IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.534 of 2013
M.P.No.1 of 2013

M.Babu ..Appellant/Plaintiff

Vs.

1.R.Manivasan
2.S.Uma
3.M.Nalini ..Respondents/Defendants

Prayer : First Appeal filed against the Judgment & Decree dated 23.08.2013 passed in O.S.No.549 of 2012 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.S.Gunalan

For Respondent : Mr.S.Kadarkarai for RR1 to 3.

O R D E R

The appeal suit is filed against the judgment and decree dated 23.08.2013 passed in O.S.No.549 of 2012 on the file of the IV Additional District and Sessions Judge, Coimbatore .

2. The plaintiff is the appellant in the first appeal and the first respondent is the father of the plaintiff. The second and third respondents are the sisters of the plaintiff. The relationship between the parties are not disputed and the plaintiff instituted a suit for partition, against father and sisters. The contentions of the plaintiff in the plaint are that the first defendant succeeded to the properties ancestrally through a partition dated 02.04.1959, later, he developed the property by utilizing the joint family funds. It is contended that the said property was sold by the first defendant on 29.03.1993 in favour of one Balammal chit funds Private Limited for two lakhs. From and out of sale consideration, the first defendant purchased the suit properties. It is contended that the first defendant is the kartha of the joint family and also he started a joint family business by utilizing the joint family funds in the year 1970, under the name of Uma Enterprises.

3. The plaintiff states that it is now a partnership business, in which, the plaintiff and the first defendant are the partners. The second and third defendants have no right over the business. Thus, it was also treated as a joint family business. The plaintiff also contributed to the joint family business and accordingly, he is entitled for share in the suit schedule property. The plaintiff completed the diploma course in mechanical engineering and looked after the business along with the first defendant. The first defendant wanted to treat the same as a proprietary concern in order to meet out the requirement of accounts. At the outset, it is contended that the plaintiff contributed to the joint family business and therefore, he is also entitled for a share in the business. In view of the fact that the claim of the plaintiff was denied by the first defendant, the plaintiff was constrained to institute the suit against the defendants for partition.

4. The first defendant/father disputed the contentions raised in the plaint by stating that the property allotted to the first defendant through the partition was originally owned by his mother namely Atchammal by way of purchase. Thus, the mother of the first defendant was the owner of the property. During the relevant point of time, the plaintiff was a college student and the property belonged to the mother of the first defendant. It is contended that though the deed was styled as a partition deed, it has to be considered only as a settlement deed. So, the property allotted to the first defendant in C Schedule became the separate property of the first defendant. It was never treated as a joint family property. It is denied that the property was developed and improved with the help of joint family funds. There was no such joint family funds. The first defendant after completing the pre-University course in 1961, joined Universal Radiators Private Limited as a Typist. Later, he was transferred to various departments in the year 1977 and in the year 1978, he constructed an RCC Building with his own funds. There was no such joint family business, or any other source of income. When he was working in the company, he started a private business in the name of Uma Enterprises in 1970 and developed the business out of his own efforts. Later, he sold the property on 29.03.1993, in favour of Balammal Chit Funds Private Limited for two lakhs. He discharged the loan amount obtained from Indian Overseas Bank. Later in 1992, the first defendant started partnership business in the name of Uma Enterprises South India Limited. The first defendant and his wife were partners. So, Uma Enterprises and Uma Enterprises South India are separate entities. These businesses were never treated as joint family businesses and the plaintiff is not connected with the business. At the outset, it is contended that there was no such joint family business or no such joint family income and all such contentions raised by the plaintiff were denied by the first defendant.

5. The Trial Court framed the issues as to whether the suit properties are the ancestral property of the 1st defendant acquired through ancestral nucleus? Whether the plaintiff is in possession of the suit properties? Whether the suit is properly valued and proper court fee is paid? Whether the plaintiff is entitled to the relief of partition and permanent injunction?

6. The plaintiff examined himself as P.W.1 and 15 documents were marked on his side and the first defendant examined himself as D.W.1, and 26 documents were marked.

