

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.1201 of 2014

T.Karthikeyan

...Appellant/Appellant/Defendant

Versus

T.Natarajan

... Respondent/Respondent/Plaintiff

Prayer:-

Second Appeal filed under Section 100 of the Civil Procedure Code to allow the above Second Appeal with costs by setting aside the judgment and decree dated 25.07.2014 made in A.S.No.221 of 2013 on the file of the III Additional Judge, City Civil Court, Chennai by confirming the judgment and decree dated 11.03.2013 in O.S.No.10472 of 2009 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Kanniah

For Respondent : Mr.K.Mohanamurali

J U D G M E N T

The unsuccessful defendant is the appellant herein.

2. The respondent/plaintiff filed the suit in O.S.No.1201 of 2009, on the file of O.S.No.10472 of 2009 on the file of the IV Assistant Judge, City Civil Court, Chennai, seeking for a direction to the defendant to deliver vacant possession of the schedule mentioned property and to pay future damages of Rs.5,000/- and for a permanent injunction, restraining the defendant, his men from in any manner, making material alteration in the schedule mentioned property.

3. For the sake of convenience, the parties herein will be referred as per the same rank assigned before the trial Court.

4. The averments set out in the plaint, in short is as follows:-

i) The plaintiff is the absolute owner of the schedule mentioned property, bearing Old Door No.65/2, New No.128, situated at Medavakkam, 2nd Street, Kilpauk, Chennai - 10. The plaintiff purchased the property by virtue of a sale deed dated 07.03.1981 from one P.S.Nandhagopal through his Power Agent. After the said purchase, the plaintiff constructed a ground floor in the year 1994 by availing loan from the Co-operative Society of Simpson and Company, Anna Salai, Chennai. In April, 1999, the plaintiff retired from service and out of such retiral benefits, he constructed 1st floor in the suit property and the said property is in occupation of the defendant, who is none other than the younger brother of the plaintiff. The plaintiff being the Kartha of the family, spent all his hard earned money for the well being and maintenance of the family and also arranged for the marriage of his sisters and brothers. Insofar as the defendant is concerned, he got married on 30.11.1998 and he is permitted to occupy the first floor by the plaintiff. The plaintiff has three daughters and they are all married.

ii) Whiles, from 2007, the defendant and his wife started to pick up quarrel with the family members of the plaintiff and owing to the same, plaintiff requested him to vacate the premises, i.e. first floor. Since the defendant refused to vacate the premises, the plaintiff, after much indulgence, caused lawyer's notice on 29.09.2009. Despite receipt of such notice, the defendant has neither replied to the notice, nor, vacated the premises, which necessitated the plaintiff to file the suit seeking for the relief, as stated in the plaint.

5. The defendant contested the suit by filing a written statement, wherein, it is stated as follows:-

i) The plaintiff is the Kartha of the family. The father of the plaintiff and defendant, named A.Thangavel @ Jayaraman, who was working as Blacksmith in the Simpson and Company, died in harness, in the year 1988, and hence, the Company, on compassionate ground, employed the plaintiff as Machine Operator and also paid substantial amount to the family, and since the plaintiff is the Kartha of the family, he was allowed to receive the amount. The wife of deceased Thangavel predeceased him in the year 1986. The said Thangavel died leaving behind him the plaintiff, defendant and seven daughters. The suit property was purchased not only from the income of the plaintiff, but also from the income which accrued due to the death of the father, Thangavel, and insofar as the improvements made to the property is concerned, the other family members contributed to the same and therefore, plaintiff cannot claim independent right over the suit property, claiming himself to be the absolute owner of the property. Since the plaintiff, being the Kartha of the family,

the property was purchased in his name and taking advantage of the same, the plaintiff is now trying to defeat the rights of the other family members.

ii) The defendant further contended that he is in occupation and enjoyment of the suit premises only by virtue of his right/interest over the property, and not at the mercy of the plaintiff. The suit instituted by the plaintiff is nothing but with an intention to grab the property. The entire property was occupied and enjoyed by all the members of the joint family and insofar as the first floor is concerned, it is not only enjoyed by the defendant but also by one of his unmarried sister and since the plaintiff demanded to vacant premises, all of a sudden, the defendant refused, and also not chosen to give reply to the notice caused by the plaintiff, since the defendant is in enjoyment of the property by virtue of his right. Further, the defendant contended that the suit is suit bad for non joinder of necessary parties, as they are other co-sharers, who have to be necessarily impleaded and thus, averred that the suit is not maintainable and liable to be dismissed.

