



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.01.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.51 of 2017

and

C.M.P. (MD) No.1119 of 2017

1.Chandran

2.Muthupandian

: Appellants / Appellants / Plaintiffs

-Vs-.

1.Sendurpandian

2.Kalangiam

: Respondents / Respondents / Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.10.2016 passed in A.S.No.73 of 2015 on the file of the Sub Court, Sankarankovil, confirming the judgment and decree dated 19.08.2015 passed in O.S.No.289 of 2013 on the file of the Additional District Munsif Court, Sankarankovil.

For Appellants

: Mr.V.Meenakshisundaram

for Mr.D.Nallathambi

For Respondents

: Mr.M.Thirunavukkarasu

for Mr.H.Arumugam

JUDGMENT

The plaintiffs in the suit in O.S.No.289 of 2013 on the file of the Additional District Munsif Court, Sankarankovil, are the appellants in this Second Appeal.

2.The appellants filed a suit in O.S.No.289 of 2013 on the file of the Additional District Munsif Court, Sankarankovil, for a declaration that the suit first schedule properties are the exclusive properties of the first plaintiff and for consequential injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the same. The suit is also for a declaration that the suit second schedule properties are the exclusive properties of the second plaintiff and for consequential injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit second schedule properties. The further relief in the suit is for declaring that the document executed by the first defendant in favour of the second defendant on 25.04.2011 as a family settlement is void and for directing the registration of such decision declaring the document dated 25.04.2011 as void by the Sub Registrar of Sankarankovil under Section 31(2) of the Specific Relief Act.



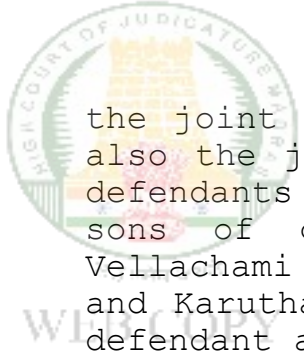
3. The first defendant in the suit is the brother of second appellant herein who is the second plaintiff in the suit. The second respondent is the second defendant in the suit and the daughter of first respondent herein. The case of the plaintiffs in the suit / appellants herein are as follows:

3.1. The properties shown in the first item in the first schedule originally belonged to one Maruthiah Thevar, son of Muthu Arunasala Thevar and the said Maruthiah Thevar executed a registered power of attorney deed in favour of the second appellant on 25.01.1995. The second plaintiff, as power of attorney agent of the said Maruthiah Thevar, executed the sale deeds dated 25.10.2012 in favour of the first appellant and that the first appellant, the first plaintiff became the exclusive owner of the properties described in the first item of first schedule.

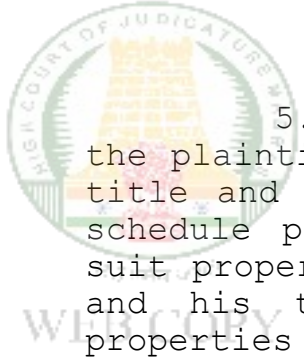
3.2. The properties described in second item in first schedule originally belonged to one Vella Pandi son of Shanmugaiah Thevar and he executed a power of attorney deed in favour of the second plaintiff on 03.03.1997. The second plaintiff / second appellant as power of attorney agent of Vella Pandi, executed a registered sale deed dated 25.10.2012 in favour of the first plaintiff in respect of the properties shown as second item in first schedule. By virtue of the three sale deeds dated 25.10.2012 executed by the second plaintiff in favour of the first plaintiff, the properties described in first schedule became the exclusive properties of the first plaintiff. Similarly, the properties described in the second schedule were purchased by the second plaintiff under three registered sale deeds dated 16.11.1974, 16.12.1983 and 15.05.1984. Thus, the properties which are described in the first schedule are the absolute properties of the first plaintiff and the properties purchased by the second plaintiff and described in the second schedule are the exclusive properties of the second plaintiff.

