

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1202 of 2009

S.Chakravarthy

... Appellant/Plaintiff

versus

1.M.Sivanantham (Died)

2.S.Thangadurai

3.Government of Tamil Nadu,

Represented by the District Collector,

(Salem)

Now Namakkal District.

4.Rathnam

... Respondents/Defendants

(4th respondent brought on record as legal representative of the deceased 1st respondent vide Order of Court dated 10.07.2019 made in C.M.P.No.7629 of 2017 in S.A.No.1202 of 2009).

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 09.09.2009 in A.S.No.23 of 2008 on the file of the Subordinate Judge's Court, Rasipuram, confirming the Judgment and Decree dated 06.04.2004 in O.S.No.51 of 2004 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.P.Valliappan

For Respondents: Mr.C.Prabakaran[R2]

Mr.N.Manikandan,

Government Advocate (C.S.) [R3]

No Appearance [R4]

R-Died

JUDGMENT

The plaintiff, who laid a suit for partition and permanent injunction, was unsuccessful before both the Courts below has preferred this appeal. Parties would be referred to by their ranks before the trial Court.

2. Seven items of immovable properties were scheduled to the plaintiff. The 1st defendant is the father of the plaintiff and the second defendant. He worked as a Revenue Official under the 3rd defendant for some time, and later he gave up his employment to explore some lucrative avenues in arrack business. The same did not appear to have been profitable venture, as he ran into a financial difficulties and became liable to pay a sum of Rs.5,34,000/- to the State towards Excise dues. For realising the same, proceedings under Tamil Nadu Revenue Recovery Act was initiated. It is at this juncture, the plaintiff had approached this Court claiming that the suit properties are ancestral properties in the hands of his father and that he has 1/3rd share in the property. This Court was informed that before the trial Court, the plaintiff had obtained an Order of interim injunction against the defendants from proceeding ahead with the proposed action initiated under the Revenue Recovery Act. Therefore, the suit properties are yet to be attached.

3. The 3rd defendant in the suit is the State of Tamil Nadu. None contested the suit. Still, the trial Court dismissed the suit on the ground that the plaintiff has not established that the suit properties are ancestral in character. Therefore, the plaintiff preferred an appeal before the First Appellate Court. He also produced three documents which were received by the First Appellate Court in evidence and these documents were marked as Exts.A1 to A3. The First Appellate Court in its judgment has noted:

a) Ext.A1 is a partition deed dated 15.11.1951, in which, the father of the 1st defendant was allotted items 1 and 2.

b) Exts.A2 and A3 are the sale deeds dated 28.08.1978 and 16.10.1978 under which, the 1st defendant had purchased item Nos.3, 4, 7 and item Nos.5 and 6 respectively along with his brother.

Still, the First Appellate Court decided not to decree the suit.

4. This appeal was admitted on the following substantial questions of law:

1. When a son is not bound by the 'Avyavatharika' debt incurred by his father/kartha, whether the Courts below are correct in law in holding that the appellant is bound to pay the debts of the third

respondent for the loss incurred by the first respondent out of his arrack business?

2. Whether the Courts below are correct in law in rejecting the suit filed by the appellant especially when all the respondents remained exparte without filing any written statement, before the Trial Court?

3. Whether the Lower Appellate Court is correct in law in eschewing Exhibits A1 to A3, which would clearly prove that the suit properties are ancestral properties?

5. The learned counsel for the appellant argued :

- Ext.A1 indicates that items 1 and 2 indeed have been allotted to plaintiff's paternal grand father and necessarily when plaintiff's father inherited the same from his father, he became entitled to 1/3rd share in the suit property and when the joint family is shown to be in possession as ancestral nucleus, it ought to be presumed that the properties namely items 3 to 7 were purchased out of the income from the ancestral properties.

6. Heard the learned Government Advocate and he has not opposed to express anything about the present auction purchase.

7.1 The substantial questions of law framed on a presupposition that the suit properties are ancestral properties. If only the 1st defendant had not been employed, and if his only source of income was that which his ancestral estates in items 1 and 2 generate, then the argument of the plaintiff would fall in place. However, it is an admitted case that the 1st defendant was employed under the 3rd defendant and had also later resigned the job to deal with the 3rd defendant in his commercial activity, it cannot be stated that any decree of accuracy that these properties have been purchased under Exts.A2 and A3 are funded solely from the ancestral income. The law is settled that merely because the karta of the joint family holds ancestral property, does not ipso facto imply that any property that he has purchased are funded by the income from the ancestral property, more so, when he is shown to have his independent source of income.

7.2 This Court holds that so far as the items 1 and 2 is concerned, the defendants have 1/3rd right in the property and a preliminary decree can be passed to that effect. So far as the properties in items 3 to 7 covered under Exts.A2 and A3 are concerned, there is no evidence to hold that they are ancestral.

8. This Court therefore, considers it appropriate to pass a decree only with regard to items 1 and 2, and the shares of the first defendant in item 1 and 2 and his absolute right over items 3 to 7 are available for the 3rd defendant to realise its dues. Here, it may be mentioned that the State is first required to realise its dues only from the property which would be sufficient to satisfy its debt.

9. In the result, this appeal is partially allowed and the judgment and decree dated 09.09.2009 in A.S.No.23 of 2008 on the file of the Subordinate Judge's Court, Rasipuram is set aside, and the suit is partly decreed, and plaintiff's 1/3rd share regarding item 1 and 2 is hereby declared. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

ssn

To :

1. The Subordinate Judge
Rasipuram.
2. The District Munsif Court,
Rasipuram.
3. The District Collector,
(Salem)
Now Namakkal District.

+1 cc to Mr.P.Valliappan Advocate sr62644

S.A.No.1202 of 2009

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