6. Before the Trial Court, on the side of the plaintiff, plaintiff examined himself as P.W.1 and marked eight documents, viz., Exs.A.1 to A.8. On the defendant's side, the defendant and two other were examined as D.W.1 to D.W.3, and no documents were marked.

7. The trial Court on the basis of both oral and documentary evidence, partly allowed the suit. Against the said judgment and decree, the defendant preferred First Appeal before the First Appellate Court.

8. The First Appellate Court also concurred with the findings of the Trial Court and dismissed the Appeal. Aggrieved by the said judgment, the defendant has preferred the present Second Appeal.

9. At the time of admission of the Second Appeal, the following substantial questions of law were framed:-

a) Whether the courts below have committed an error in deciding the claim of the respondent without considering the existence of the joint family or not?

b) Whether the Courts below were correct in holding that the suit property is the separate property of the respondent even though he has failed to prove the disruption in the joint family status?

c) Whether the courts below have committed an error in granting decree for delivery of possession, without any pleadings and evidence as to the actual date, terms and conditions subject to which the appellant was put in possession of the suit property?

10. The learned counsel appearing for the appellant/defendant contended that the suit property is a joint family property and the respondent/plaintiff alone cannot claim individual right over the same. Further, both the appellant/defendant and the respondent/plaintiff are living in the suit property from the year 1999. The subject property was purchased as a vacant site on 07.05.1981 by the plaintiff, in his name, as he is the eldest male member in the family, and the Kartha of the family. The father of the plaintiff and the appellant/defendant was employed as Blacksmith in Simpson and Company and died in the year 1988 leaving behind his wife, 3 sons and 2 daughters. The Company paid substantial amount to the father's death towards his service benefit and the same was received and utilised by the plaintiff for the purpose of purchase of vacant site. That apart, the plaintiff/respondent was employed in the above said company on compassionate ground. The plaintiff, defendant and their younger brothers and sisters were all living together in the same property as joint family for all these years. All the members of the family have contributed their income for the maintenance of the family. The appellant/defendant is in possession and enjoyment for quiet a long time.

11. The learned counsel further contended that the first floor of the suit property was occupied not only by the appellant but also by their sisters, hence, the suit is not maintainable on the ground of non-joinder of necessary parties and all these aspects were not considered both by the trial Court and the First Appellate Court and decreed the suit. Further, the learned counsel also relied upon the decision rendered in Shankarrao Dejisaheb Shinde Vs. Vithalrao Ganpatrao Shide and others, reported in (1989) SCC 162 in support of his contention that onus lies on the party claiming disruption in the joint family property and yet another decision rendered in the case of Sher Singh and others Vs. Gamdoor Singh reported in (1997) 2 SCC 485, wherein, it is held that when existence of joint family being not in dispute, the property held by the family assumed the character of coparcenary property.

12. Therefore, the learned counsel contended that the burden of proof lies on the respondent/plaintiff to establish that he is the absolute owner of the property and to substantiate the same, no evidence have been produced. It is further contended that the plaintiff is the Kartha of the family and is responsible to take care of the entire family, and since he being the kartha of the family spent considerable amount for conducting the marriages of the sisters, which would prove that all the sisters and appellant/defendant and the plaintiff were living in the same property for a considerable long time, so

the property is a joint family property and accordingly, the same has to be declared as a joint family property. Therefore, the learned counsel prays for allowing the present Appeal.

