

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2018

PRONOUNCED ON : 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1734 of 2003

R.Pandurangan

...

Appellant

Vs.

1. K.Ramanuja Naidu
2. Sulochanammal
3. Saroja
4. Banumathi
5. Komala

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.03.2002 passed in A.S.No.1 of 2000 on the file of the District Court, Vellore, confirming partly the Judgment and Decree dated 24.11.1999 passed in O.S.No.275 of 1991 on the file of the Subordinate Court, Ranipet.

For Appellant : Mrs.R.T.Sundari
for Mr.R.Margabandhu
For Respondents : Mr.V.Manohar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.03.2002 passed in A.S.No.1 of 2000 on the file of the Principal District Court, Vellore, partly confirming the Judgment and Decree dated 24.11.1999 passed in O.S.No.275 of 1991 on the file of the Subordinate Court, Ranipet.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for partition.

4. The case of the plaintiff, in brief, is that the first defendant is his father, the second defendant is his mother and the defendants 3 to 5 are his sisters and the plaintiff and the first defendant constitute members of a Joint Hindu Family and in the partition effected between the first defendant and his brothers, as regards the joint family properties on 02.11.1962, a partition list was drafted and in the said partition, "A" schedule properties were allotted to the first defendant comprising of 1.73 cents of wet lands and 1.96 cents of irrigated dry lands and also consisting of a pump-set and further, according to the plaintiff, another pump-set was installed in the said properties and the said properties are fertile lands and there was sufficient surplus income from the "A" schedule properties and the first defendant was only an agriculturist and not engaged in any other avocation and not deriving other source of income other than the agricultural income from the "A" schedule properties. The first defendant had purchased the "B" schedule properties out of the surplus income derived from the "A" schedule properties and out of the exertion of the plaintiff, as the plaintiff was engaged in the cultivation along with the first defendant and on account of the quarrel,

which had developed amongst the women folk of the family, the defendants took an hostile stand against the plaintiff and accordingly, the first defendant had created sham and nominal settlement deeds in favour of the other defendants in respect of the suit properties, which are not valid and binding upon the plaintiff and that, the said documents would not confer any title in respect of the suit properties in favour of the defendants 2 to 5 and the "C" schedule properties also belonged to the joint family and the defendants 3 to 5 had been given in marriage at heavy expenses with good seer and hence, inasmuch as the plaintiff is entitled to obtain half share in the suit properties and as the defendants failed to effect the partition of the plaintiff's due share, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and the description of the plaintiff schedule properties are not properly given. It is false to state that the plaintiff and the first defendant constitute members of a Joint Hindu Family and it is false to state that the first defendant derived the plaintiff "A" schedule properties in the partition effected with his brothers on 02.11.1962 and the said partition was recorded in a partition list and it is false to state that the first defendant was deriving surplus income from the "A" schedule properties, as also from the joint exertion of the plaintiff and with the said income, he had acquired the plaintiff "B" schedule

properties and it is false to state that the first defendant was not engaged in any other avocation other than agriculture and on the other hand, according to the defendants, the first defendant was engaged in sheep and cattle business and accordingly, earning sufficient and substantial income out of the same and out of his above said personal income, he has acquired several properties under the various sale transactions and the said properties are only the self acquired properties of the first defendant and cannot be recorded as the joint family properties as claimed in the plaint. The plaintiff never joined in the cultivation along with the first defendant and hence, the case of the plaintiff that he was also instrumental in the acquisition of the suit properties is false. Only a small extent of property was allotted to the first defendant in the partition and the said extent was also not income yielding and the plaintiff is not entitled to claim any share in the plaint schedule properties and as the said properties are the self acquired properties, according to the defendants, the first defendant had settled the same in favour of the other defendants by way of settlement deeds dated 22.05.1986 and 15.03.1989, which are perfectly legal and valid and not sham and nominal documents as claimed by the plaintiff and the properties described in "C" schedule properties do not exist and there are no jewels belonging to the family and the defendants 2 to 5 are in the possession of the properties settled by the first respondent and hence, the claim of the plaintiff that he is entitled to $\frac{1}{2}$ share in the suit properties is false and

the first defendant has acquired various properties under the various sale deeds as detailed in the written statement and thus, the properties acquired by the first defendant out of the said sale deeds are the self acquired properties and the suit is bad for non-joinder of necessary parties and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A11 were marked. On the side of the defendants, DWs1 to 3 were examined and Exs.B1 t& B2 were marked.

