

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :28.02.2018

PRONOUNCED ON: 19.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2188 of 2003

V.Parasuraman Appellant/Plaintiff

Vs.

V.Ariyaputhri Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.99 of 2002 on the file of the Additional District & Sessions Judge, Fast Track Court-II, Tindivanam dated 26.12.2002 in confirming the judgment and Decree in O.S.No.120 of 1995 on the file of the District Munsif, Vanur dated 13.08.1997.

For Appellant : Mr.M.Muruganantham
For M/s.V.Raghavachari

For Respondent: Mr.S.parthasarathy

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 26.12.2002 passed in A.S.No.99 of 2002 on the file of the Additional District Judge, Fast Track Court No.II Dindivanam, confirming the judgment and decree dated 13.08.1997 passed in O.S.No.120 of 1995 on the file of the District Munsif Court, Vanur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration, possession and mandatory injunction.

4.The case of the plaintiff in brief is that the suit property belong to the plaintiff absolutely. The defendant, the

plaintiff, Manivannan and Bakthavathcalam are the sons of Venugopal and Prabhavathy and Vijaya Lakshmi are the daughters of Venugopal and the plaintiff's mother Thulasiammal died about 30 years ago and the plaintiff was brought up by his grandfather Kathavaraya Gounder and accordingly, the plaintiff out of his sole earned income, acquired the suit property, by way of a sale deed dated 09.02.1968 and enjoying the same, the plaintiff's father Venugopal contracted a second marriage after the demise of Thulasiammal and did not care for his children thereafter and it is only the plaintiff, who has been enjoying the suit property separately and while so, the plaintiff's father effected partition in respect of the properties amongst the sons in the year 1976 and in the said partition, the plaintiff was allotted 0.63 cents and accordingly the plaintiff has been in possession and enjoyment of the suit property as well as the 0.63 cents allotted to him under the above said partition. While so, the plaintiff in order to eke out his livelihood, went to Bangalore and stayed there for some years and taking advantage of his absence, the defendant unlawfully intruded or trespassed into the suit property and put up a superstructure on the same and the defendant is not entitled to suit property in any manner and hence the illegal construction put up by the defendant is liable to be removed and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The claim of the plaintiff that the suit property is his self acquired property is false and the partition arrangement projected by the plaintiff would go to show that the suit property is not the self acquired property of the plaintiff and the Commissioner's report will expose the truth and the plaintiff never enjoyed the suit property as his self acquisition property as claimed in the plaint and the suit property is the joint family property of the plaintiff, the defendant and their brothers and hence the suit laid by the plaintiff without impleading all the brothers is bad in law and the suit is therefore liable to be dismissed.

6.In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A9 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B10 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been laid.

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

(i) Whether the Courts below are right in ignoring the settled principles of law that the purchase of the property in the name of the junior member gives rise to a presumption that it is his self-acquisition vide 1992, L.W.692?

(ii) Whether the Courts below are right in billeting the documentary evidence to oral evidence and whether the reasoning of the Courts below are not opposed to the principles enunciated in 1997 1.L.W492 and 88 L.W.349?

(iii) Whether the Court below are right in concluding that the property is a joint family property, when the defendant had failed to establish that Kathavarayan had sufficient joint family income to purchase suit property?

9. The materials placed on record would go to show that there has been a partition effected by the plaintiff's father and his sons including the plaintiff and defendant, during the year 1976 and the partition deed above stated has been marked as Ex.A4/B1. The partition list given to the plaintiff has been marked Ex.A3. From Ex.A4/B1, it is found that the plaintiff has been allotted 0.63 cents by his father and the other properties allotted to the defendant and the other sons. The plaintiff had admitted the factum of the partition made under Ex.A4/B1. It is thus found that till the partition effected under Ex.A4/B1, the plaintiff's family were joint and only thereafter they got divided. In this connection, the plaintiff examined as P.W.1, during the course of cross examination has admitted that it is correct to state that they had divided their shares on 19.07.1996 and his signature available in the partition deed and the original of the partition deed is Ex.B1 and the recitals contained in the schedule of the partition deed are true and all the sharers accepted the recitals and signed the partition deed and though he would at the first instance, pleaded ignorance about the recitals in the partition deed with reference to the agreement entered into between the sharers that any property left out of the partition standing in the name of the brothers, the same should be equally divided later, finally admitted that such a recital is contained in Ex.A4/B1 and it is thus found

that only after Ex.A4/B1 Venugopal and his sons got separated and till that point of time they were joint. On a perusal of the recitals found in Ex.A4/B1, it is found that the parties had agreed that if any property is left out even standing in the name of the brothers, the said property should be equally divided amongst the brothers. It is further found that under Ex.A4/B1, the property acquired in the name of the defendant was also divided, however it is seen that the property acquired in the name of the plaintiff has not been divided under Ex.A4/B1. According to the defendant, as at the point of time, the sale deed in respect of the suit property was not available, the same was not included and further according to the defendant, as per the recitals contained in Ex.A4/B1, the same having been admitted by the plaintiff, through the suit property stands in the name of the plaintiff, the same is only the joint family property and accordingly, liable to be divided amongst the brothers.