13. On the other hand, the learned counsel appearing for the respondent/plaintiff submitted that the property was purchased during the year 1981 in the name of the plaintiff by virtue of a sale deed dated 07.03.1981 from one P.S.Nandhagopal through his Power Agent, and nowhere, in the sale deed, it was mentioned that the property was purchased out of the amount derived due to the death of the father and other family members have also substantial contribution to the said purchase. Further, the learned counsel submitted that the respondent/plaintiff was found employment in the Simpson company on compassionate ground due to the death of his father and got married, all these would per se prove that out of his own earning and out of the sale of the jewels belonged to his wife, the property was purchased in the year 1981 and to substantiate the same, the plaintiff marked exhibited eight documents, Exs.A1 to A8, out of which, Ex.A1 is the sale deed executed in favour of the plaintiff, and Ex.A2, is the patta in respect of the property, standing in the name of the plaintiff. Therefore, the learned counsel appearing for the respondent/plaintiff contented that the property certainly belongs to the plaintiff alone and neither the defendant nor the other cosharers, viz., the sisters can claim right over the same. Accordingly, the plaintiff established his title over the property before the trial Court. Hence, the suit was decreed in favour of the respondent/plaintiff and the first Appellate Court also upheld the same. Therefore, the concurrent judgments passed by the Courts below does not call for interference of this Court.

14. Admittedly, the property was purchased in the name of the plaintiff vide the sale deed dated 07.03.1981 executed by P.S.Nandhagopal through his Power Agent and patta in respect of the property was also issued in his name on 29.08.1983, as evident from Ex.A.2. The respondent/plaintiff also produced evidence to show as to how he got the source to purchase the property. Ex.A.7 is the salary certificate issued by the Simpson Company, where, the plaintiff was employed. Therefore, it is clear that the plaintiff was employed. Similarly, it is not in dispute that the plaintiff is a married one at the time of purchase of the property. Hence, it can be easily inferred that since he was an employee in the Simpson Company, from and out of the income derived by his earnings and also out of the sale proceeds of the jewels of his wife, he purchased the property in his name and thereafter, by obtaining loan from the Cooperative Society of Simpson and Company he started constructing a ground floor in the year 1994, and in the year 1999, he retired from service and out of such retiral benefits,

he constructed 1st floor in the suit. Since his father passed away during the year 1981, and he being the eldest male member of the family, he had discharged his duty as Kartha of the family and solemnized marriages of his brothers and sisters, and also allowed the defendant and sisters to reside in his property, and taking advantage of the same, they cannot squat on his property.

15. Merely because, the plaintiff, defendant and their younger brothers and sisters were all living together in the property as joint family from the year 1999, and that, they have also put efforts for maintenance of the family, it cannot be presumed that all the members of the family have contributed money for the purchase of the property. Further, in the sale deed, nowhere, it is mentioned that the property was purchased out of the income earned by the other family members. Therefore, the defendant cannot claim that the property belong to joint family and he has coparcenary right over the same. Similarly, the authorities relied upon by the learned counsel appearing for the appellant/defendant, viz., the decision rendered by the Hon'ble Supreme Court, i) in the case of Shankarrao Dejisaheb Shinde's (cited supra) and Sher Singh and others (cited supra) in support of his contention that onus lies on the party claiming disruption in the joint family property and that, when existence of joint family being not in dispute, the property held by the family assumed the character of coparcenary property, are not applicable to the appellant's case, as the respondent/plaintiff has proved his title over the property beyond any reasonable doubt.

16. All these aspects were rightly considered by the Courts below and decreed the suit and this Court find no reasons to interfere with the judgments of the Courts below. Accordingly, the substantial questions of law are answered against the appellant/defendant.

17. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the Courts below. No costs.

17/12/2018

After the pronouncement of the judgment, the learned counsel appearing for the appellant requested time for handing over the possession to the respondent.

In view of the submission made by the learned counsel for the appellant, three months time is granted for handing over the possession to the respondent from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The III Additional Judge, City Civil Court, Chennai
2. The IV Assistant Judge, City Civil Court, Chennai.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Kanniah, Advocate sr.no.88277
+1cc to Mr.K.Mohanamurali, Advocate sr.no.87564

S.A.No.1201 of 2014

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