

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2019

PRONOUNCED ON : 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.452 of 2018

Ekambaram

...Appellant / Plaintiff

Vs.

1.Jayalakshmi
2.Kirapanidhi
3.Anbikjanidhi
4.Pugazhenth
5.Arul
6.Vimala
7.Nirmala
8.Suguna
9.Rani
10.Chezhian
11.Selvi
12.Kalaiselvi
13.Senthil
14.Arun
15.Agalayan
16.Thamanthi
17.Gomathi
18.Suganthi

...Respondents / Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.10.2017 passed in A.S.No.18 of 2014 on the file of the Principal District Court, Kancheepuram at Chengalpattu, confirming the Judgment and Decree dated 25.04.2014 passed in O.S.No.90 of 2007 on the file of the Subordinate Court, Madurantakam.

For Appellant : Mr.P.Veeraraghavan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.10.2017 passed in A.S.No.18 of 2014 on the file of the Principal District Court, Kancheepuram at Chengalpattu, confirming the Judgment and Decree dated 25.04.2014 passed in O.S.No.90 of 2007 on the file of the Subordinate Court, Madurantakam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for partition.

4. From the pleas put forth by the respective parties and the materials placed on record, it is found that the plaintiff has laid the suit against the defendants claiming partition and separate possession of $\frac{1}{4}$ share in the suit properties described in items 1 to 21. The relationship between the parties is not in dispute. It is found that Singara Gounder had four sons viz., Mannathan, Manickam, Sarangapani and the plaintiff Ekambaram. The defendants 1 to 8 are the legal heirs of Mannathan, the defendants 9 to 11 are the legal heirs of Manickam and the defendants 12 to 18 are the legal heirs of Sarangapani. The plaintiff has levied the suit against the defendants in respect of items 1 to 21 described in the plaint schedule on the footing that they are the joint family properties of the plaintiff and the defendants and accordingly, each branch is entitled to obtain $\frac{1}{4}$ share in the abovesaid items. Therefore, the plaintiff has come forward with the suit only on the basis that the suit properties are the joint family properties of Singara Gounder and his sons.

5. The main defence put forth by the defendants, particularly, the defendants 1 to 8 is that the items 9, 20 & 21 of the plaint schedule properties had been purchased by Mannathan in his independent capacity and they are not the joint family properties as put forth by the plaintiff and according to the defendants 1 to 8, from the income earned from the paddy business, Mannathan had acquired the abovesaid three items of the suit properties and accordingly, the plaintiff as well as the other sons of Singara Gounder are not entitled to claim any share in the items 9, 20 & 21 of the suit properties.

6. On the basis of the materials placed on record and the submissions made, the Courts below were pleased to grant the relief of partition in favour of the plaintiff as prayed for in respect of the plaint schedule properties excepting the items 9, 20 & 21. Aggrieved over the same, the plaintiff has preferred the present second appeal.

7. Admittedly, the items 9, 20 & 21 of the plaint schedule properties stand in the name of Mannathan. It is further noted that the plaintiff and the two sons of Singara Gounder viz., Manickam and Sarangapani are engaged in the Government service, Mannathan is engaged in the agricultural occupation. From the materials available on record, it is found that Singara Gounder had a small extent of agricultural properties. It is found that items 20 & 21 of the plaint schedule properties measures about 8

acres and 82 cents and the agricultural properties owned by Singara Gounder is only an extent of 2 acres, therefore, as rightly determined by the courts below, it is highly improbable that the extent of 8 acres and 82 cents would have been acquired out of the aid of the income derived from the extent of two acres of agricultural land owned by Singara Gounder. However, according to the plaintiff, they have also contributed in the acquisition of the abovesaid items 20 & 21 of the plaintiff schedule properties. As rightly found by the Courts below, if really, the abovesaid case put forth by the plaintiff has any semblance of truth, as held by the Courts below, the properties acquired by the plaintiff and the other two sons of Singara Gounder and standing in their independent names would have also been treated and enjoyed as the joint family properties. However, it is found that the properties, which had been acquired independently by the plaintiff and the other two brothers, were not branded as the joint family properties and they have not been included in the present suit for partition. On the other hand, the plaintiff and the other brothers only put forth the case that the items 9, 10, 20 & 21 of the plaintiff schedule properties standing in the name of Mannathan are the joint family properties, whereas, the properties standing in their names are not the joint family properties and that they had been acquired independently out of their own income. As rightly held by the Courts below, the plaintiff appears to be blowing hot and cold by contending that only the properties standing in the name of Mannathan are the joint family properties and the properties standing in the name of the other brothers are not the joint family properties.