3.3. The first defendant who is the brother of the second plaintiff executed a settlement deed dated 25.04.2011 in favour of the first defendant's daughter, namely, the second defendant including the properties that belong to the plaintiffs. The said settlement deed is void as the first defendant (The first respondent in this appeal) had no right or title over any of the items specified in the first and second schedule. Since the registration of the settlement deed was with an intention to create a cloud on the exclusive title of the plaintiffs, the Court has to hold that the settlement deed is void and consequently, such decision should be sent to the Sub Registrar of Sankarankovil, for registration. The plaintiffs are in exclusive possession and enjoyment of the suit properties and therefore, they are entitled to seek relief of consequential injunction.

4. The suit was contested by the defendants by stating that the suit schedule properties were purchased out of the income from



the joint family properties and therefore, the suit properties are also the joint family properties. It is the specific case of the defendants that the second plaintiff and first defendant are the sons of one Veeraputhira Thevar along with his brother one Vellachami and Ayyadurai. It is also contended that one Kottaithai and Karuthathuraichi are the sisters of second plaintiff and first defendant and daughters of Veeraputhira Thevar. The defendants gave a list of several properties in the written statement apart from furnishing details regarding the joint enjoyment of all the properties purchased in the individual name of the members of the joint family. It is contended that even the properties purchased in the name of first plaintiff is being irrigated from the well that was dug out of the joint family income. It is also the specific case of the defendants that the properties were purchased in the name of the first plaintiff and second plaintiff out of the joint family income generated out of the joint exertion of the second plaintiff and his three brothers. The defendants further pleaded that the power of attorney document dated 03.03.1997 was obtained from one Veeraputhira Thevar by paying a consideration of Rs.27,000/- from and out of the joint family income. Similarly, it is contended that a sum of Rs.2,00,000/- was paid from and out of the joint family funds for getting the power of attorney deed in the name of the second plaintiff from Maruthiah Thevar. It is the contention of the defendants that the second plaintiff, being the senior male member of the undivided joint family, purchased the second schedule properties in his name utilizing the joint family funds. It is also contended by defendants that the properties purchased in the name of plaintiffs were enjoyed by all the brothers as joint family properties by referring to specific instances as to the manner in which the properties were enjoyed by all the members of joint family. Apart from referring to substantial landed properties that belong to the joint family, other source of income by way of receiving rent from the buildings owned by the joint family and other sources, the defendants also contended that the sale deeds executed by the second plaintiff in favour of the first plaintiff by taking advantage of the power of attorney obtained in his name are fraudulent and that they will not confer any exclusive right or title in favour of the first plaintiff. It is also admitted that the first defendant and his brothers along with his daughter, the second defendant in the present suit, has filed another suit in O.S.No.102 of 2013 on the file of the First Additional District Court, Tirunelveli, for partition of 1/4th share each in favour of the three brothers and for other reliefs which are required to claim partition in respect of all the properties including the suit properties. Despite the position that all the three brothers of the second plaintiff have filed the suit as plaintiffs for partition in respect of all the joint family properties including the suit properties, the appellants, namely, the plaintiffs have not chosen to implead the other two brothers in the present suit.



5.The trial Court after framing necessary issues found that the plaintiffs are not entitled to get the relief of declaration of title and permanent injunction in respect of the first and second schedule properties. The trial Court specifically held that the suit properties are the joint family properties of second plaintiff and his three brothers and that they are not the exclusive properties of the plaintiffs as contended by them in the suit. The suit was also held to be bad for non-joinder of necessary parties. Aggrieved by the findings of the trial Court and dismissal of the suit in O.S.No.289 of 2013 by the Additional District Munsif Court, Sankarankovil, the appellants have preferred the appeal in A.S.No.73 of 2015 on the file of the Sub Court, Sankarankovil.

6.The lower appellate Court by a judgment and decree dated 18.10.2016 confirmed the findings of the trial Court and dismissed the appeal preferred by the appellants. Aggrieved by the concurrent findings of Courts below and the judgment and decree of the lower appellate Court in A.S.No.73 of 2015 the plaintiffs have preferred the above Second Appeal.

