

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2019

PRONOUNCED ON : 21.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.36 of 2013

K.R.Jaganathan ... Appellant/Plaintiff

Vs.

R.Nandagopal ... Respondent/Defendant

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree dated 16.08.2012 made in O.S. No.692 of 2007, on the file of the IV Additional District and Sessions Court/Fast Track Court No.II, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondent : Mr.L.Mouli

JUDGMENT

Aggrieved over the judgment and decree dated 16.08.2012, passed in O.S. No.692 of 2007, on the file of the IV Additional District and Sessions Court/Fast Track Court No.II, Coimbatore, the plaintiff has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for partition.

4. Briefly stated, according to the plaintiff's case, Sarvappa Naidu and Krishnamma Naidu constituted a joint hindu family and Rangasamy Naidu is the son of Sarvappa Naidu and the plaintiff is the son of Rangasamy Naidu. Ramachandra Naidu is the son of Krishnamma Naidu and the defendant is the son of Ramachandra Naidu. It is further put forth that partition had been effected in respect of the joint family properties during the year 1961 between the abovesaid two branches and further, it is also the case of the plaintiff that item Nos.1 and 2 of the plaint

schedule properties had been purchased in the name of Krishnamma Naidu only out of the joint family funds and the 3rd item of the suit properties had been purchased in the name of the defendant's father, Ramachandra Naidu, also out of the joint family funds and the 4th item of the suit properties was purchased out of the joint family funds in the name of Soodamani. However, according to the plaintiff, the abovesaid properties purchased in the name of the abovesaid persons had been omitted to be included in the partition effected during 1961, i.e., on 26.08.1961 and 31.08.1961 and also put forth the case that though the abovesaid properties had been purchased in the name of the individual members, they belong to the joint family and accordingly seeking partition and separate possession of the half share in the suit properties, the suit has come to be laid by the plaintiff.

5. The defendant resisted the plaintiff's suit and denied the case of the plaintiff that the suit properties had been purchased out of joint family funds. According to the defendant, the item Nos. 1 and 2 of the suit properties were purchased by Krishnamma Naidu out of his own funds and for his own benefits and similarly, the 3rd item of the suit properties had been purchased by Ramachandra Naidu out of his own funds and for his benefits and in a like manner, item No.4 of the suit properties was purchased by Soodamani and therefore, contended that the plaintiff is not entitled for seeking partition and separate possession in the suit properties claiming that the same are joint family properties and also the plaintiff cannot be held to be in the joint possession and enjoyment of the suit properties and therefore, it is stated that the plaintiff has not properly valued the suit and the court fees paid is incorrect and for all the abovesaid reasons, sought for the dismissal of the plaintiff's suit.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the suit properties are the undivided ancestral properties of the plaintiff and defendant?
2. Whether the suit properties are the self acquired properties of the grand father and father of the defendant as alleged in the written statement?
3. Whether the plaintiff is entitled to partition and separate allotment of $\frac{1}{2}$ share as prayed for?
4. To what relief?

Additional issues:

1. Whether item No.4 of the suit

property is ancestral property of the plaintiff?

2. Whether the plaintiff is in joint possession and common enjoyment of the suit property?

3. Whether the suit is bad for non-joinder of necessary parties?

4. Whether the court fee paid under 37(2) (ii) of T.N.Court fees and Suit Valuation Act is correct or not?

7. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A13 were marked. On the side of the defendant's, DWs 1 and 2 were examined and Exs.B1 to B7 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit with costs. Impugning the same, the present first appeal has been preferred by the plaintiff.

9. The following points arise for determination in this first appeal:

1. Whether the suit properties are the joint family properties of the plaintiff and the defendant?

2. Whether the plaintiff is entitled to obtain partition and separate possession of the $\frac{1}{2}$ share in the suit properties as claimed in the plaint?

3. Whether the suit properties are the self acquired properties of Krishnamma Naidu, Ramachandra Naidu and Soodamani as put forth by the defendant?

