

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.1906 and 1949 of 2001

S.A.No.1906 of 2001:-

1.Palaniammal

2.Rani ...Appellants/Appellants/Plaintiffs

Vs.

1.Ezhumalai Gounder (Deceased)

[R1 died viz., Ezhumalai Gounder. A memo dated 03/01/2019 is recorded. Appellants 1 and 2 and RR2 & 4 are recorded as LR's of the deceased R1 vide order of Court dated 10/01/2019 made in SA.No.1906/2001]

2.Alamelu Ammal

3.Govindasamy (Deceased)

[R3 set ex-parte is dispensed with vide order of Court dated 10/01/2019 made in SA.No.1906/2001]

4.Krishnamurthy

... Respondents/Respondents/Respondents

S.A.No.1949 of 2001

1. Palaniammal

2. Rani

...Appellants/Appellants/Defendants

Vs.

Alamelu

...Respondent/Respondent/Plaintiff

Common Prayer: Second Appeals filed under Section 100 of C.P.C., against the Judgment and Decree dated 31.10.2000 in A.S.Nos.36 & 37 of 1999, respectively, on the file of the Sub Judge, Mettur confirming the judgment and decree dated 30.11.1995 in O.S.No.177 of 1987 and O.S.No.271 of 1991, respectively, on the file of the District Munsif, Mettur.

For Appellants : Mr.K.Kalyanaraman

in both appeals

For Respondents : R2 & R4 No Appearance

in SA.No.1906 of 2001

Respondent No Appearance

in SA.No.1949 of 2001

COMMON JUDGMENT

The plaintiffs 1 and 2 in O.S. No. 177 of 1987 are the appellants in Second Appeal No.1906 of 2001.

2.The defendants 1 and 2 in O.S. No. 271 of 1991 are the appellants in Second Appeal No. 1949 of 2001.

Second Appeal No. 1906 of 2001:-

3.The suit in O.S. No. 177 of 1987 was filed for the relief of partition and separate possession A and B Schedule property and for mesne profits against defendants 1 to 4. The first plaintiff is the daughter-in-law of the defendants 1 and 2. The second plaintiff is the grand daughter of defendants 1 and 2. The third and fourth defendants are the sons of defendants 1 and 2. In other words, the husband of first plaintiff, since deceased, is one of the sons of the defendants 1 and 2.

4.According to the plaintiffs, the A and B Schedule Properties are joint family properties, which were enjoyed in common. It is the specific case of the plaintiffs that the husband of first plaintiff died 15 years prior to the institution of the suit. The A and B Schedule Properties were maintained by the first defendant as Kartha of the joint family and with the income derived from the A Schedule Property, the B Schedule Property was purchased by the first defendant in the name of the second defendant (wife of the first defendant). The second defendant has no independent source of income to purchase the B Schedule Property and she is only a name lender. Therefore, the plaintiffs are entitled to 2/3 share and the second defendant is entitled to the remaining 1/3rd share in the A and B Schedule Properties. The defendants were in receipt of a sum of Rs.12,000/- derived from the A Schedule Property, however, the defendants did not pay any amount to the plaintiffs. On 15.02.1987, the plaintiffs demanded for a partition of the suit properties, but the defendants refused, hence, the suit was filed.

5.The defendants 1 and 2 resisted the suit by contending that the plaintiffs are entitled for a partition in respect of the A Schedule Property alone, however, they are not entitled for any share in B Schedule Property. The B Schedule Property was purchased by the first defendant out of the sreedhana brought by his wife/the second defendant at the time of marriage and with the income earned by him. The first defendant never acted as Kartha of the joint family as contended by the plaintiffs. The suit properties were never in possession of the plaintiffs and defendants as a joint family property. The B

Schedule Property was purchased independently in the name of the second defendant and she is the absolute owner of the property. In fact, a portion of the property in B Schedule measuring 5 cents was settled by the second defendant on 06.12.1978 in favour of her son/third defendant by way of a registered settlement deed and the remaining property alone was shown as the B Schedule Property in the plaint, which would indicate that the plaintiffs accepted, the right of the second defendant to settle a portion of the property in favour of the third defendant, while so, the B Schedule property par-take the character of self-acquired property of the second defendant over which the plaintiffs cannot have no right for partition, hence, the plaintiffs are not entitled for any share in the B Schedule Property.

Second Appeal No. 1949 of 2001:-

6.The respondent herein/plaintiff has filed the suit in O.S. No. 271 of 1991 contending that she along with one Ramakkal has purchased the suit property (which is morefully described as B Schedule Property in O.S. No.177 of 1987) and on 22.12.1979, the said Ramakkal has settled her half share, in favour of the plaintiff and from that date, the plaintiff is in possession and enjoyment of the suit property. The plaintiff has paid tax, in respect of the suit property, in her name and except the plaintiff, no one can assert any right, title or interest in the B Schedule property. The first defendant is her daughter-in-law and the second defendant is her grand daughter. After the death of the husband of first defendant, the defendants are demanding a share in the suit property. The suit property is the self-acquired property of the plaintiff over which, the defendants have no right for partition. The defendants have been demanding a share in the said B Schedule property, which was refused by the plaintiff. On 30.04.1991, the defendants attempted to interfere with the suit property, which was in the possession of the plaintiff. The plaintiff successfully prevented such attempt on the part of the defendants. As there was an imminent threat of interference by the defendants, the plaintiff has filed the suit.