10.It is the case of the plaintiff that he has been brought up by grandfather Kathavaraya Gounder, it is further seen that the suit property had been acquired on 09.02.1968 in the name of the plaintiff and the said sale deed had been marked as Ex.A2. Admittedly, at that point of time, the plaintiff was only a minor. Therefore, the plea of the plaintiff that he had acquired the suit property out of his funds/income as such cannot be countenanced in any manner and on the other hand, evidence has been let in by the defendant through the defendant examined as D.W.1 that the consideration for the acquisition of the suit property had been given only by the plaintiff's father Venugopal. In this connection, the plaintiff's aunt Poorniammal examined as P.W.2, during the course of cross examination had admitted that Kathavarayan had two sons and it is only the plaintiff's father Venugopal who had been earning income by conducting "Koothu" at out stations. It is found that Venugopal had been earning considerable income out of his avocation and accordingly maintaining the family. Even though the suit property had been purchased in the name of the plaintiff by his grandfather Kathavarayan, when it is noted that the plaintiff was a minor, at that point of time and when there is no material placed on record to show that Kathavarayan was independently earning income and on the other hand when there is clear evidence through the mouth of P.W.2 that the plaintiff's father was earning income by conducting "Koothu" at out stations and accordingly, it is found that the plaintiff cannot take advantage of the acquisition of the suit property in his name and thereby contend that the suit property is his self acquired property.

11.From the evidence placed on record, it is found that in the family of Venugopal , most of the properties had been

acquired only in the name of either the defendant or the plaintiff. Accordingly, it is found that various properties had been acquired in the name of the defendant and the plaintiff as the case may be and as above seen, the property acquired in the name of the defendant was also the subject matter of the partition under Ex.A4/B1 and the same has been admitted by the plaintiff. Inasmuch as, various properties had been acquired in the name of the brothers of the family, accordingly, the parties had agreed that in case, any property is left out of the partition under Ex.A4/B1, standing in the name of brothers, the same should be later equally divided amongst the brothers and when the said recitals had been admitted by the plaintiff and admitting the same he had also signed the partition deed, it is found that the left out property, as determined by the Courts below, should only to be treated as the joint family property of the plaintiff and his brothers and in such view of the matter, the plaintiff cannot lay any exclusive title to the suit property as such. There is no material placed on record to evidence that either Kathavarayan on behalf of the plaintiff or the plaintiff, as the case may be, had been in exclusive possession and enjoyment of the suit property from the date of Ex.A2 transaction. The Kist receipt marked as Ex.A8 has come into existence after the institution of the suit and the Kist receipt marked as Ex.A7 is just prior to the filing of the suit and therefore, Exs.A7 and A8 would be of no use to sustain the plaintiff's case that the suit property has been in his exclusive possession and enjoyment right from the date of Ex.A2 transaction. As above seen, when admittedly, the plaintiff was a minor at the time of the acquisition of suit property and when there is no material on record to show that Kathavarayan had funds of his own to acquire the suit property and on the other hand, when it is seen that it is only the plaintiff's father who had been earning income during the relevant point of time, as admitted by P.W.2, it is found that only out of the income earned by the plaintiff's father, the suit property as well as the other properties had been acquired in the name of the plaintiff or the defendant as the case may be and accordingly it is found that all the properties acquired in the name of the brothers were brought into the hotch pot and partitioned by way of Exs.A4/B1 and as the parties thereto felt that some other properties would have been left out of the partition, accordingly agreed to include the recitals therein i.e., in case, any property left out of the partition, the same should be later equally divided amongst the brothers and when it is found that the plaintiff as well as his brothers are the signatories to the said partition deed, the same is binding upon them in full force. Inasmuch as it is found that the plaintiff cannot lay any independent claim of title to the suit property as such and on the other hand, as rightly determined by the Courts below, the suit property could only to be determined as the joint family property of the plaintiff, the defendant and their

brothers and accordingly, liable for partition amongst the brothers as per the recitals found in the partition deed marked as Exs.A4/B1, it is seen that the plaintiff cannot be granted the reliefs prayed for.

12.Inasmuch as the suit property has been all along treated as the joint family property, accordingly it is noted that the plaintiff is unable to place any material to hold that the same has been in his exclusive possession and enjoyment from the date of the acquisition thereof. Accordingly, it is found that the plaintiff has also not evinced any interest to stop the construction put up on the suit property by the defendant and when from the materials placed on record, particularly, the Commissioner's report and plan, when it is noted that the defendant had put up the construction even two years prior to the filing of the suit in the suit property and the plaintiff being aware of the same and when the case of the plaintiff that he was not in station at the point of time and left to Bangalore to eke out his livelihood and when with reference to the above case of the plaintiff, there is no proof placed whatsoever, it is found that inasmuch as the suit property had been treated and enjoyed as the joint family property accordingly, it is seen that the plaintiff has not shown any resistance to the construction put up by the defendant and left the matter as such. Only thereafter, it is found that the plaintiff has come forwarded with the present suit, on the footing that the suit property is the self acquired property. Be that as it may, in any event, it is found that even the construction put up by the defendant in the suit property cannot be legally accepted, when it is noted that the same is the joint family property of the brothers and liable to be equally partitioned amongst the brothers.

