

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2019
PRONOUNCED ON: 28.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.21 of 2006

Vinayagam ..Appellant/4th Defendant

Vs.

1.Abiramasundari

2.Shanti ...Respondents 1 & 2/Plaintiffs

3.Sivapooshanam

4.Kalyani (Deceased)

5.Kumaresan

6.Kandasamy

7.Vasanthi

8.Ramani ...Respondents 3 to 8 /Defendants

[4th respondent died.

The appellant is permitted
from substituting the LRs
of the deceased R4 vide order
of Court dated 07.03.2019
made in CMP.16421 of 2018
in S.A.No.21 of 2006]

...Respondents

Prayer:- Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated 29.09.2005 made in
A.S.No.98 of 2004 on the file of the I Additional Sub Court,
Villupuram reversing the judgment and decree dated 30.04.2004
made in O.S.No.3 of 2002 on the file of the Principal District
Munsif Court, Villupuram.

For Appellant : Mr.T.Dhanyakumar

For RR1 and R2: Mr.I.Periyasamy

For RR3, R5, R7

and R8 : No appearance
Set exparte vide order dated 18.03.2019

For RR4 : Died
Exempted from taking steps
vide order dated 07.03.2019

For RR6 : Notice dispensed with

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 29.09.2005 passed in A.S.No.98 of 2004 on the file of the First Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 30.04.2004 passed in O.S.No.3 of 2002 on the file of the Principal District Munsif Court, Villupuram.

2. The second appeal has been admitted on the following substantial questions of law:

1. Whether the decree of the lower appellate court is vitiated in granting share of the plaintiffs from the $\frac{1}{4}$ share of Shanmugam after holding that Ex.B2 Settlement Deed is valid in respect of his $\frac{1}{4}$ share?
2. Whether the findings of the Lower Appellate Court are vitiated in holding that Ex.B2 Settlement Deed is invalid without taking into consideration that Ex.B2 Settlement Deed was executed with the consent and knowledge of the co-parcenors?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The suit has been laid by the plaintiffs for partition and future mense profits.

6. The plaintiffs laid the suit against the defendants contending that the plaintiffs, the defendants 2, 6 and 7 are the daughters, the first defendant is the wife, and the defendants 3 to 5 are the sons of the deceased Shanmugam and the items 1 to 4 of the plaint schedule properties are the joint family properties belonging to the plaintiffs and the defendants derived from their ancestors by inheritance and the item 10 of the plaint schedule properties is the separate property of the deceased Shanmugam having acquired by him and the 11th item of the plaint schedule properties is acquired by the deceased Shanmugam by way of assignment and the grant of patta by the Government and as the defendants 3 and 5 are stationed outside and the plaint schedule properties had been looked after by the 4th defendant as the manager of the family affairs and accordingly, the 4th defendant has been continuing as the manager of the family even after the death of Shanmugam. Further according to the plaintiffs, the items 5 and 6 of the plaint schedule properties had been purchased in the name of the 4th defendant as the manager of the family on 13.10.1986 from one Thangavelu Naicker with the aid of joint family nucleus and the joint efforts of the other members of the family, particularly, the major contribution made by the defendants 3 and 5 and furthermore the maternal grandmother namely Dhanalakshmi Ammal had settled her properties i.e., items 7 to 9 of the plaint schedule properties in favour of the family and however, the deed had been executed in the name of the 4th defendant as he was managing the family and the joint family had accepted the abovesaid settlement deed dated 13.10.1986 and the said properties had also been thrown into the joint family hotchpot and blended with the other properties and treated and enjoyed as the joint family properties of the family members. The plaintiffs had been given their share of income out of the joint family properties abovestated, however, of late, the income due to the plaintiffs had not been distributed and instead the 4th defendant refused to give the income and also denied their right in respect of the suit properties and hence according to the plaintiffs, they are entitled to 1/18 the share in the items 1 to 9 and 2/9th share in the items 10 and 11 of the plaint schedule properties, accordingly, come forward with the suit for appropriate reliefs.