4. Whether the suit is bad for non joinder of necessary parties?

5. Whether the suit has been properly valued and proper court fees had been paid by the plaintiff?

6. To what relief, the plaintiff/appellant is entitled to?

7. To what relief the defendant is entitled to?

Point Nos.1 to 4:

10. The relationship between the parties is not in dispute. It is found that the plaintiff is the son of Rangasamy Naidu and Rangasamy Naidu is the son of Sarvappa Naidu and it is further found that the defendant is the son of Ramachandra Naidu and Ramachandra Naidu is the son of

Krishnamma Naidu. From the materials placed on record, it is found that Sarvappa Naidu and Krishnamma Naidu had possessed some joint family properties and it is further noted that the abovesaid two branches had chosen to effect partition in respect of the joint family properties by way of the above partition deeds dated 26.08.1961 and 31.08.1961 and the abovesaid partition deeds have been marked as Exs.A4 and A5. As held by the trial Court rightly, once the joint family status had been severed by way of division under the abovesaid partition deeds and when the plaintiff still put forths the case that the properties purchased in the name of Krishnamma Naidu, Ramachandra Naidu and Soodamani are the joint family properties and omitted to be included in the abovesaid partition deeds and when the abovesaid case of the plaintiff had been stoutly challenged by the defendant contending that the properties acquired by Krishnamma Naidu Ramachandra Naidu and Soodamani are their self acquired properties and not purchased out of the joint family funds and not enjoyed as joint family properties, the burden is heavy upon the plaintiff to establish that the properties acquired in the name of Krishnamma Naidu, Ramachandra Naidu and Soodamani i.e., the suit properties are the joint family properties as put forth by him.

11. As rightly held by the trial Court, if the abovesaid properties are the joint family properties and had been acquired with the aid and assistance of the joint family nucleus, the said properties would have been also the subject matter of the partition effected under Exs.A4 and A5. However, as above noted, the suit properties had been omitted to be included in the partition effected under Exs.A4 and A5. This would only probabalise the theory that inasmuch as the suit properties are not the joint family properties and not treated and enjoyed as joint family properties, the same had not been the subject matter of the partition effected in Exs.A4 and A5.

12. In this connection, the position of law as regards how the properties standing in the name of the individual members are to be treated as the joint family properties, we have the decision of the Apex Court reported in (2003) 10 SCC 310 (D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another) and relied upon by the plaintiff's counsel and the law with reference to the same as adumbrated by the Apex Court in the above said decision is extracted below:

A. Hindu Law - Joint family -
Whether joint family property or self
acquired - Property cannot be presumed
to be joint family property merely
because of existence of joint family -
Burden to prove the property to be joint

lies on the person who asserts so - But if he proves that the family possessed sufficient nucleus with the aid of which joint family property could be acquired, then presumption would be that the property is joint and onus would shift on the person claiming it to be self-acquired - On failure to establish the nucleus, held, burden of proof would remain on the person who asserts the property to be joint.

Held:

There is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

Appalaswami v. Suryanarayanamurti, AIR 1947 PC 189; 1947 All LJ 587; Srinivas Krishnarao Kango v. Narayan Devji Kango, AIR 1954 SC 379; Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh, (1969) 1 SCC 386; Baikuntha Nath Paramanik V.Sashi Bhusan Pramanik, (1973) 2 SCC 334; Surendra Kumar V. Phoolchand, (1996) 2 SCC 491, relied on.

The respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item 2 property and no other nucleus was claimed, the burden remained on the respondents to establish that item 1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is

concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of item 1 to be joint family property would fail.

Mallesappa Bandeppa Desai V.Desai
Mallappa, AIR 1961 SC 1268; Achuthan
Nair V.Chinnammu Amma, AIR 1966 SC 411;
Mallappa Girimallappa Betgeri
V.R.Yellappagouda Patil, AIR 1959 SC
906, distinguished.

From the abovesaid principles of law enunciated by the Apex Court, it is seen that it is for the plaintiff to establish that the joint family possessed of sufficient nucleus and only out of the aid of the same, the suit properties had been acquired in the names of the individual members.