13.In the light of the above discussions, it is found that the plaintiff has miserably failed to establish that the suit property is his self acquired property as claimed and on the other hand, the materials placed on record go to establish that suit property had been acquired only out of the income earned by Venugopal, the father in name of the plaintiff and accordingly treated and enjoyed as the joint family property and not as the independent property by the plaintiff. In view of the above position, the Courts below had not ignored the presumption that the property standing in the name of junior members is his self acquisition and on the other hand, the Courts below on the basis of the material placed on record, rightly came to the conclusion that, though the suit property had been acquired in the name of the plaintiff, it is only the joint family property of the plaintiff and his brothers acquired by the plaintiff's father in the name of the plaintiff, as has been the practice in the

family to acquire the properties in the names of the sons and accordingly there is no error in the determination of the Courts below that the suit property is only the joint family property as the plaintiff has failed to establish that Kathavarayan had separate funds or income to acquire the suit property in his name and particularly when it is noted that the plaintiff was admittedly a minor at the time of the acquisition of the suit property. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

14. In the light of the above discussions, the principles of law enunciated by the authorities relied upon by the plaintiff's counsel reported in 2008 (7) SCC 46 [Hardeo Rai Vs. Sakuntala Devi and Others], [Puthiavinayagam Pillai Vs. Sivasankaran Pillai], 1999 (2) Law weekly 652 [R. Subbiah & S. Dhason Vs. P. Anandam @ Panchali], 1997 (1) Law weekly 482 [Puthiavinayagam Pillai Vs. Sivasankari Pillai] and the decision of this Court dated 13.07.2015 rendered in S.A.739 of 2008 [Amutha and others Vs. Janardhanan and others] are taken into consideration and followed as applicable to the case at hand.

15. At the end, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court-II,
Tindivanam.

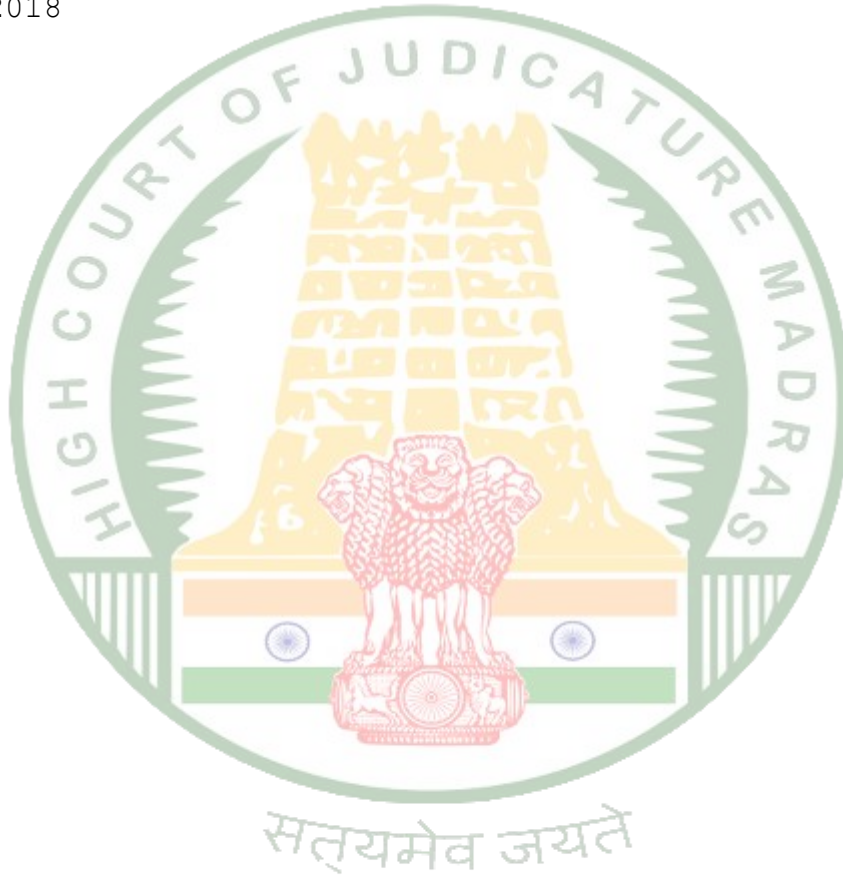
2. The District Munsif,
District Munsif Court,
Vanur .

3.The Section Officer,
VR Section,
High Court.(2 copies)

+1cc to Mr.V.Raghavachari, Advocate sr.no.20235
+1cc to Mr.Parthasarathy, Advocate sr.no.20247

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