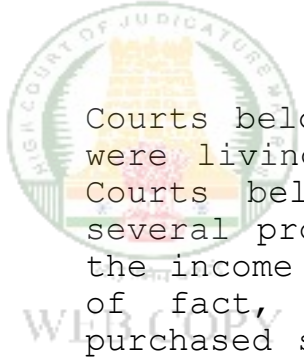
7.The appellants have raised the following substantial questions of law in the memorandum of grounds:

"a) Whether mere proof of joint family nucleus is sufficient to clothe the suit properties as joint family properties without any sufficient evidence to prove surplus income out of joint family nucleus and as such the Judgment and Decree of the Courts below warrants interference?

(b) When there is no presumption of a property being joint family property only on account of existence of joint family nucleus and the defendants who asserts the said fact have failed to prove that it is joint family properties, whether the Courts below are correct in dismissing the suit for declaration and injunction?"

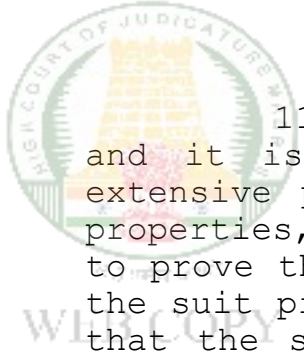
8.Before dealing with the substantial question of law raised by the appellants, it is necessary to discuss the facts that are borne out from records and the findings of the Courts below, particularly, the lower appellate Court on the over all appreciation of the pleadings and evidence in this case.

9.Before the trial Court, the plaintiffs have filed documents Ex.A1 to Ex.A12. The second appellant examined himself as P.W.1. On behalf of the respondents Ex.B1 to Ex.B33 were filed. The first defendant examined himself as D.W.1 and examined the original owners of the properties described in the first schedule who had executed the power of attorney deeds in favour of the second plaintiff as D.W.2 and D.W.3 on behalf of the respondents / defendants. In this case, the fact that the father of the second plaintiff had four sons including the second plaintiff and two daughters is not in dispute. In the course of evidence, the existence of ancestral properties even in the hands of Veeraputhira Thevar is not in dispute. It has been specifically found by the



Courts below that the father Veeraputhira Thevar and his four sons were living as members of joint family. It is also found by the Courts below that the father Veeraputhira Thevar had purchased several properties in his name and in the name of his sons out of the income he derived from the joint family properties. As a matter of fact, it is admitted that the father Veeraputhira Thevar purchased several properties under Ex.B2 to B7 in his name. It is also admitted that all the properties acquired by Veeraputhira Thevar were treated as joint family properties and the father Veeraputhira Thevar and his four sons were enjoying all the properties of the joint family as member of the joint family. It is admitted that the father Veeraputhira Thevar died intestate in the year 1977. Wife of Veeraputhira Thevar by name Vellathal died 17 years prior to the institution of the suit. It is also admitted that one of the daughters of Veeraputhira Thevar by name Kottaithai was given in marriage about forty six years back and the other daughter by name Karuthathuraichi was given in marriage in the year 1979. Apart from the properties purchased by Veeraputhira Thevar in his name, the joint family has acquired several properties in the name of members of the joint family and all the properties are the subject matter of the suit filed by the three brothers against the plaintiffs in O.S.No.102 of 2013 on the file of the First Additional District Court, Tirunelveli. It is to be seen that the properties which were acquired in the name of other brothers of second plaintiff were shown as the properties acquired out of the joint family income and all the brothers except the second plaintiff have acknowledged the character of the suit properties and other properties as the joint family properties of the hindu undivided joint family consisting of the second plaintiff and his three younger brothers. It is also admitted that the second plaintiff is the senior male member of the joint family. It is also admitted in this case that there was no partition by metes and bounds in respect of the properties of joint family. The only issue that arise for consideration in the present appeal is whether the suit first schedule properties are the exclusive properties of the first plaintiff or the properties of the joint family. Similarly, the second issue is regarding the second schedule properties and the question is whether the properties are the exclusive properties of the second plaintiff or the joint family consisting of the second plaintiff and his three brothers.