7. The contention of the plaintiff was that the first defendant was allotted ancestral property through a partition deed dated 02.04.1959. Later, the property was developed by the joint family funds and it was sold to one Balammal Chit Funds Private Limited, on 29.03.1993, and the funds of the same were utilized for the purpose of purchasing the suit property. But the first defendant would say that the property allotted to the first defendant under "C" Schedule through Ex.A.1, was originally, purchased by Achammal, the mother of the first defendant; so, any property acquired from a maternal line will not come under the category of ancestral property or coparcenary property.

8. On reading the description of the property, the Trial Court found that Rangasamy Naidu, was having only half share in the whole property. It has been mentioned in Ex.A11, deed of transfer that Rangasamy Naidu was adjudicated as an insolvent and his properties vested with the official assignee. By that deed of transfer, one Narayanasamy Naidu, purchased the property. Thus, the very statement by the first defendant that his father was adjudicated as an insolvent under the provisions of The Presidency- Towns Insolvency Act, 1909 was established before the Trial Court. This apart, the property vested with the official assignee after adjudication and therefore, the contention in this regard by the appellant was disbelieved by the Trial Court. The Trial Court cogently and elaborately considered all these contentions raised by the plaintiff with reference to the documents marked by the parties as well as the evidences and arrived at a conclusion that Ex.A.1, the property was developed out of the joint family income and it was treated as a joint family property. The Trial Court found that absolutely there is no evidence on records to show that the business run by the first defendant under the name and style of M/s.Uma Enterprises was a joint family business. It is the case of the plaintiff that he also contributed in the business and after completing his education, he looked after the business. But the sale to Balamani Chit funds and purchases took place in the year 1993. The plaintiff admitted the fact that he was born on 04.12.1975. So, on the date of purchase, he could have been 18 years old. Thus, he contributed in the business cannot be accepted. Further, the Trial Court found that the business

cannot be construed as a joint family business. There is no evidence to establish that it was a joint family business. Even, at this point of time, the plaintiff was aged about 18 years and the business was being run by the first defendant successfully. Therefore, the contentions in this regard are not accepted by the Trial Court. There cannot be any presumption in respect of joint family business and the same is to be established, with reference to the documents and evidences. A presumption cannot be a ground to arrive at a conclusion that a particular business is a joint family business.

9. The Trial Court, with reference to the other grounds raised by the appellant in the plaint, has made a finding that none of the documents produced by the parties would show or establish to the effect that the property was treated as a joint family property. Even under Ex.A2, the first defendant has stated that the property allotted to him through a partition deed belongs to him absolutely. There is also a reference to the effect that the building was constructed at his own cost. There is no evidence to show that the property was treated as a joint family property.

10. In fact, the first respondent executed a deed Ex.A.1 in favour of the appellant in respect of properties situated at Coimbatore, and the extent of property is 6 ¼ cents. The suit property was released in favour of the appellant by the first respondent/father. Therefore, as a father, the first defendant had given the property to the appellant and further, he has deposed before this Court that every month he has paid Rs.30,000/- to the appellant from and out of business income. Considering all these factors as well as the findings of the Trial Court, this Court holds that the property is not a joint family property and the plaintiff had not established the property to be ancestral property and in fact, the property was acquired by the first respondent and the suit schedule property cannot be construed as an ancestral property as well as the business cannot be said to be as a joint family business. Accordingly, Issue No.1 is answered.

11. With reference to issue No.2 is concerned, the Trial Court arrived at a conclusion that the plaintiff could not be able to establish that the suit schedule property is an ancestral property and the business is a joint family business. Accordingly, the Trial Court held that the plaintiff cannot be considered to be in joint possession of the suit property. The Trial Court in Issue No.3 held that the suit schedule property is not an ancestral property and accordingly, answered and rejected the relief of partition and permanent injunction sought for by the plaintiff.