7. The plaintiffs' suit had been resisted only by the 4th defendant and briefly stated, according to the 4th defendant, there is no joint family as put forth and therefore no joint family properties are available for division and according to him, the items 1 to 4 of the plaint schedule properties are not derived from the ancestors by inheritance and hence they are not the joint family properties of the plaintiffs and the defendants as put forth in the plaint and according to him, the abovesaid

properties are the separate properties of the deceased Shanmugam and in respect of the same, the deceased Shanmugam executed a settlement deed in favour of the 4th defendant and hence the plaintiffs are not entitled to claim any share in the same and further according to him, the items 5 and 6 of the plaint schedule properties are the separate properties of the 4th defendant purchased from Thangavelu Naicker under the registered sale deed dated 13.10.1986 and he is in an exclusive possession of the same and further according to him, the items 7 to 9 of the plaint schedule properties had been settled in his favour by Dhanalakshmi Ammal, grandmother and they cannot be treated as the joint family properties and further according to him the items 10 and 11 of the plaint schedule properties are the properties of Dhandapani, the brother of the deceased Shanmugam and therefore, the same cannot be said to be the joint family properties of Shanmugam and the same are not the properties of the joint family as claimed in the plaint and further disputed that he had been acting as the manager of the joint family and in that capacity had acquired the items 5 and 6 of the plaint schedule properties and also had derived the items 7 to 9 of the plaint schedule properties on behalf of the joint family and according to him the defendants 3 and 4 were well placed and settled outside and the plaintiffs and the other daughters of the deceased Shanmugam had been given in marriage and the plaintiffs due to dispute in their husband's family had come to the suit village and thereby they cannot seek any right in the properties belonging to the 4th defendant and hence the plaintiffs are not entitled to claim any share in the suit properties on the footing that they are the joint family properties and therefore the suit is liable to be dismissed.

8. In support of the plaintiffs' case, P.Ws 1 to 4 were examined. Exs. A1 to A22 were marked. On the side of the 4th defendant, D.W.1 was examined. Exs. B1 to B40 were marked.

9. 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 plaintiffs' suit. On appeal by the plaintiffs, the first appellate court was pleased to set aside the judgment and decree of the trial court and granted the relief of partition in respect of the plaintiffs' share as regards the items 1 to 6, 10 and 11 of the plaint schedule properties as prayed for and dismissed the suit in respect of the items 7 to 9 of the plaint schedule properties and accordingly disposed of the first appeal and impugning the same, the present second appeal has been preferred by the 4th defendant.

10. As regards the items 7 to 9 of the plaint schedule properties admittedly, it is found that the same had been settled in favour of the 4th defendant by the grandmother

Dhanalakshmi Ammal by way of a settlement deed dated 13.10.1986. The 4th defendant had derived the abovesaid properties through his maternal grandmother, hence the plaintiffs cannot be allowed to contend that the same had been settled in favour of the joint family and hence they are also entitled to claim partition in the same as claimed in the plaint, accordingly, it is found that the first appellate court is justified in negating the relief of partition sought for by the plaintiffs as regards the items 7 to 9 of the plaint schedule properties. With reference to the abovesaid determination of the first appellate court, the plaintiffs have not preferred any appeal or cross objection/cross appeal in the present second appeal with reference to the same.