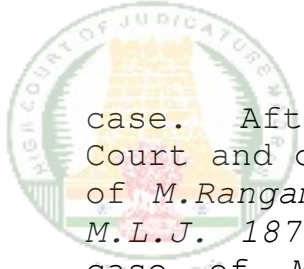
10. Based on the power of attorney deeds marked as Ex.A1 and Ex.A2 executed by one Maruthiah Thevar and Vella Pandi and the three sale deeds dated 25.10.2012 executed by the second respondent in favour of the first plaintiff under Ex.A3 to Ex.A5 the plaintiffs claim that the suit properties described in the first schedule are the exclusive properties of the first plaintiff. Similarly, on the basis of the sale deeds obtained by the second plaintiff under Ex.A6 to A8, the second appellant claimed exclusive title to the properties described in the second schedule.



11. Even though the joint family owns substantial properties and it is admitted in this case that the father had acquired extensive properties out of the income derived from his ancestral properties, the plaintiffs have neither pleaded nor made an attempt to prove that they have independent source of income for purchasing the suit properties in their individual name. It is not in dispute that the second plaintiff is the senior male member of the joint family consisting of second plaintiff and his three brothers. The persons who were examined as D.W.2 and D.W.3 are the original owners of the properties described in the suit first schedule. They have deposed in this case to the effect that the consideration for executing the power of attorney deed in favour of the second plaintiff came from the joint family consisting of second plaintiff and his three brothers. Having regard to the admitted facts in this case, the Courts below are right in accepting the case of the defendants that the second plaintiff being the senior male member of the family is the Manager and Kartha of the joint family. Existence of joint family properties at the time when the sale deeds were obtained in the names of appellants is not in dispute. Though it is true that mere existence of the joint family will not lead to any presumption that the properties held by any member of the family is joint and that the burden always rest upon the party who assert that a particular property was purchased out of the joint family funds. However, in this case, it is established and admitted that the family consisting of the second plaintiff and his three brothers possessed substantial properties which are capable of yielding surplus income to form the nucleus for purchasing other properties in the name of members of the family after the death of father Veeraputhira Thevar in the year 1977. When the existence of substantial properties capable of yielding substantial income to acquire properties is established by substantial evidence, the burden in this case would shift to the plaintiffs to prove their case that the suit properties were purchased out of their own funds without the aid of joint family income.

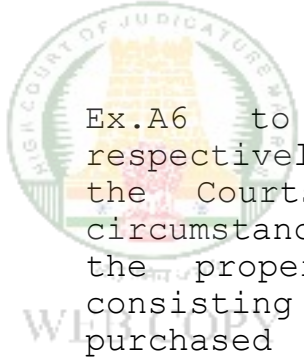
12. The learned counsel for the appellants fairly conceded that there is no pleading as to the source for purchasing the suit first schedule and second schedule properties in the name of first plaintiff and second plaintiff respectively. When the joint family properties are yet to be divided among the parties, it can be presumed that the properties acquired by the second plaintiff though by getting the power of attorney deed in his name or by getting the sale deed in his name are acquired out of the joint family fund. The appellants have not adduced any evidence regarding their independent income or source to acquire the properties under Ex.A1 to Ex.A8.

13. In the judgment of this Court in the case of *Ramaswamy and another vs. R. Murugan* reported in (2000) M.L.J. (Supp.) 545 is helpful to the respondents to substantiate their case that the suit properties are the joint family properties and the Courts below have rightly relied upon the said judgment to the facts of the present



