

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2018

PRONOUNCED ON : 12.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.580 of 2004

M.G.Subramaniam

...

Appellant

Vs.

1. M.Kannan

2. M.Saroja

3. M.Renu

....

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 03.12.2003 passed in A.S.No.67 of 2003 on the file of the Principal District Court, Vellore, confirming the Judgment and Decree dated 04.07.2003 passed in O.S.No.379 of 1997 on the file of the Principal District Munsif Court, Vellore.

For Appellant : Mr.P.Ganapathy

For Respondents : Mr.N.P.Kumar

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 03.12.2003 passed in A.S.No.67 of 2003 on the file of the Principal District Court, Vellore, confirming the Judgment and Decree dated 04.07.2003 passed in O.S.No.379 of 1997 on the file of the Principal District Munsif Court, Vellore.

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

3. Suit for partition

4. The case of the plaintiffs, in brief, is that the plaintiffs and the defendant are the sons and daughters of Mannar Gounder, who died in 1972 and their mother Thanjiammal died on 08.12.1994 leaving behind the plaintiffs and the defendant to succeed to her property as her legal heirs and the suit property belonged to Thanjiammal, she having purchased the same by way of two sale deeds and on her death, the plaintiffs and the defendant are each entitled to $\frac{1}{4}^{\text{th}}$ share as per law and the first plaintiff is residing in a portion of the suit property and the defendant has let out a portion and following exchange of notices between the parties, a Panchayat was convened and the defendant demanded $\frac{1}{2}$ share in the suit property, whereas, he is entitled to only $\frac{1}{4}$ share and hence, left with no other alternative, according to the plaintiffs, they had been constrained to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. It is true that the plaintiffs and the defendant are the sons and daughters of Mannar Gounder and Thanjiammal and it is true that Thanjiammal died on

08.12.1994 leaving behind the plaintiffs and the defendant to succeed to her interest in the suit property and it is false to state that the suit property belonged to Thanjiammal as acquired by her by way of two sale deeds and it is false to state that the plaintiffs and the defendant are each entitled to $\frac{1}{4}$ share in the suit property. Even during the life time of his father, Mannar Gounder, was in possession of a portion of the suit property, which he had inherited from his ancestors and subsequently, he had purchased another portion by way of a registered sale deed dated 02.03.1939 benami in the name of his wife Thanjiammal for the benefit of the joint hindu family from and out of his own funds and exertion and Thanjiammal never treated the suit property as her separate property and the same was enjoyed by all the members of the joint family consisting of Mannar Gounder and his children and the entire suit property has been treated and enjoyed only as the joint family property and Thanjiammal had no independent income of her own to acquire the suit property and she was depending only on the income of the defendant and the first plaintiff and the defendant also purchased a portion of the suit property with his own funds derived from his defence employment for the benefit of the joint family benami in the name of his mother and accordingly, the first plaintiff and the defendant are in the possession of a separate portion of the suit property as members of the joint family and Mannar Gounder is entitled to $\frac{1}{3}$ share if he had been alive and thus, it is stated that the first plaintiff and the defendant is entitled to each $\frac{5}{12}$

share in the suit property and the plaintiffs 2 & 3 are entitled to each 1/12 share in the suit property as per law and the plaintiffs 2 & 3 were given in marriage after incurring heavy expenses long back and the suit property does not belong to Thanjiammal as her separate property and the same has been purchased only benami in her name as above stated and as a portion of the suit property was inherited by Mannar Gounder, by no stretch of imagination, the suit property can be treated or construed as the separate property of Thanjiammal and hence, the suit laid by the plaintiffs is not entitled for acceptance and liable to be dismissed.

6. In support of the plaintiffs case, PW1 was examined and Exs.A1 to A5 were marked. On the side of the defendants, DWs 1 & 2 were examined and Exs.B1 to B8 were 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 accept the plaintiffs' case and accordingly, granted the preliminary decree as prayed for. Impugning 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) Misconstruction of the evidence of P.W.1 in spite of admission that portion of the suit property is ancestral property. Whether the lower court is right in holding that the suit property is property of Thanjamma?

(ii) Whether the appellant had established Ex.A1 property as a joint family property?

(iii) Whether Ex.A1 is proved to be the separate and self acquired property of Thanjammal?

(iv) Whether the share allotted is in accordance with law?"