7.The suit in O.S.No.271 of 1991 was resisted by the first defendant (i.e., first plaintiff in O.S.No.177 of 1987) contending that the averments of the plaintiff (i.e., second defendant in O.S.No.177 of 1987) purchased the suit property on 09.02.1950 from one Ramakkal and the said Ramakkal settled it to the plaintiff on 22.12.1970 are false. The suit property is the joint family property, to which, the husband of the first defendant is the Kartha. The husband of the plaintiff purchased the suit property in the name of the plaintiff and the plaintiff

is only a name lender. The plaintiff has no independent source of income to purchase the suit property. The suit property was purchased only out of the joint family funds generated from the A Schedule property. Since the defendants herein have filed the suit in O.S. No.177 of 1987, and the suit in O.S.No.271 of 1991 has been filed as a counter-blast.

8.Before the Trial Court, common evidence was let in. The plaintiff in O.S.No.177 of 1987 examined herself as PW.1 and five others were examined as Pws.2 to 6 and Exs.P1 to P15 were marked. On behalf of the defendants, the defendants 1 and 2 in O.S.No.177 of 1987 were examined as DWs 1 and 2 and Exs.D1 to D17 were marked.

9.The Trial Court, upon considering both the oral and documentary evidence, come to the conclusion that first defendant has admitted in the written statement that A-schedule property is available for partition. However, the Trial court found that B-schedule property was purchased independently in the name of the second defendant and it is held to be a separate and individual property of the second defendant. Accordingly, the Trial Court dismissed the suit in so far as the relief of partition in respect of B-schedule property and decreed the suit only in respect of A-schedule property. Consequently, the Trial Court decreed the suit in O.S.No.271 of 1991 filed for bare injunction.

10.Aggrieved by the dismissal of O.S.No.177 of 1987 and O.S.No.271 of 1991, the plaintiffs in O.S.No.177 of 1987 have filed the both A.S.Nos.36 & 37 of 1999 respectively, before the First Appellate Court and they were dismissed by confirming the decree and Judgment of the Trial Court. Hence, these second appeals.

11.The above second appeal has been admitted on the following substantial questions of law:-

"1.Whether the Courts below omitted to consider the material evidence available on record regarding the benami nature of the transaction relating to the B Schedule property and the evidence and circumstances establishing that there was sufficient joint family nucleus for the purchase of the B schedule property?

2. Whether the courts below gravely erred in holding that the plaintiffs have not discharged the burden that suit B Schedule property is the joint family property by over looking material evidence and circumstances showing that there was sufficient

joint family nucleus for the purchase of the B schedule property?"

12.The learned counsel appearing for the appellants would contend that the B Schedule Property in the suit in O.S.No.177 of 1987 is the joint family property, in which, the plaintiffs/appellants are also entitled to a share. In fact, it was specifically pleaded that the B Schedule Property was purchased out of the income derived through the A Schedule Property of the plaintiff. On the contrary, the defendants pleaded that the suit property was purchased by the first defendant benami in the name of the second defendant. However, to substantiate the same, no one, except the defendants 1 and 2, were examined. The defendants failed to prove that the suit property was purchased by the first defendant in the name of the second defendant for her exclusive benefit. The Courts below also failed in rendering a finding that the suit property is the exclusive property of the second defendant and she is in possession as an owner thereof.

13.On the above contention, this Court heard the learned counsel for the appellants as well as the respondents and perused the materials available on records.

14.After going through the evidence of DW.2/viz, Alamelu ammal, coupled with the documentary evidence Ex.A5/Sale deed on 02.05.1950 along with one Ramakkal wherein, the second defendant purchased the B-Schedule property (mentioned in O.S.No.177 of 1987) and subsequently, got half of the share settled in her favour under Ex.A6/Sale deed on 22.12.1970 from the above said Ramakkal, which are registered sale deeds and on the strength of the same, the Courts below have concluded that the second defendant is in the absolute possession and enjoyment of the same. There is nothing to show that this property was purchased by the first defendant out of the joint family property and the second defendant is only a name lender. In such circumstances, the Courts below rendered a specific finding that there is no records produced by the plaintiffs to show as to, what was the total income derived from the A Schedule Property in O.S.No.177 of 1987 from which, the B Schedule Property was allegedly purchased in the name of the second defendant.

15.It is also seen from the records that revenue records have been mutated in the name of the second defendant and she has been paying taxes in her name, which was marked under Ex.B6 to B14. Further, Ex.B17/the adangal extract is also in the name of the second defendant. Taking into consideration of the above

documentary evidence coupled with the deposition of DW.2, both the Courts below have concurrently held that B Schedule Property in O.S.No.177 of 1987 is the separate and independent property of the second defendant and at the same time, the plaintiffs failed to prove that it was purchased from the income generated from and out of the A Schedule Property. Therefore, the Courts below also concurrently concluded that the second defendant is not a name lender and that she purchased the B Schedule Property in O.S. No.177 of 1987 by relying upon Exs. B4 and B5/settlement deeds.

16.On appreciation of the above facts and circumstances of the case, I do not find any error in the concurrent finding of the Courts below. Consequently, the substantial of questions of law are answered in negative as against the appellants in both the second appeals. Accordingly, both the Second Appeals filed by the appellants are dismissed by confirming the Common Judgment and Decree dated 31.10.2000 in A.S.Nos.36 & 37 of 1999 on the file of the Sub Judge, Mettur by confirming the Common Judgment and Decree dated 30.11.1995 in O.S.No.177 of 1987 and O.S.No.271 of 1991, on the file of the District Munsif, Mettur. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Mettur.
2. The District Munsif, Mettur.

Copy to : The Section Officer, VR Section, High Court, Chennai.

+2cc to M/s.S.Kalyanaraman, Advocate Sr.No.50434

AKM/09.12.19/6P-6C /

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