

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.1034 of 2012 &

M.P.No.1 of 2012

1. Mr.Karuppuswamy Gounder
2. Mr.Gopal

...Appellants/Plaintiffs

-Vs-

1. Mrs.Subbayal
2. Mrs.Kamalam
3. Ms.Sivakami
4. Mrs.Ammami
5. Mrs.Palaniammal
6. Mrs.Ammiammal
7. Mrs.Palaniammal

(Respondents 6 & 7 were impleaded
as LR's of Subbayal (Re) in A.S.62 of 2010.
They are the appellants 4 & 5
in A.S.No.62 of 2010.)

... Respondents/Defendants

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 02.03.2012 in A.S.No.62 of 2010 on the file of the Principal District Court, Erode modifying the judgment and decree dated 07.09.2009 made in O.S.No.893 of 1993 on the file of the Principal Sub Court, Erode.

For Appellants : Mr.A.K.Kumarasamy, S.C.,
for S.Kaithamalai Kumaran

For Respondents: Mr.N.Manokaran - R1-R3
Mr.Ma.Pa.Thangavelu - R5

RR4, 6 & 7 - Served N.A

JUDGMENT

Aggrieved over the reversal finding of the first appellate Court, the present Second Appeal has been filed.

2. The brief facts leading to the filing of the Second Appeal is as follows :

The first defendant has executed a settlement deed in favour of the second plaintiff in respect of 1/3 share retaining his life interest and the property settled under the settlement deed is the property acquired by the first defendant from his mother under Ex.A.16. Therefore, the Courts below had not taken note of this fact and erroneously held that the above property is a joint family property. If Ex.A.16 settlement deed is considered, it will be a separate property of the first defendant. Therefore, the second defendant is certainly entitled for partition in the suit properties.

3. It is the contention of the learned counsel for the respondents that the properties are joint family properties. Therefore, any settlement in respect of undivided share is not valid in law.

4. This Second Appeal is pending from the year 2012 in the admission stage itself. Heard the learned Senior Counsel for the appellants and the learned counsel for the respondents and perused the entire materials available on record.

5. The first plaintiff and the second defendant are sons of the first defendant. The defendants 3 to 5 are the daughters of the second defendant and the sixth defendant is the second wife of the first defendant. The defendants 7 and 8 are the daughters of the first defendant. The second plaintiff is the son of the first plaintiff. The relationships is not in dispute. The first plaintiff, who is one of the son of the first defendant, along with his son has filed the suit for dividing the suit properties into 3 equal shares and allot two such shares to the plaintiffs.

6. It is the contention of the plaintiffs that the suit properties are a joint family properties and the first defendant, during his life time, has executed a settlement in respect of 1/3 share of the property in favour of the second plaintiff. Hence, the suit for partition. The second defendant has denied the allegations and contended that settlement in favour of the second plaintiff is not valid and such settlement is not permissible under Hindu Law. The trial Court, however, decreed the suit and the first appellate Court dismissed the suit in

respect of the second plaintiff alone. However, granted partition to other parties including the first plaintiff and others as per their entitlement. Now, the second plaintiff is before this Court in the Second Appeal. The second plaintiff is alone claiming 1/3 share along with his father on the basis of Ex.A.1 Settlement Deed dated 28.06.1993 executed by the first defendant, his grand father, wherein his grandfather is said to have settled his 1/3 share in favour of the second plaintiff. Only on the basis of the above settlement deed, the second plaintiff claimed a share.

7. It is curious to note that the plaintiffs pleadings itself reveals that certain properties have been acquired by the second defendant through his mother and another property has been inherited by the first defendant from his father and the said properties have all along been treated as joint family properties. Once, the plaintiffs themselves pleaded that the properties are treated as joint family properties, any settlement in respect of the joint family properties is not permissible under law. The learned Senior Counsel has placed reliance on Ex.A.16 to show that the first defendant has become owner of the property from his mother on the basis of a settlement and such property acquired through his mother can be only self acquired property. No doubt, any property acquired from a family member normally cannot be considered as a joint family property. However, the fact remains that the plaintiffs themselves have clearly pleaded that the entire properties were treated as joint family properties by the first defendant.

8. When the self acquired property is also considered as a joint family property by the person concerned and treated as a joint family property, irrespective of the source from which the property has been derived, that property should be considered as a joint family property only. The pleading of the plaintiffs clearly indicate that the properties are joint family properties. Having asserted in the pleadings, now the second plaintiff cannot take a contrary stand to contend that the property has to be treated as a separate property under Ex.A.1 and he is totally estopped from taking such a plea. Hence, this Court, considering the entire aspects found that there is no substantial question of law in this appeal. Allotment of shares to the co-owners is not under challenge. The Court below has granted shares as per their entitlement.

9. It is the contention of the learned senior counsel for the second plaintiff that the second plaintiff is in enjoyment of the property for more the 20 years and therefore, equity should be shown in his favour while allotting his share in the final decree. It is only the trial Court has to take into consideration all these facts at the time of final decree proceedings.

10. Accordingly, this Second Appeal is dismissed and the judgment and decree of the first appellate Court is confirmed. Subsequently, the connected miscellaneous petition is closed. No cost.

vrc

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Erode.
2. The Principal Subordinate Judge,
Erode.
3. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, SR.No.13364
+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.13671
+1cc to Mr.N.Manokaran, Advocate, SR.No.13770

Second Appeal No.1034 of 2012

Kak (03/07/2019)

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