13. As above noted, the joint family properties had already been partitioned under Exs.A4 and A5 deeds. As regards the availability of income from the ancestral nucleus and the utilisation of the same for the acquisition of the suit properties, there is absolutely no acceptable and reliable materials forthcoming on the part of the plaintiff. In this connection, the plaintiff would chose to examine his maternal uncle Muthusamy as PW2 and PW2 in a general manner would depose that all the purchases made by the individual members were done only for the joint family benefits. As rightly held by the trial Court, the abovesaid piece of evidence adduced by PW2 would not be sufficient to hold that the suit properties had been acquired with the aid and assistance of the income derived from the joint family nucleus. PW2 would further claim that the suit properties had been jointly enjoyed by the family members, however, with reference to the joint enjoyment, there is no material forthcoming on the part of the plaintiff.

14. Merely from the oral assertion of PW2, however, when there is no basis or foundation for accepting the same and when the plaintiff has failed to place any material worth acceptance that the joint family funds or income constituted the source for the acquisition of the suit properties in the names of the individual members and thereafter, the suit properties had been treated and enjoyed as joint family properties, in such view of the matter, the trial Court is found to be justified in not placing reliance upon the evidence of PW2 for upholding the plaintiff's case.

15. As regards the evidence of the plaintiff PW1, when he is found to be a person of young age at the time of the

acquisition of the suit properties and may not have any direct knowledge with reference to the same, accordingly, the trial Court has rightly determined that his evidence would not be useful to sustain the character of the suit properties as put forth by the plaintiff.

16. In the light of the abovesaid factors, when there is no material whatsoever placed on the part of the plaintiff evidencing that the suit properties had been acquired out of the joint family income or funds and thenceforth treated and enjoyed as the joint family properties and when as above pointed out, the joint family properties had already been partitioned under Exs.A4 and A5 and when thereafter the plaintiff had come forward with the suit for partition nearly after a lapse of 46 years without any foundation or materials, on the ipse dixit case projected by the plaintiff, it cannot be held that the suit properties are the joint family properties. When the plaintiff examined as PW1 has admitted that he has not visited the suit properties for more than 20 years and also not endeavoured to ascertain the status of the suit properties and when it is seen that the alienation had been effected by Ramachandra Naidu in respect of the suit properties acquired under Ex.B2, even during the year 1974, when there is no challenge put to the same in any manner, all put together would only go to disclose that the plaintiff, without any basis or foundation, has come forward with the case that the suit properties are the joint family properties and accordingly, unable to place any material to sustain his case.

17. As regards the fourth item of the suit properties standing in the name of Soodamani, absolutely there is no proof to show that the same had been acquired out of the joint family funds or income and Soodamani also not being impleaded as a part to the suit, in such view of the matter, as rightly held by the trial Court, the suit laid by the plaintiff is also found to be bad for non joinder of proper and necessary parties.

18. In all, I hold that the suit properties had been rightly determined to be the self acquired properties of Krishnamma Naidu, Ramachandra Naidu and Soodamani and not the joint family properties of the plaintiff and the defendant by the trial Court and the trial Court has rightly held that the suit is bad for non joinder of Soodamani. I therefore hold that the plaintiff is not entitled to obtain partition and separate possession of $\frac{1}{2}$ share in the suit properties as claimed. Accordingly, the point Nos.1 to 4 are answered. Point No.5:

19. As regards the claim of the plaintiff that he has been in the possession and enjoyment of the suit properties, absolutely there is no proof whatsoever on the part of the plaintiff. As above noted, after the partition effected under Exs.A4 and A5, the suit has been laid by the plaintiff, nearly 46 years thereafter. The suit properties are held to be the separate properties of Krishnamma Naidu, Ramachandra Naidu and Soodamani. The plaintiff has miserably failed to establish the joint possession and enjoyment of the suit properties. In such view of the matter, the trial Court is found to be justified in holding that the plaintiff has not properly valued the suit and the payment of the Court fee paid by the plaintiff is incorrect and no interference is warranted with reference to the abovesaid determination of the trial Court. Accordingly, the point No.4 is answered.
Point Nos.6 and 7:

20. In the light of the abovesaid discussions, the judgment and decree dated 16.08.2012, passed in O.S. No.692 of 2007, on the file of the IV Additional District and Sessions Court/Fast Track Court No.II, Coimbatore are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

The IV Additional District and Sessions Court,
Fast Track Court No.II, Coimbatore.

Copy to:

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

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.97486
+1cc to Mr.L.Mouli, Advocate, S.R.No.97138

A.S.No.36 of 2013

PM(CO)
CB(27/08/2020)