12. This Court is of the considered opinion that the suit admittedly was instituted by the appellant for partition and permanent injunction. The first defendant is the father of the

plaintiff as well as the defendant Nos.2 & 3. The plaintiff could not able to establish that the property was purchased from and out of the joint family funds and income. In fact even as per the deposition of the first defendant, his father was declared as an insolvent by the Competent Court of Law. Since his father was declared as an insolvent and the property vested with the official assignee, the contention raised in this regard by the plaintiff was rejected by the Trial Court. This apart, the plaintiff contended that the business is a joint family business and he was a partner and he assisted for the development of the business. In respect of the said contention, the Trial Court made a finding that the business was originally developed by the first defendant and his wife was a partner to the business. It is clarified by the first respondent that as far as Uma Enterprises is concerned, he is the sole proprietor and as far the Uma Enterprises South India is concerned, himself and his wife are the partners. Though these factors may not be relevant as far as the plaintiff is concerned, the fact remains that he could not able to establish that it is a joint family business. The business was being developed by the first respondent even during the childhood of the plaintiff and therefore, he was assisting his father in the business cannot be accepted and under these circumstances, the Trial Court arrived at a conclusion that the plaintiff could not able to establish that it is a joint family business. Undoubtedly, the son being not employed elsewhere would have assisted the business and that would not confer him any right to claim the share in the business as if the business itself is a joint family business. The concept of joint family business cannot be considered as it is established as proprietorship concern. The first respondent developed the business from his own funds and it is self acquired. Therefore, the contention of the plaintiff in this regard was rejected by the Trial Court itself.

13. As a father, the first respondent made a deposition before the Trial Court as well as before this Court that all along he is paying money to his son and even now he is paying Rs.30,000/- every month. This apart, he has already settled a three storeyed building situated in Gandhipuram, Coimbatore in favour of the appellant and the appellant is getting rental income from and out of the said property. Thus, it is not that, as a father, he has not given anything to the appellant. He has given properties and also paying monthly remuneration to the appellant who is none other than his son, as a father during his old age and this apart, he had given some properties to his other two daughters, who are respondents 2 & 3. Therefore, the first respondent has not discriminated his children and in fact, he is paying remuneration to the son even now in order to help the family of the appellant.

14. In respect of these findings, the first respondent, who is a senior citizen aged about 80 years with tears lamented before this Court, that nobody is taking care of him.

His son is not even responding inspite of the fact that he is paying remuneration to him even now. He is taking food from outside and residing in the same building in a room in the sit out. All along he earned lot of money and settled the properties in favour of his son and in favour of other two daughters, who are respondents 2 & 3.

15. These being the facts and circumstances, this Court is of an opinion that the Trial Court has rightly proceeded and arrived at a conclusion with reference to the documents and evidences filed by the parties to the lis on hand.

16. The first respondent submitted the set of papers which would show that the appellant himself had demanded money for water charges, electricity charges and in the event of non-payment, he used to disconnect the electricity and stop the water connection and close the water taps. Such an attitude can never be accepted but to be condemned. If the appellant is unable to take care of his father, he has no right to harass him or disturb him from performing his day to day activities and responsibilities. He is now residing separately in the same building.

17. Under these circumstances, the appellant has no right to interfere with the day to day activities of the first respondent in conducting his business or leading his life peacefully. This Court raised a concern about the harassment caused to the first respondent and further informed the first respondent that such conduct amounts to an offence under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The first appellant at the advice of his counsel has given a letter of undertaking that he will not interfere with the day to day activities and conduct of business in the premises by the first respondent and the said letter of undertaking is recorded and treated as a document in this Appeal Suit.

18. Considering the facts and circumstances as well as the evidences produced by the parties before the Trial Court and considering the findings, this Court is of the opinion that the plaintiff has not established that the suit schedule property is an ancestral property and further he has failed to establish that the business is a joint family business. This being the factum the judgment and decree dated 23.08.2013 passed in O.S.No.549 of 2012 is confirmed and the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

ssb

To
1. The IV Additional District and Sessions Judge,
   Coimbatore.

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

+1cc to Mr.S.Gunalan, Advocate SR.No.106014

A.S.No.534 of 2013
M.P.No.1 of 2013

NRJK(CO)
GMY(24/08/2020)