case. After referring to several judgments of the Hon'ble Supreme Court and our High Court, a Division Bench of this Court in the case of *M.Rangammal and others v. B.Balavenkatesan* reported in (2002) 3 M.L.J. 187 endorsed the view of the Hon'ble Supreme Court in the case of *Mudigowda Gowdappa Sankh v. Ramchandra Revgowda Sankh* reported in AIR 1969 S.C. 1076 that if possession of sufficient nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. Of course, the view expressed by the Hon'ble Supreme Court is subject to the limitation that the joint family property must be such, with its aid the property in question could have been acquired. Once existence of adequate nucleus is shown, the onus shifts on to the persons who claims the property as a self-acquisition to make out the case that the property was acquired without any aid from joint family estate. In the present case, it can be seen that there is neither pleading nor evidence to substantiate that the plaintiff had sufficient means or source for acquiring the properties under Ex.A1 to Ex.A8. However, there is ample evidence to prove that the joint family consisting of second plaintiff and his three brothers had substantial properties and they are capable of forming adequate nucleus to purchase the suit properties. When it is admitted that the father of the second plaintiff Veeraputhira Thevar had acquired substantial properties out of the income from the ancestral properties and the properties were enjoyed in common by all the four brothers after the life time of the father Veeraputhira Thevar, the existence of substantial properties to form an adequate nucleus cannot be disputed.

14. In this case, the burden is upon the plaintiffs to prove that the suit properties were purchased out of their own funds. In the absence of specific pleading or evidence, this Court is of the view that the findings of the Courts below are unassailable. In this case, the family had sufficient nucleus and the second plaintiff is the senior member of the undivided joint family. Hence, the burden is very much on the plaintiffs to prove their case, as the presumption is in favour of the defendants that the properties purchased in the name of the individual members of family are also the joint family properties. It is to be seen in the present case that the Courts below have accepted the evidence of D.W.2 and D.W.3 with regard to the source for acquiring the suit first schedule properties in the name of first plaintiff. Under Ex.A1 and Ex.A2, the power of attorney deeds were obtained by the second plaintiff on 25.01.1985 and 03.03.1997. It was several years later, the second plaintiff has executed the sale deed as power of attorney agent of the original owners in favour of first plaintiff under three documents of sale dated 25.10.2012. In these circumstances, the conclusions of the trial Court as well as the appellate Court to hold that the suit first schedule properties are the joint family properties are well founded. Similarly, like some other properties were purchased in the names of other brothers of the second plaintiff, the properties described in the second schedule have been purchased in the name of second plaintiff under



Ex.A6 to A8 dated 16.11.1974, 16.12.1983 and 15.05.1984 respectively. From the nature of evidence let in by parties before the Courts below, it can be seen that there are several circumstances which would indicate that the father had treated all the properties purchased by him as joint family properties consisting of himself and his four sons. Admittedly, properties purchased in the name of other brothers of second plaintiff were treated as the joint family properties by dealing with the properties jointly by all the members. In such circumstances, this Court find that there is no merit in this Second Appeal. All the substantial questions of law are answered against the appellants, in view of the factual findings of the Courts below which are supported by pleadings and substantial evidence both oral and documentary. As rightly pointed out by the trial Court, the plaintiffs ought to have impleaded the two other brothers of the second plaintiff at least after coming to know about the subsequent suit filed by the three brothers in O.S.No.102 of 2013 on the file of the First Additional District Court, Tirunelveli, for partition in respect of all the joint family properties including the suit properties. Hence, the suit itself is liable to be dismissed on the ground of non-joinder of necessary parties.

15.As a result, this Second Appeal is dismissed and the judgment and decree of the lower Appellate Court in A.S.No.73 of 2015, on the file of the Sub Court, Sankarankovil, dated 18.10.2016 concurring with the judgment and decree of the trial Court in O.S.No.289 of 2013 on the file of the Additional District Munsif Court, Sankarankovil, dated 19.08.2015 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Additional District Munsif , Sankarankovil.

2.The Subordinate Judge , Sankarankovil.

Copy to:- The Section Officer, Vernacular Records, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.D.Nallathambi, Advocate, SR.No.42866

+One cc to Mr.H.Arumugam, Advocate, SR.No.42790

SRM

RL/7C/8P/KK/SAR2/6/3/2018

Judgment made in
Second Appeal (MD) No.51 of 2017