7. On a consideration of the oral and documentary documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit laid by the plaintiff. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to allow the appeal in part in respect of the "A" schedule properties in favour of the plaintiff and dismissed the appeal as regards the plaint "B" & "C" schedule properties. Aggrieved over the same, the present second appeal has been laid by the plaintiff.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i) Whether from A schedule

properties there is no sufficient surplus income with which the B schedule properties could not have been purchased for the benefit of the joint family?

(ii) Whether the burden has been discharged by the first defendant in proving the purchase of B schedule property?"

9. The plaintiff is the son of the defendants 1 & 2 and the defendants 3 to 5 are the daughters of the defendants 1 & 2. The above said relationship is not in dispute. The plaintiff claims that he and the first defendant constitute members of the joint Hindu Family and according to him, the plaint "A" schedule property was allotted to the first defendant, in the family partition effected with the brothers of the first defendant on 02.11.1962 and out of the income derived from the "A" schedule properties, it is the case of the plaintiff that the plaint "B" schedule properties were acquired by the first defendant in his own name and the first defendant has no other income other than the agricultural income and it is further stated that the plaintiff has also contributed his labour in the cultivation of the suit properties and further, it is stated that the "C" schedule properties comprising of Jewels belonged to the joint family and it is thus the case of the plaintiff that he is entitled to half share in the suit properties and as his request to effect amicable partition of the suit properties and the allotment of his share had not been

accepted by the defendants, according to him, he has been constrained to lay the suit for partition.

10. Per contra, it is the case of the defendants that the plaint "A" schedule properties had not been allotted to the first defendant in the family partition as alleged in the plaint and on the other hand, only a small extent of land had been allotted, which are not income-yielding and the first defendant was engaged in sheep and cattle business and thereby receiving considerable income and out of the said personal income, he had acquired the written statement schedule properties under various sale deeds as detailed in the plaint and hence, it is the case of the first defendant that the suit properties are the self acquired properties of the first defendant and accordingly, he has settled the same in favour of his wife and daughters and hence, the plaintiff cannot lay any claim of right or share in the suit properties and the suit is liable to be dismissed.

11. The first appellate Court, on the basis of the evidence of PW2, the brother of the first defendant as well as the partition list marked as Ex.A11 as well as the admission of DW2 that her father had been allotted 1.73 acres of Nanjai land and 1.96 acres of dry lands and further, finding that the defendants have failed to establish that only a small extent of land had been allotted to the first defendant in the above said partition, accordingly, on an appreciation of the above said materials, proceeded to

hold that the plaint "A" schedule properties are the ancestral properties of the first defendant and accordingly, holding that the plaintiff and the first defendant constituting members of the Joint Hindu Family and accordingly, held that the plaintiff is entitled to obtain half share in the plaint "A" schedule properties. As against the above determination of the first appellate Court, the defendants have not preferred any appeal or filed any cross objection in the present second appeal levied by the plaintiff.

12. The Courts below have held that on the materials placed, the first defendant is engaged sheep and cattle business and also based on the above said determination and on the admission of the plaintiff made during the course of his evidence, it is further found that the "B" schedule properties had been admittedly acquired by the first defendant in his own name under the various sale deeds as detailed in the written statement. The said facts had not been disputed by the plaintiff as such. In fact, the evidence adduced in the matter disclose that the plaintiff had taken away the above said sale deeds standing in the name of the first defendant with reference to the acquisition of the plaint "B" schedule properties. Accordingly, it is found that the plaintiff is in the possession and custody of the materials evidence, which would throw a considerable light on the contentions put forth by the respective parties as to the nature of the acquisition of the plaint "B" schedule properties. However, despite the

