

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2019

CORAM: The Hon'ble Mr. Justice N. Seshasayee

S.A.No.836 of 2004

and C.M.P.No.6411 of 2004

1.Nagarajan (Died)

2.Saroja

...Appellant/Appellant/Defendant

[2nd Appellant brought on record as LR of the deceased sole appellant Vide order of Court dated 24/06/2019 made in C.M.P.No.7904 to 7906/2017 in S.A.No.836/2004]

Vs.

1.Dhanalakshmi

2.Jayalakshmi

3.Suseela

4.Rajaram

...Respondents

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 25.07.2003 made in A.S.No.45 of 2002 on the file of the I Additional District Judge, Erode, in confirming the Judgment and Decree dated 31.07.2001 made in O.S.No.45 of 1999 on the file of the Subordinate Judge, Bhavani.

For Appellant : Mr.J.Ramakrishnan

For Respondents: M/s.Kaithamalai Kumaran for R1&R2
No appearance for R3 and R4

JUDGMENT

The sole defendant in a suit for partition is the appellant herein. He died during the pendency of the appeal and his widow is now before this Court.

2.1 The controversy may now be stated. The Suit properties are described in two schedules:

- The property described in the A-schedule, originally belonged to certain Ella Reddy, one of whose son was Perumal Reddy. In a partition, Perumal Reddy had obtained 2.0 acres out of the total extent of 5.72 acres. Out of this 2.0 acres, 1.0 acre was sold in Court auction Vide Ext.B.8 and Ext.B.9. The balance one acre is described as A schedule property.
- The property described in B-schedule and others were purchased by Ella Reddy under Ext.B-1 and Ext.B-2 sale deeds, both of which date back to 1939. Out of the extent purchased, on 11.04.1962, under Ext.A.1, Ella Reddy sold 2.50 acres to his son Perumal Reddy. Out of this extent of 2.50 acres, Perumal Reddy had sold 11 cents under Ext.A.5 and Ext.A.6 to some third parties. This leaves the balance extent at 2.39 acres, and this is described as B schedule property.
- Perumal Reddy died sometime in 1988, and this is not in dispute. He had three daughters and a son. Two of his daughters are plaintiffs 1 and 2. His third daughter was Pachiammal and she predeceased her father in 1993, and her heirs are plaintiffs 3 and 4. Perumal Reddy's only son is the defendant.

2.2 The case of the plaintiffs is that A schedule property is an ancestral property, in which, 1.0 acre (which represents $\frac{1}{2}$ of the total extent) was brought to sale in court-auction to meet the personal debts of the defendant and the balance one acre fell to the share of their father Perumal Reddy, which, on his death, devolved on all his four children. This would imply, the plaintiffs would be jointly entitled to $\frac{3}{4}$ share, and the defendant would be entitled to $\frac{1}{4}$ share.

3.1 On this aspect, the trial Court has held that there was no evidence to indicate that there was a partition of A schedule property between Perumal Reddy and the defendant, and proceeded to grant only for $\frac{1}{8}$ share to the plaintiff's 1 and 2, and another $\frac{1}{8}$ share jointly to plaintiff's 3 and 4. This part of the trial Court's judgment was not challenged by the plaintiffs and has attained finality.

3.2 Turning to the B schedule property, it has a total extent of 2.39 acres. The case of the plaintiffs is that this property was the self-acquisition of Perumal Reddy, and on his demise each of his children including the branch of Pachiammal, would be entitled to $\frac{1}{4}$ share each.

4. This was resisted by the defendant/appellant on two grounds:
- Inasmuch as the sale is by his grandfather to his father, the property conveyed under Ext.A.1 must be considered as an ancestral property.
 - The consideration paid under Ext.A.1 was only Rs.1000/- and inasmuch A schedule property is an ancestral property, the income therefrom must be presumed to have been used for the purchase of B schedule property covered by Ext.A.1.

The trial Court accepted it and so was the first Appellate Court.

5.The appeal is admitted on the following substantial questions of law:

1.Whether the judgment and decree of the Courts below are perverse when the respondents/plaintiffs have miserably failed to prove that Perumal Reddy had independent source of income and from and out of his own income, the suit 'B' schedule property was purchased as required under the provisions of Indian Evidence Act and Hindu Law?

2.Whether in law the courts below are right in holding that the 'B' schedule property is self acquired property of the Perumal Reddy based on Ex.A.5 and Ex.A.6, when there is no pleading about the same?

3.In view of the scope and ambit of Sec.115 of Indian Evidence Act, whether in law the findings as well as the judgment and decree of the Courts below are sustainable, when attestation of documents does not entitle any of the parties thereto or any one claiming under them to regard such attestation, per se, as acceptance on the part of the attester that such attester had knowledge of the same, when more particularly there is no evidence before the Court either intrinsic to show that the attester had knowledge of the contents and had accepted the same as correct?

6.The learned counsel for the appellant submitted that it is an admitted fact on both sides that Perumal Reddy possessed ancestral properties, and when the same is proved, the Court should necessarily presume the nexus between the property purchased and the source of consideration.

7. Heard, the learned counsel for the respondents.

8. Turning to the pleadings and evidences of the plaintiffs, they would say that A schedule property was essentially a dry land, that Perumal Reddy was trading in cattle and raised his separate income. The defendant however, would plead in the context of Ext.A.1, that Perumal Reddy had applied for a license for a contract, and to provide solvency to him Ext.A.1 itself had come into existence. In his evidence, he has countered the evidence of the plaintiffs but it does not indicate anything to show that A schedule property generated adequate income. On the other hand, the evidence indicates the facts to the contra. While plaintiffs hold that Perumal Reddy was engaged in the cattle trading, appellant/defendant said that he was a contractor. Secondly, even he has admitted that B schedule property was essentially a dry land, and to cap it, plaintiffs and defendant were minor children when B schedule property was purchased under Ext.A.1.

9. Mere existence of an ancestral property does not ipso facto imply that property purchased by a coparcenor will be a coparcenary property. Since Perumal Reddy is shown to possess his independent source of income, it cannot easily be presumed that the property was his personal property.

9. Necessarily going by preponderance of probability, this Court has to conclude that the property covered under Ext.A.1 is the self acquisition of Perumal Reddy. Has Perumal Reddy blended his personal property with his ancestral property? Here Ext.A.5 and Ext.A.6 step in. Both are the sale deeds executed by Perumal Reddy, and they cover an extent of 11 cents totally and in these two sale deeds, Perumal Reddy had recited the property that he had purchased under Ex.A.1 as his personal property. This would show that Perumal Reddy had least intention to blend his personal property with his ancestral property. In this regard, it may have to be added that the defendant himself was an attester to Ext.A-6 sale deed, and its effect cannot be entirely ignored. This is a case where Perumal Reddy himself had recited in Ex.A.5 and Ex.A.6 that the property was his personal property and it is adequate to hold that no blending of personal property of Perumal Reddy with his ancestral property had taken place. Hence, all the substantial questions of law fails.

10. Accordingly, the appeal is dismissed and the Judgment and Decree, dated 25.07.2003, made in A.S.No.45 of 2002 on the file of the I Additional District Judge, Erode, in confirming the

Judgment and Decree, dated 31.07.2001, made in O.S.No.45 of 1999 on the file of the Subordinate Judge, Bhavani is upheld. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional District Court,
Erode.

2.The Subordinate Court,
Bhavani.

+lcc to M/s.Kaithamalai Kumaran, Advocate Sr.53207

+lcc to M/s.J.Ramakrishnan, Advocate Sr.52690

S.A.No.836 of 2004
and
C.M.P.No.6411 of 2004

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