

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019

PRONOUNCED ON : 08.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1824 of 2004

1.C.Venugopal (died)
2.Varadhan
3.Selvaraj
4.Ranganathan
5.Thulasingham
6.Ponni
7.Panneerselvam
8.Sulochana

(Appellants 2 to 8 were brought
on record as Lrs of the deceased
sole appellant vide order of Court
dated 04.12.2012 made in C.M.P.
Nos.1603 to 1605 of 2009 in
S.A.No.1824 of 2004)

..Appellants/Appellants/Plaintiffs

Vs

1.Deevanuran
2.Muthumari
3.Rajaveni
4.Munusamy
5.Kathavaraya Gounder
6.Murugan

..Respondents/Respondents/Defendants

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.112 of 2002 dated 13.09.2002 on the file of the learned First Additional District Judge (Fast Track Court No.1), Tindivanam against the judgment and decree dated 08.03.1999 made in O.S.No.602 of 1993 on the file of the learned Additional District Munsif, Tindivanam.

For Appellants	:	Mr.Krishnasamy
For Respondents	:	No Appearance
RR1 to 3		
For Respondents	:	Mrs.N.Mala
RR4 to 6		

JUDGMENT

The present appellants are the legal representatives of C.Venugopal who was the plaintiff in O.S.23 of 1999 on the file of Sub-Court Tindivanam. The suit filed for partition and consequential injunction was dismissed by both the Courts below. Hence, the second appeal.

2.The suit is laid for partition and mesne profits. The case of the sole plaintiff is that, the first defendant - Chinnakuppan is his father. The second defendant - Pappa is his mother. Third defendant is his brother. 4th and 5th defendants are his sisters. The first item of the suit schedule property is the residential building constructed by him from out of his income. He and the defendants 1 to 5 were living in it. 25 years ago, his sisters got married and left the parental home. The plaintiff and his brother who is the 3rd defendant are in joint possession and enjoyment of the 2nd and 3rd items of the suit schedule property. His parents, who are the first and second defendants have no right in it. Taking advantage of the ill health of his father (the first defendant), the defendants 6 to 8 have created documents alleging to have been executed by the first defendant and trying to trespass into the 2nd and 3rd items of the suit schedule property. Hence, a suit was filed by the plaintiff for partition claiming 1/3rd share and injunction. Pending suit, alleging that the 7th defendant has dispossessed the plaintiff and harvested the field in the 2nd and 3rd items of the suit schedule property, pleadings were amended to that effect claiming mesne profits. Pending suit, the plaintiff's father, (first defendant) and mother (second defendant) died. Therefore, alleging that his share has enlarged to 1/2 from 1/3, suitable amendment has been carried out by the plaintiff.

3.The third defendant, in his written statement, has contented that, except the relationship between the plaintiff and the defendants 1 to 5, all other averments made in the plaint are denied. He is no way connected with the suit property. He is not a necessary party to the suit. Hence, his name must be deleted from the suit and the suit has to be dismissed as against this defendant.

4.The 7th defendant, in his statement, has contented that, he purchased the 2nd and 3rd items of the suit schedule property from the first defendant for valuable consideration on 13/09/1993. These two properties were purchased by his vendor on 02/01/1987 from his own source and hence, it was his vendors absolute property. Merely because the plaintiff is one of the sons of his vendor, he cannot question the alienation of his father. The sale of the 2nd and 3rd items of the suit schedule

property by the first defendant in favour of the 7th defendant is valid in law and binding. In respect of other averments made in the plaint, this defendant has adopted the statement of the 8th defendant.

5.The 8th defendant written statement has been adopted by the 1st and 6th defendants. In their written statement, the defendants have denied the contention of the plaintiff that the suit properties are joint family properties. The plaintiff and the defendants 1 and 2 never lived and possessed property jointly. For nearly 30 years prior to the suit, the plaintiff and defendants were living separately. The first defendant have no ancestral property. The 1st and 3rd defendants have their own source of income. The suit properties were purchased from their own source of income and not out of joint family income. While the 3rd defendant is an employee of Transport Corporation, the brother of the first defendant is employed in Chennai Port Trust and from out of his income, the suit properties were purchased.