11. The relationship between the parties is not in dispute. It is thus found that the first defendant is the wife, the plaintiffs, the defendants 2, 6 and 7 are the daughters and the defendants 3 to 5 are the sons of the deceased Shanmugam. According to the plaintiffs, the items 1 to 4 of the plaint schedule properties are the joint family properties derived by the deceased Shanmugam by inheritance. According to the plaintiffs, the items 1 to 4 of the plaint schedule properties are the joint family properties derived by the deceased Shanmugam from his ancestors by way of inheritance. However, the 4th defendant would resist the abovesaid case of the plaintiffs contending that the same had been settled in his favour by the deceased Shanmugam and therefore, the plaintiffs are not entitled to claim any share in respect of the abovesaid items of the plaint schedule properties. The settlement deed dated 02.01.1987 executed by the deceased Shanmugam in favour of the 4th defendant has been marked as Ex.B2. In the said document, it has been averred by the executor, i.e., the deceased Shanmugam that the properties comprised therein had been derived by him by way of a partition held on 14.06.1986 in the presence of village panchayathars and as rightly determined by the first appellate court, it is found that the deceased Shanmugam had derived the abovesaid items of the plaint schedule properties only by way of partition amongst his family members and thereby it is found that the same had not been acquired independently by the deceased Shanmugam. That apart, the 4th defendant during the course of cross examination has also admitted that the items 1 to 4 of the plaint schedule properties had been acquired by his grandfather and accordingly, it is found that the properties belonging to the grandfather, on partition as above noted, only by way of the same, the items 1 to 4 of the plaint schedule properties as well as the other properties had come to be allotted to the share of the deceased Shanmugam and therefore, the first appellate court is justified in holding that the items 1 to 4 of the plaint schedule properties are only the ancestral properties of the deceased Shanmugam and hence they are the

joint family property belonging to the family as put forth in the plaint. It has not been established by the 4th defendant that the abovesaid items of the plaint schedule properties had been exclusively enjoyed by the deceased Shanmugam on his own by not treating the same as the joint family properties vis-a-vis his own family members. In such view of the matter, when items 1 to 4 of the plaint schedule properties are found to be the joint family properties, the deceased Shanmugam is found to be not entitled to settle the same in favour of the 4th defendant and furthermore, when the said settlement deed had not been established to have been executed by the deceased Shanmugam with the knowledge and consent of all the co-parceners/ joint family members as required by law, accordingly, it is found that the abovesaid settlement deed would not acquire any validity as per law and hence the said properties would continue to be the joint family properties belonging to the plaintiffs and, as such, the defendants and as such, the plaintiffs would be entitled to obtain their share in the same ie., their share in the 1/4th share of the deceased Shanmugam in the said items of the properties and it is thus found that they would be entitled to claim 1/18th share in the abovesaid items.

12. According to the plaintiffs, it is only the 4th defendant, who has been looking after the joint family properties as the manager and accordingly out of the joint family nucleus and the efforts of the joint family members, the items 5 and 6 of the plaint schedule properties had been acquired for the benefit of the joint family, but, in the name of the 4th defendant and accordingly contended that the items 5 and 6 of the plaint schedule properties though standing in the name of the 4th defendant are only the joint family properties and thus the plaintiffs are entitled to their shares in respect of the said properties. Though the 4th defendant would claim that he has not been managing the affairs of the joint family, however in the settlement deed relied upon by him marked as Ex.B2, it has been clearly averred that, it is only the 4th defendant, who had been looking after the family affairs by coordinating with all and thereby, it is seen that, on that basis only even the settlement deed Ex.B2 dated 02.01.1987 had come to be executed in favour of the 4th defendant by the deceased Shanmugam. That apart, it is found that the 4th defendant has admitted that he has been residing with his father till 1989 and the items 5 and 6 of the plaint schedule properties are found to have been acquired by the 4th defendant when he was residing with the family members. The sale deed with reference to the same marked as Ex.A3 is dated 13.10.1986 and the same deed has also been marked as Ex.B4. It is further seen that the prior to the abovesaid sale transaction, the abovesaid properties had been mortgaged by Thangavelu and only in continuation of the same, it had come to be alienated in