admission of the plaintiff that he is in the possession and custody of the sale deeds, it is seen that the plaintiff has not come forward to produce the same for enabling the Courts to determine as to the nature of the acquisition of the "B" schedule properties standing in the name of the first defendant. That apart, the materials placed on record in this matter do not point out that any income had been derived as such by the joint family during the relevant period so as to enable them to acquire the "B" schedule properties as claimed in the plaint. In this connection, though the plaintiff would claim that the shares allotted to the first defendant during the family partition was yielding considerable income and by way of the same, the first defendant had acquired the plaint "B" schedule properties in his own name, however, to buttress the same, there is no material whatsoever and in such view of the matter, it is found that as rightly contended by the defendants, inasmuch as there had been no income from the properties allotted to the first defendant by way of the family partition, it is seen that neither the plaintiff nor the defendants are able to place any material pointing to the same. In such view of the matter, it is found that the case of the plaintiff that the properties allotted to the first defendant by way of the family partition were highly income yielding properties as such, cannot be accepted. If that be so, nothing prevented the plaintiff from producing the Adangal extract with reference to the plaint "A" schedule properties to show that the suit properties were under the cultivation of the first defendant and they were yielding income

in surplus for enabling the first defendant or for the matter, the joint family to acquire the plaint "B" schedule properties as such.

13. No doubt, on the determination of the first appellate Court that the plaint "A" schedule properties are the joint family properties consisting of the plaintiff and the first defendant and when it is further seen that the plaint "B" schedule properties had been acquired only in the name of the first defendant, the first defendant being the eldest member of the family and managing the family as such, it is found that the burden is upon the first defendant to establish that the plaint "B" schedule properties had been acquired out of his self acquisition. However, when according to the first defendant, he has acquired the plaint "B" schedule properties under the various sale deeds as listed in the written statement and when the said fact has not been controverted by the plaintiff and when it is seen that as per the admission of the plaintiff during the course of cross examination, that he had taken away all the above said sale deeds and failed to produce the same to throw light on the issues involved in the matter for the proper appreciation of the Courts and when the materials placed on record, further, disclose that the first defendant was engaged in cattle and sheep business and earning income out of the same and in such view of the matter, it is found that the first defendant independently was acquiring income out of his own avocation and not deriving any income as such from the properties allotted to him by way of

the family partition. In such view of the matter, it is found that the materials placed on record point out to the fact that the first defendant was deriving considerable income out of his own avocation as above discussed and the said fact having been admitted by the plaintiff to some extent and when it is found that the plaintiff is in the custody of the material evidence which would throw light on the issues to be resolved, the plaintiff having suppressed to the same, the adverse inference should be drawn only against the plaintiff with reference to the same. In such view of the matter, it is found that the plaintiff cannot be allowed to complain that the first defendant has failed to establish the acquisition of the plaint "B" schedule properties out of his own acquisition. On the other hand, as above discussed, when it has been determined by the Courts below that the first defendant is engaged in separate avocation and earning income and the properties allotted to him under the family partition are not shown to be income yielding properties, it is seen that the plaint "B" schedule properties cannot be construed as the joint family properties belonging to the joint family and in such view of the matter, the first appellate Court is found to have correctly determined that the plaintiff has failed to establish the nature of the plaint "B" schedule properties as the joint family properties belonging to him and the first defendant. In such view of the matter, I do not find any reason to interfere with the above said determination of the first appellate Court.

14. As regards the plaint "C" schedule properties, it is found that absolutely, there is no material placed on record to evidence that the joint family owned any jewels as described in the plaint "C" schedule properties and in such view of the matter, it is found that the claim of the plaintiff that the plaint "C" schedule properties also form part of the Joint family properties as such cannot be accepted sans any material pointing to the same.

