

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.784 of 2009
and
C.M.P.No.6131 of 2019

1.Singaravelu
2.Pachiyappan ... Appellants/Defendants

Vs

Pachiyammal ... Respondent/Plaintiff

Appeal preferred under Section 96 r/w Order 41 Rule 1
C.P.C. against the judgment and decree dated 27.01.2009
made in O.S.No.113 of 2006 on the file of the I Additional
District Judge (Fast Track Court II), Poonamallee.

For Appellants .. Mr.N.Thiagarajan

For Respondent .. Mr.C.P.Sivamohan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the judgment and decree
dated 27.01.2009 made in O.S.No.113 of 2006 on the file of
the I Additional District Judge (Fast Track Court II),
Poonamallee.

2.The suit has been laid for partition and separate
possession of 4/9 share by the respondent/plaintiff against
the appellants, who are none other than her father and
brother.

3.It is the case of the respondent/plaintiff that the
suit property was purchased by the mother in her name and

also in the names of the second appellant and plaintiff. Thus, it was not purchased from the income of the first appellant (since deceased). It is the further case of the appellants that the proprietary concern by name M/s.Pachaiappan Plastic and Electrical Industries stood in the name of the mother S.Pankajam being the sole proprietrix. She died intestate on 01.09.2001. The suit property was purchased by the mother in her name and the names of the children viz., the respondent/plaintiff and the second appellant/second defendant.

4.In the written statement filed by the first defendant, though it was submitted that the proprietary concern stands in the name of the deceased mother Pankajam and the property purchased under Ex.B2 stands in her name and the names of the respondent/plaintiff and the second appellant/second defendant and they were actually purchased out of the income of the first defendant. This was done for two reasons. One is he was having creditors and second is that he was in the habit of going out from office in connection with business. To support the aforesaid stand, Exs.B3 to B10 were relied upon. These documents indicate the name of the first defendant as the proprietor of the concern. Incidentally, a plea has been taken that the respondent/plaintiff has already been given some of the properties.

5.The Trial Court framed the following issues:

1.Is the plaintiff entitled for 4/9 share in the suit property?

2.Is the suit property the self acquired property of the first defendant?

3.Is the suit property valued properly?

6.Before the Trial Court, the respondent/plaintiff examined herself as P.W.1 along with other witness P.W.2. She marked Exs.A1 to A15. Similarly, the appellants/defendants examined themselves as D.Ws.1 and 2 and marked Exs.B1 to B11.

7.The issues were answered in favour of the respondent/plaintiff by the Trial Court by holding that the defendants have not proved that the suit property is the self acquired property of the first defendant. Challenging the same, the present appeal has been filed.

8. Pending the appeal, the first appellant died. He also executed a settlement deed in favour of the second appellant. This document is not in dispute. Therefore, depending upon the decision to be made, whatever right that accrues in favour of the deceased first appellant will go to the second appellant. To that extent, there is no controversy between the parties.

9. Learned counsel appearing for the appellants would submit that even in his evidence, D.W.1 has stated that the mother did not have any income. Exs.B3 to B10 would clearly show that it is the first defendant/first appellant was functioning as proprietor, thus carrying on the business. Admittedly, at that point of time, the respondent/plaintiff and the second appellant/second defendant were minors and the mother was also an illiterate person, apart from suffering from illness. Considering the above said materials, the appeal will have to be allowed by setting aside the judgment and decree of the Trial Court.

10. Learned counsel appearing for the respondent/plaintiff would submit that the evidence has to be read as a whole. P.W.1 has also stated that the suit property under Ex.B2 was purchased from the money given by the father of the deceased mother Pankajam and it is for the defendants to prove to the contrary. Since the defendants have not done so, the Trial Court rightly decreed the suit. Therefore, no interference is required.

11. The core facts are not in dispute viz., mother being the sole proprietrix and the properties having been purchased in the name of the mother, the respondent/plaintiff and the second appellant/second defendant. Thus, as rightly held by the Trial Court and submitted by the learned counsel for the respondent, onus is on the appellants to prove that the property under Ex.B2 was purchased by the first appellant in the name of his wife and children. The documents relied upon viz., Exs.B3 to B10 will not help the case of the appellants. They cannot be taken as material factors to hold that the first appellant was also incharge of the business and that by itself would not be sufficient, especially, when in the written statement itself it is admitted by him that on the question of proprietrix and property having been purchased in the names of the wife and children. The Trial Court rightly found that the onus has not been discharged by the first appellant. Once that has not been done, the consequence will have to follow. In such view of the matter, we do not find any error in the judgment and decree rendered by the Trial Court.

12.However, we find that even in the earlier suit, which cannot constitute res judicata, the respondent/plaintiff has made the plea that the Kalayana Mandapam has been constructed by the second appellant. She has also admitted the aforesaid factum in her evidence as well. Therefore, while holding that the second appellant is entitled for 5/9 share as against the respondent's/plaintiff's share of 4/9, equities with respect to expenses incurred towards construction of Kalyana Mandapam by the second appellant will have to be worked out at the time of final decree proceedings.

13.Accordingly, the issues as answered by the Trial Court are confirmed as under:

1.The respondent/plaintiff is entitled for 4/9 share in the suit property.

2.The second appellant is entitled for 5/9 share in the suit property.

3.The Trial Court at the time of passing final decree will have to work out the equities by taking note of the expenditure incurred towards the construction of Kalayana Mandapam by the second appellant.

4.The respondent/plaintiff is at liberty to initiate separate proceedings towards mesne profits.

14.In the result, the appeal suit stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi
To

The I Additional District Judge
Fast Track Court No.II, Poonamallee.

Copy to :The Section Officer,
VR Section,High Court,Madras
+1cc to Mr.N.Thiagarajan , Advocate SR.No.38287
+1cc to Mr. N.Moorthi, Advocate SR.No. 38302

A.S.Nos.784 of 2009

A.SK(27/06/2019)