favour of the 4th defendant under Ex.A3/B4. The mortgage deed has been marked as Ex.B3. Furthermore, in respect of the earlier suit proceedings between the deceased Shanmugam and his family members in O.S.No.918 of 1987 wherein, the 4th defendant was also made a party, in the written statement filed therein, the copy of which has been marked as Ex.B10, the 4th defendant had clearly admitted that the items 5 and 6 of the plaint schedule properties had been acquired with his self earnings as well as with the financial assistance provided by his maternal grandmother Dhanalakshmi Ammal and his employed brothers. It is thus found that the items 5 and 6 of the plaint schedule properties had been acquired by the 4th defendant not on his own, but also by the monetary aid provided by his brothers as well as the maternal grandmother. Even the plaintiffs have averred that the 4th defendant had purchased the abovesaid properties with the aid of the family nucleus as well as the joint efforts of the family members. All put together would only go to show that inasmuch as the 4th defendant has been acting as the manager of the family at the relevant point of time, accordingly, the abovesaid properties had come to be acquired in the name of the 4th defendant and when the same had been acquired as admitted by the 4th defendant in O.S.No.918 of 1987, with the monetary support of his brothers, accordingly, the first appellate court is justified in holding that the 4th defendant and the family members had contributed for the acquisition of the items 5 and 6 of the plaint schedule properties and when there is no contra evidence adduced on the part of the 4th defendant that he had acquired the same on his own, without any reference to the other family members as such, it is found that, as determined by the first appellate court, the items 5 and 6 of the plaint schedule properties are also the joint family properties of the plaintiffs and the defendants and accordingly the plaintiffs are found to be entitled to obtain the shares with reference to the same as claimed in the plaint.

13. As regards the items 10 and 11 of the plaint schedule properties, according to the plaintiffs, they are the separate properties of their father deceased Shanmugam. The sale deed with reference to the same marked as Ex.A2 would go to show that the item 10 had been acquired by the deceased Shanmugam and accordingly it is found that as determined by the first appellate court, with reference to the item 10, the plaintiffs would be entitled to their due shares in the said property. The item 11 is said to be the property acquired by the deceased Shanmugam by way of assignment from the Government. In this connection, the V.A.O has been examined as P.W.4 and he has in his evidence deposed that in respect of the item 11 of the plaint schedule properties, it is only the deceased Shanmugam who had been granted the patta and accordingly as determined by the first appellate court, the assignment in

respect of the 11th item of the plaint schedule properties having been issued in favour of the deceased Shanmugam, the patta has also come to be issued in his favour and on his demise as his legal heirs, it is found that the plaintiffs would also be entitled to obtain their due share in the said property.

14. Though the 4th defendant would claim that the items 10 and 11 of the plaint schedule properties belonged to his paternal uncle Dhandapani, however with reference to the abovesaid claim, no proof whatsoever has been placed on his part. In addition to that, the 4th defendant, during the course of his cross examination has admitted that he has no objection in granting the due shares of the plaintiffs in respect of the items 10 and 11 of the plaint schedule properties. In the light of abovesaid reasons, when the items 10 and 11 of the plaint schedule properties are found to be the self acquired properties of the deceased Shanmugam, the plaintiffs being his daughters, as determined by the first appellate court, they would be entitled to obtain their due share in the said properties also.

15. In the light of the abovesaid factors, the first appellate court has rightly appreciated the materials placed on record in the correct perceptive, both factualwise as well as legalwise and accordingly determined the nature of the properties i.e., they being the joint family properties of the plaintiffs/ the self acquired properties of the deceased Shanmugam and accordingly has determined the shares to which the plaintiffs are entitled to the same and also rightly found that the items 7 to 9 are not the joint family properties as put forth by the plaintiffs and that they are the separate properties of the 4th defendant. No valid reason has been projected warranting any interference with the judgment and decree of the first appellate court. In my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the 4th defendant and in favour of the plaintiffs.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition if any is closed.
mfa

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The First Additional Subordinate Judge,
First Additional Subordinate Court,
Villupuram.

2.The Principal District Munsif,
Principal District Munsif Court,
Villupuram.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.T.Dhanyakumar, Advocate, SR.No.30070

+1cc to Mr.J.Rajmohan, Advocate, SR.No.29505

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k(28/05/2019)



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