15. The case of the plaintiff is that he had also exerted his labour in the cultivation activities along with the first defendant and hence, entitled to the share in the plaint "B" schedule properties, however, the same has been vehemently denied by the first defendant. Despite the same, there is no material forthcoming on the part of the plaintiff to hold that he was contributing his labour in the cultivation of the suit properties as such for enabling the first defendant to acquire the other properties described in the plaint.

16. In the light of the above said reasonings and in the absence of any proof to hold that the properties allotted to the first defendant by way of the family partition or for the matter, the plaint "A" schedule properties had been yielding any income as such for constituting a corpus for acquiring the plaint "B" schedule properties and when it is found that the first defendant was engaged in separate business of his own and

earning considerable income by way of the same and when the first defendant has also discharged his burden that he had acquired the plaint "B" schedule properties out of his own income and acquisitions as determined by the Courts below and the plaintiff has not placed any contra material to the same for enabling the Court to hold that the family properties yielded considerable income to acquire the plaint "B" schedule properties, it is found that the first appellate Court had rightly determined that the plaint "B" schedule properties are the self acquired properties of the first defendant and accordingly, the plaintiff cannot lay any claim of share in the same and rightly dismissed the plaintiff's suit with reference to the same as well as the plaint "C" schedule properties. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

In conclusion, the second fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

sms

To

1. The District Court, Vellore.

2. The Subordinate Court, Ranipet.

3. The Section Officer, V.R.Section, High Court, Madras.

08.03.2018

WEB COPY

T.RAVINDRAN, J.

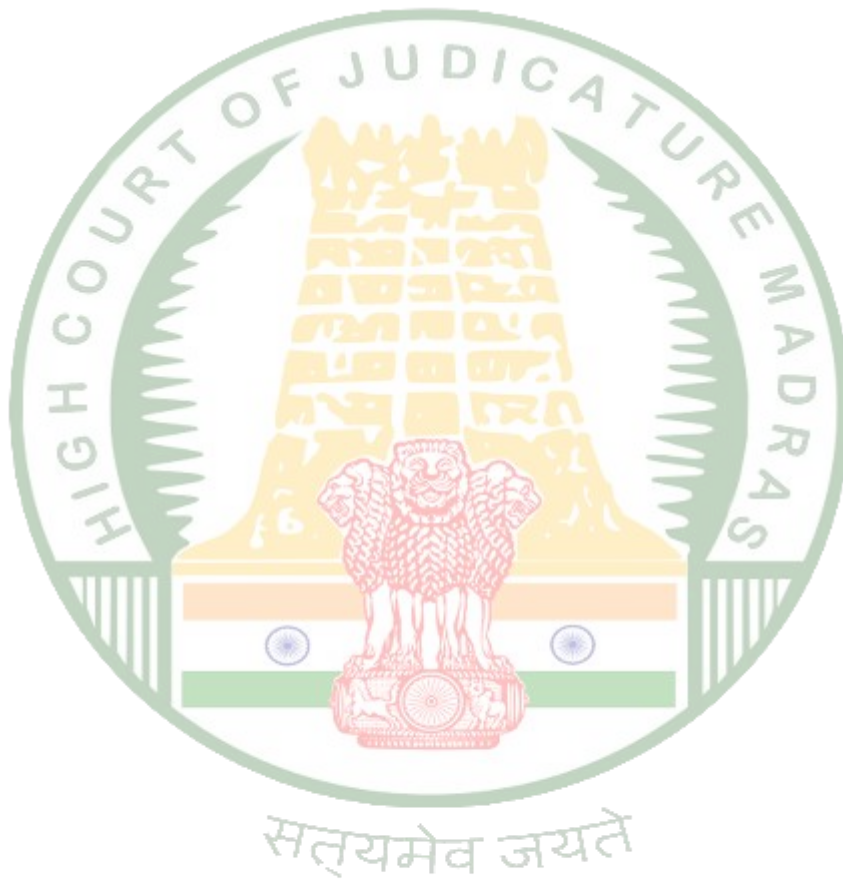
sms



**Pre-Delivery Judgment made
in S.A.No.1734 of 2003**

WEB COPY

08.03.2018



WEB COPY