8. It is found that the daughter of Singara Gounder viz., one Senthamarai had laid the suit for partition against the plaintiff and others. The plaintiff has not whispered about the abovesaid partition suit in his plaint. Be that as it may, it is seen that in the abovesaid suit, the properties standing in the name of Mannathan viz., the items 9, 20 & 21 of the present plaintiff schedule properties had not been included. According to the defendants 1 to 8, as the abovesaid items are the separate and personal properties of Mannathan, they had not been included in the abovesaid partition suit laid by Senthamarai in O.S.No.733 of 1982 on the file of the District Munsiff Court, Madurantakam. To obviate the abovesaid contention put forth by the defendants 1 to 8, the plaintiff would state that the items 9, 20 & 21 standing in the name of Mannathan are the joint family properties only belonging to the four brothers, where as, according to him, the other properties are the joint family properties belonging to the family of Singara Gounder. However, the plaintiff has failed to establish the abovesaid plea and as abovenoted, when the plaintiff had not endeavoured to include the properties standing in his name and the names of other

brothers in his suit for partition and would claim that they are the separate properties, it is found that without any basis, he had come forward with the suit, as if the items 9, 20 & 21 are only the joint family properties. If that be so, in the earlier suit laid by Senthamarai, the abovesaid items would have been included as the subject matter, however, a new case has been projected, as if the abovesaid items are the only joint family properties of the four brothers alone but not the joint family properties of Singara gounder and the above contention does not merit acceptance and rightly rejected by the Courts below.

9.As regards the case now projected by the plaintiff that the other three brothers had contributed for the acquisition of the items 9, 20 & 21, absolutely there is no material forthcoming on the part of the plaintiff. The pre suit notice is marked as Ex.A2 and the reply sent by the defendants 1 to 8 has been marked as Ex.A3. In the pre suit notice, the plaintiff would claim that the properties in the name of Mannathan were acquired out of the joint family properties funds for the benefit of the family, he being the eldest male member and the plaintiff would also plead some family arrangement entered into qua the family properties, the abovesaid case has been repudiated by the defendants 1 to 8 in the reply notice. As held by the Courts below, the family arrangement put forth by the plaintiff in the pre suit notice has not seen the light of the day. As held by the Courts below, the plaintiff cannot be allowed to plead that only certain items are the joint family properties of the four brothers and the other items are the joint family properties of Singara gounder and also cannot be allowed to plead that the properties standing in his name and in the names of the other two brothers are their separate properties without any basis and in such view of the matter, when it is found that the alleged ancestral nucleus is found to be not capable of yielding sufficient income for the acquisition of the items 9, 20 & 21 of the plaint schedule properties and when it is further noted that Mannathan was engaged in paddy business independently and when it is further seen that all the four brothers had been acquiring properties in their own names out of their independent income, in such view of the matter, the case projected by the plaintiff that only the items standing in the name of Mannathan are the joint family properties and the other properties standing in his name and in the names of the other brothers are not the joint family properties, as such, cannot be believed and accepted and rightly disbelieved by the Courts below.

10.The argument has also been put forth that in respect of the properties standing in the name of Mannathan and which had been sold, all the brothers had joined in the execution of the sale deed. As held by the Courts below, merely because, the four

brothers had joined in the sale of the abovesaid items that would not lead to inference that the properties standing in the name of Mannathan are only the joint family properties. Mere joining of the party in the execution of the sale deed or mortgage deed does not create any right for such a person and such inclusion might be at the instance of the purchasers or the mortgagee. Therefore, it is found that the abovesaid position of law has been rightly appreciated and followed by the Courts below and in such view of the matter, the Courts below are found to be totally justified in holding that the items 9, 20 & 21 of the plaint schedule properties are not the joint family properties and they are the separate and independent properties of Mannathan and hence, they are not liable for partition as claimed by the plaintiff.

11.The reasonings and conclusions of the Courts below for declining the claim of partition put forth by the plaintiff in respect of the items 9, 20 & 21 of the plaint schedule properties being founded on a proper appreciation of the materials placed on record as well as the principles of law governing the issues involved between the parties and not suffering from any infirmity or perversity, in all, no reason is warranted to interfere with the judgment and decree of the Courts below.

12.For the reasons aforesated, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal is dismissed. Consequentially, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sms
To

- 1.The Principal District Judge, Kancheepuram at Chengalpattu.
- 2.The Subordinate Judge, Madurantakam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

Judgment made
in S.A.No.452 of 2018

EV (CO)
SSM(14/11/2019)