



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2019

Coram:

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.297 of 2004

1. Elumalai,
S/o.Venkatachala Gounder,

2. Narayansamy,
S/o.Venkatachala Gounder,

Both are residing at Ravuthankuppam,
Vanoor Taluk, Villupuram District.

... Appellants /Defendants

/versus/

1. Venkatachalam,
S/o.Kesavan.

2. RaviKumar,
S/o.Kesavan,

3. Kesavan,
S/o.Govindaraj,

Respondents 1 to 3/Plaintiffs

All are residing at P.F.Govt.Quarters,
Lawspet, Pondicherry-9.

4. Jayalakshmi,
W/o.R.K.Dhandapani,
Kandamangalam Village,
Villupuram Taluk.

...4th Respondent/3rd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.02.2003 made in A.S.No.106 of 2002 (A.S.No.11/99 Tindivanam Sub Court) on the file of the Additional District Fast Track Court No.I Tindivanam partly modifying the judgment and decree dated 29.11.1996 made in O.S.No.726 of 1995 on the file of the District Munsif-cum-Judicial Magistrate, Vanoor.

For Appellant	: Mr.M.V.Venkataseshan
For R1 to R3	: Ms.G.Sumithra
For R4	: No appearance

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 3.

2. The suit is for partition. The plaintiffs 1 and 2 are sons of 3rd plaintiff. The suit properties initially owned by one Venkatachala Gounder who died intestate about 1967-68 leaving behind 2 sons and 2 daughters. One of his daughter Jagadeeswari was the wife of the 3rd plaintiff. Therefore, the plaintiffs are entitled to get the 1/4th share in the suit properties as legal heirs of Jagadeeswari.

3. The properties listed in "A" Schedule are the properties purchased by Venkatachal Gounder. After his death the first defendant Elumalai as elder male member of the family administering the property and purchased the "B" schedule property in his wife name from the income derived from "A" schedule property. So the properties in both "A" and "B" schedule are to be divided by metes and bound allotting ¼ share to the plaintiffs.

4. In the written statement the defendants contested the suit alleging the plaintiffs are not legal heirs of Jagadeeswari. The "A" schedule properties are not the individual properties of Venkatachala Gounder. It was ancestral properties of Venkatachal Gounder inherited by him along with his brother Murugesu Gounder. After the death of Govinda Gounder his sons Venkatachala Gounder and Murugesu Gounder jointly enjoying the property. On 01.09.1956 they partitioned the property and enjoying it uninterruptedly. Having in possession and enjoyment of the property continuously for more than 12 years, they have perfected title by adverse possession.

5. The trial Court held that 3rd plaintiff is the husband of Jagadeeswari plaintiffs 1 and 2 are the son of Jagadeeswari. Relying Ex.A.9 in which the 3rd plaintiff is shown as husband of Jagadeeswari and the first defendant has signed in this document as one of the witness. The Courts below negatived the plea of the defendants that the plaintiffs are not the legal heirs of Jagadeeswari.

6. The trial Court, after considering the evidence let in by the parties has excluded the properties which was inherited by Venkatachalam Gounder through his father from partition and restricted the claim of partition in respect of the properties which were purchased by Venkatachala Gounder in his name holding that those properties were earned by Venkatachala Gounder out of his labour. Those items are mentioned as item Nos.1, 5, 6, 7, 10, 13, 14 and 18 in the "A"

and "B" schedule properties.

7. On appeal, the Appellate Court while confirming the judgment of the trial Court modified to that effect that item No.18 being a dwelling house and being in possession and occupation of the male members of the family, deleted the item from division.

8. The learned counsel appearing for the appellants would submit that all the properties mentioned in the suit schedule were either inherited by Venkatachala Gounder from his father or purchased in his name as a Karta of the family. Since, it has not proved that the Venkatachala Gounder had no separate income, the Courts below ought to have raised a presumption that the acquisition was made from and out of the income of the joint family properties and ought to have excluded all the properties.