6.As far as the 1st item of the suit schedule property, it was purchased from the legal heirs of Ponnusamy by the third defendant from his income in the year 1978. Later, third defendant sold this property to his mother Pappammal in the year 1982. Pappammal has sold the property to the 8th defendant under the sale deed dated 08/09/1993. Since, the suit properties are the self acquired properties, the plaintiff can have no claim over the properties.

7.The trial Court has framed 11 issues and found the case of the plaintiff deserved to be dismissed after appreciating the evidences of P.Ws.1 to 3 on behalf of the plaintiff and D.Ws.1 to 6 on behalf of the defendants. 23 documents on the plaintiff side and 17 documents on the defendants side were marked. After tracing the title regarding the suit properties, the trial court held that the properties are the self acquired properties of first and second defendants. They have independently sold it the 7th and 8th defendants for valuable consideration. The plaintiff has failed to prove that the properties are joint family properties and he, as a member of the joint family, entitled for a share in it.

8.Aggrrieved by the dismissal of the suit, the plaintiff has preferred first appeal in A.S.No.112/2002 on the file of Additonal District Fast Track Court No. 1, Thindivanam contending that the trial Court failed to properly appreciate Exs.A-1 to A-4 which will prove that the suit properties are joint family properties and not the personal properties of First and Second defendants. It was also contended by the sole plaintiff that the burden to prove that the suit properties are not the joint family properties lies on the defendants.

9.The First Appellate Court after re-appreciating the evidence, has confirmed the judgment of the trial Court and dismissed the appeal. Hence the present Second Appeal.

10.The learned counsel for the appellant would submit that, the appellant through Exs.A-1 to A-4 - promissory notes, have established the fact that the properties were purchased through joint exertion of the family members. While so, the failure of the defendants to prove that the property was purchased from out of their own income ought to have weighed the mind of the Courts below. Unfortunately, both the Courts have failed to consider that fact that the plaintiff and defendants 1 to 3 were living together as Hindu Joint Family and therefore, it must be presumed that the properties acquired by the members of the family though, in their respective names, only as joint family properties.

11.The contention raised by the learned counsel for the appellants is not sustainable in law. When the plaintiff who pleads that the properties were acquired in the name of the family members from out of the joint family exertion, the primary burden is on the plaintiff to prove the same. The promissory notes relied by the plaintiff are Exs. A-1 to A-4. These promissory notes indicate that the plaintiff and his father (first defendant) had jointly executed pro-notes and borrowed money. Two of the pro-notes indicate that they have borrowed money to buy cattles. Two of the pro-notes were executed in lieu of discharging the earlier debt. None of the documents relied by the sole plaintiff show any semblance of joint family exertion in acquiring the suit properties. The first defendant who is the father of the plaintiff and the third defendant, who is brother of the plaintiff have pleaded that they had their own source of income and from out of the income, the properties were purchased and later sold for valuable consideration.

12.The plaintiff though impleaded the purchasers of the suit properties as Defendants 7 and 8, even after knowledge of the transfer of property, he has not challenged the sale deeds. The vendors of the suit properties namely, the plaintiff's father (first defendant) and mother (second defendant) have sold the property claiming it as their individual self acquired property and the defendants 7 and 8 have purchased the same bonafidely for valuable consideration. In the said circumstances, the burden to prove that the properties are joint family properties squarely falls on the the sole plaintiff and when the plaintiff has failed to discharge the said burden, he is bound to fail.

13.When the sole plaintiff has not even able to prove that he along with the defendants 1 to 3 were living jointly, he cannot claim joint possession and right over the properties which stands in the name of his father, mother and brother. He

cannot conveniently transfer the burden on the defendants to prove that the properties are their self acquired properties. It is well settled principle that he who pleads a fact, has to prove the fact pleaded. Having failed to prove the fact pleaded, the Courts below has rightly dismissed the suit and the First Appeal filed thereon.

14. In the light of the above facts and circumstances of the case, one can draw no other conclusion but to dismiss the second appeal as devoid of merits. Accordingly, the second appeal is dismissed with costs through out.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The First Additional District Judge
(Fast Track Court No.1),
Tindivanam.

2. The Additional District Munsif,
Tindivanam.

copy to: The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.S.Krishnasamy, Advocate, S.R.No.1786

+1 cc to M/s.N.Mala, Advocate, S.R.No.1866

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SSV(CO)
SSM(24/04/2019).

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