9. The relationship between the parties is not in dispute. The plaintiffs and the defendant are the children of Mannar Gounder and Thanjiammal. Now, according to the plaintiffs, the suit property is the separate property of Thanjiammal and as such, on her demise, the plaintiffs and the defendant, being her legal heirs, are each entitled to $\frac{1}{4}$ share in the suit property and as their claim of share in the suit property has not been accepted by the defendant, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that a portion of the suit property is the ancestral property of Mannar Gounder and Mannar Gounder has acquired a portion of the suit property out of his exertion and funds benami in the name of his wife Thanjiammal and accordingly, the said portion has been treated and enjoyed only as the joint family property of the parties concerned and further, according to the defendant, another portion of the suit property was acquired by him out of his income from the defence service benami in the name of his mother Thanjiammal and thus, in all, it is the case of the defendant that though the suit property as such stands in the name of Thanjiammal, the same is only the joint family property of the parties and accordingly, as per law it is the case of the defendant that he and the first plaintiff are each entitled to 5/12 share in the suit property and the plaintiffs 2 & 3 are each entitled to 1/12 share in the suit property and hence, the suit is liable to be dismissed.

11. The suit property being found to be only acquired in the name of Thanjiammal as seen from the materials placed in the matter and the defendant having taken the plea of benami, particularly, when it is noted that the acquisition of the property in the name of a female member is to be presumed only to have been acquired only for the benefit of the female concerned, the party, who challenges the same, is bound to rebut

the said presumption and it is seen that the Courts below had rightly placed reliance upon the decisions placed before them and held that the defendant has miserably failed to establish that the suit property had been acquired by Mannar Gounder as well as by him out of their own independent funds and exertion in the name of Thanjiammal benami. The above said determination of the Courts below being based on the proper appreciation of the materials placed on record and by giving acceptable reasons and also following the legal authorities placed with reference to the same and when there is no material placed by the defendant's counsel to deviate from the abovesaid findings of the Courts below in any manner, it is seen that the argument of the defence counsel that the suit property is only the joint family property of the parties as such cannot be countenanced, particularly, when it is seen that, from the evidence placed in the matter, Thanjiammal was also a earning member and accordingly, the property had come to be acquired only in her name. In the absence of any evidence to point out that the consideration for the acquisition of the property had flown from Mannar Gounder or the defendant, as such, the Courts below are justified in holding that the suit property is only the separate property of Thanjiammal and not the joint family property of the parties concerned. The suit property being the separate property of Thanjiammal, the female member, there is no question of blending the same as the joint family property as such and there is no material placed on record to show that the suit property has been treated and enjoyed

only as the joint family property of the parties concerned as putforth by the defendant.

12. The defendant has also taken a plea that a portion of the suit property is inherited by Mannar Gounder ancestrally from his forefathers. In this connection, he also relied upon a portion of the oral evidence of PW1 to contend that PW1 has also admitted that a portion of the suit property is the ancestral property. However, when the suit property is found to be a homogeneous unit without any demarcation as such and in such view of the matter, when there is no acceptable and reliable material as such to hold that as to which portion of the suit property had been acquired by Mannar Gounder ancestrally and further when it is also not established that the so called ancestral property was yielding any income for enabling the joint family to acquire the other portions of the suit property as such and when it is found that the Courts below had rightly rejected the abovesaid defence of the defendant by holding that the defendant has miserably failed to establish as to which portion of the suit property is actually the ancestral property of the parties, in the light of the above position, when the materials placed on record go to indicate and lead to conclusion that the suit property is the separate and self acquired property of Thanjiammal and the plea of benami projected is found to be false, I do not find any reason to interfere with the judgment and decree of the Courts below for rejecting the defence version projected by the defendant.

13. In the light of the abovesaid reasonings, there has been no misconstruction of the evidence of PW1 as regards the character of the property involved and the Courts below were justified in holding that the suit property is the separate and self acquired property of Thanjiammal on the right appreciation of the materials placed on record and accordingly, the Courts below are justified in holding that the property acquired by way of the sale deeds projected in the matter absolutely belonged only to Thanjiammal and accordingly, rightly determined the shares, to which, the parties are entitled to as per law. The substantial questions of law formulated in this second appeal are, accordingly, answered in favour of the plaintiffs and against the defendant.

14. The principles of law outlined in the decisions relied upon by the defendant's counsel reported in **AIR 1980 Supreme Court 1173 (Kalyani (dead) by LRs. V. Narayanan and others), (2006) 8 Supreme Court Cases 581 (Sheela Devi and others Vs. Lal Chand and another), AIR 1968 Supreme Court 1018 (V 55 C 198) (Puttrangamma and others Vs. M.S.Ranganna and others), 2017 (1) MWN (Civil) 234 (G.Saraswathi and three others Vs. K.Ganesan and three others), 2007 (4) CTC 685 (V.Shankaranarayana Rao (D) by LRs & Ors. V. Leelavathy (Dead) by LRs. And Ors) and the judgment of the Supreme Court dated**

16.10.2015 made in Civil Appeal No.7217 of 2013 (Prakash & Ors V. Phulavati & Ors) are taken into consideration and followed as applicable to the case at hand.

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

12.04.2018

Index : Yes / No

Internet : Yes / No

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To

1. The Principal District Court, Vellore.
2. The Principal District Munsif Court, Vellore.
3. The Section Officer, V.R. Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.580 of 2004**

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