9. As far as, the B schedule property is concerned, the learned counsel for the appellants would submit that the parties have arrived at an amicable settlement between them, so he is not pressing for any relief in respect of the "B" schedule property, which stands in the name of Anjalakshmi.

10. The perusal of the judgment of the Courts below and the evidence let in by the respective parties, does not disclose anything to infer that the properties which were purchased in the name of Venkatachala Gounder was from and out of joint family exertion. In fact, if at all, there was any claim in the property, which stood in the name of Venkatachala Gounder by the other descent of Govinda Gounder, they would have agitated to establish their right or share in those properties, which they have not done. The dispute is only between the descents of Venkatachala Gounder and not with the siblings of Murugesha Gounder. Therefore, a presumption which is pleaded by the learned counsel for the appellants will not arise either on law or facts.

11. Therefore, this Court holds that the trial Court as well as the Appellate Court has properly appreciated the facts placed before them and passed a decree, which does not suffers any legal infirmity to interfere. Accordingly, this Court finds no merit in the Second Appeal. Hence, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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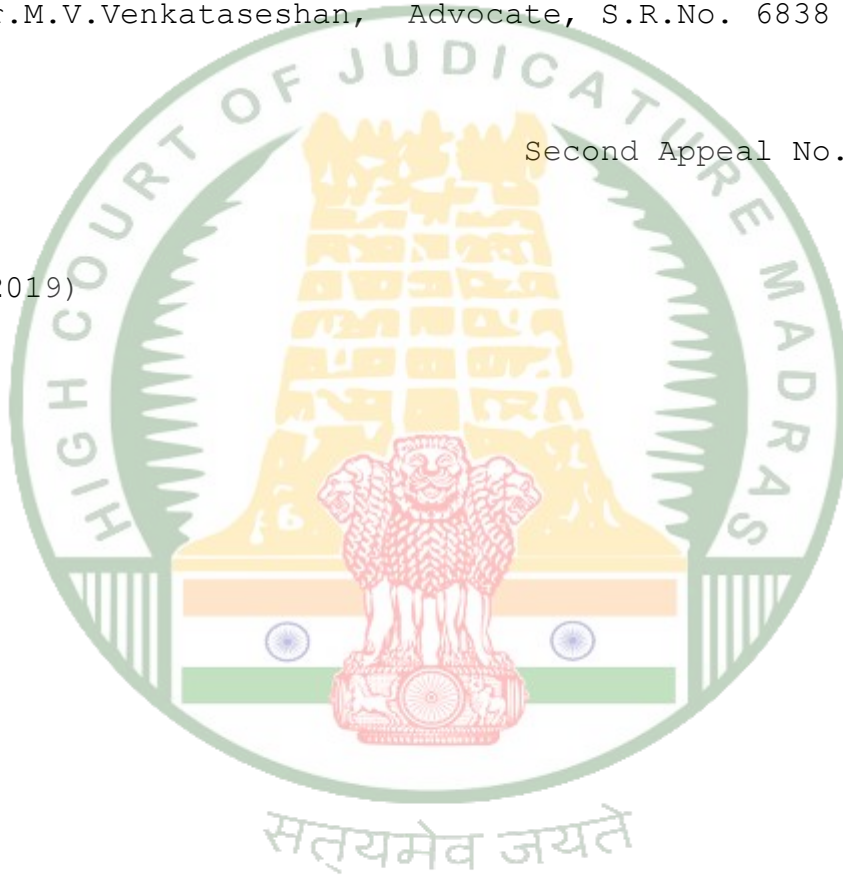
1. The Additional District Judge,
Fast Track Court No.I, Tindivanam.
2. The District Munsif-cum-Judicial Magistrate,
Vanoor.

+1cc to Mr.G.Sumitra, Advocate, S.R.No. 7153

+1cc to Mr.M.V.Venkataseshan, Advocate, S.R.No. 6838

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CNR(CO)
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