

IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 28.11.2019                     | 06.12.2019                       |

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.104 of 2014

1.Karuppannan @ Karuppagounder  
2.Ravichandran ... Appellants/Defendants  
-vs-  
Sumathi ... Respondent/Plaintiff

PRAYER:

Appeal is filed under Order 41 Rule 1 r/w Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree, dated 10.12.2013 made in O.S.No.32 of 2011, on the file of the Principal District Court, Namakkal.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.C.Jagdish

J U D G M E N T

Aggrieved over the Judgment and Decree, dated 10.12.2013, passed in O.S.No.32 of 2011, on the file of the Principal District Court, Namakkal, the defendants have preferred the first appeal.

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

3. Suit for partition.

4. The case of the plaintiff is that the first defendant is her father and the second defendant is her brother and the suit properties are the Hindu undivided ancestral joint family properties belonging to the plaintiff and the defendants and in the partition deed effected on 01.10.1974 between the

plaintiff's grandfather Kali Gounder and his brother, A-Schedule properties were allotted to the share of the plaintiff's grandfather and in the partition deed effected on 05.06.1981 between the plaintiff's grandfather, first defendant and the first defendant's brothers, the A-Schedule properties were allotted to the first defendant and the same are the subject matter of the suit.

5. The plaintiff was married on 07.06.1990 and thereby, she is entitled to the benefit of the Hindu Act 1 of 1990 and entitled to obtain 1/3<sup>rd</sup> share in the suit properties. Further, as per the Hindu Succession Amendment Act 39 of 2005 also, the plaintiff is entitled to obtain 1/3<sup>rd</sup> share in the suit properties. As the parties are unable to enjoy the suit properties jointly, the plaintiff demanded partition of her share and separate possession to the defendants. However, the defendants refused to accede to the claim of the partition putforth by the plaintiff and on suspicion, the plaintiff verified encumbrance over the suit properties and came to know that the first defendant had executed a settlement deed in favour of the second defendant in respect of his ½ share in the suit properties on 21.06.2010 and the abovesaid settlement deed is invalid and the same would not bind the plaintiff's 1/3<sup>rd</sup> share in the suit properties. Inasmuch as the plaintiff is not a party to the abovesaid settlement, it is not necessary for the plaintiff to challenge the same. Accordingly, it is putforth that the plaintiff is necessitated to lay the suit for appropriate relief.

6. The defendants resisted the plaintiff's suit contending that the claim of the plaintiff that the suit properties are the ancestral joint family properties is false and admitted the partition effected on 01.10.1974 between the first defendant's father and his brother and also admitted the partition effected on 05.06.1981 between the first defendant's father, first defendant and his brothers and the allotment of the A-Schedule properties in favour of the first defendant. The defendants have also admitted that the marriage of the plaintiff took place in the year 1990, however, disputed her case that she is entitled to obtain 1/3<sup>rd</sup> share in the suit properties by virtue of the Hindu Act 1 of 1990 as well as by virtue of the Hindu Succession Amendment Act 39 of 2005.

7. The defendants have also disputed the case of the plaintiff that she demanded partition and separate possession of her share in the suit properties. According to the defendants, the plaintiff was provided with adequate seer by way of cash and jewel and kind at the time of marriage and thereby, the defendants incurred expenses to an extent of Rs.2,00,000/- and the same was provided only out of the joint family funds and

further, the defendants were also necessitated to incur debts to provide seer to the plaintiff and the plaintiff, by way of accepting the cash from the defendants at the time of her marriage, orally relinquished her claim of share in the suit properties and therefore, she is not entitled to claim any share in the suit properties. Since then, it is only the defendants, who have been enjoying the suit properties on their own to the knowledge of everyone, including the plaintiff and thereby also, the plaintiff is not entitled to claim any share in the suit properties. Furthermore, the defendants have also provided jewels to the children born to the plaintiff at the time of the birth as well as at the time of the puberty function. Accordingly, the first defendant had executed the settlement deed in favour of the second defendant on 21.06.2010 and the plaintiff is not entitled to challenge the same.

8. Further, according to the defendants, the second item of the suit properties is the separate property of the first defendant's father and only the first defendant is entitled to claim right over the same and the same is not the joint family property and further put forth the case that the plaintiff has not properly valued the suit and not paid the appropriate Court fee and the plaintiff's suit is not maintainable without challenging the settlement deed, dated 21.06.2010, and the plaintiff has no cause of action and with ulterior motive, the plaintiff has come forward with the suit and hence, the suit is liable to be dismissed.

9. On the basis of the above pleadings, the following issues were framed for consideration by the Trial Court:

- i. Whether the plaintiff is entitled to 1/3<sup>rd</sup> share in the property?
- ii. Whether the plaintiff was given substantial seer, i.e., 30 sovereign jewels, cash Rs.30,000/-, Hero Honda bike and two lorries at the time of marriage?
- iii. To what relief if any the plaintiff is entitled to?

10. In support of the plaintiff's case, P.W.1 was examined and Exs.A1 to A5 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B3 were marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court was pleased to decree the suit holding

that the plaintiff is entitled to obtain 1/3<sup>rd</sup> share in the suit properties and accordingly, granted the preliminary decree. Impugning the same, the first appeal has been preferred by the defendants.

12. The following points arise for determination in this first appeal:

- i. Whether the plaintiff is entitled to obtain the partition and separate possession of 1/3<sup>rd</sup> share in the suit properties as putforth by her?
- ii. Whether the case of the defendants that the plaintiff had orally relinquished her claim of share in the suit properties by way of accepting seer and cash from the defendants at the time of her marriage is true and valid?
- iii. Whether the settlement deed dated 21.06.2010 is valid and binding on the plaintiff?
- iv. Whether the suit properties are the ancestral joint family properties as putforth by the plaintiff?
- v. To what relief the plaintiff is entitled to?
- vi. To what relief the defendants / appellants are entitled to?

Point Nos.1 to 4:

13. The relationship between the parties is not in dispute. The plaintiff and the second defendant are the daughter and son of the first defendant. From the materials placed on record, it is found that in the partition effected on 01.10.1974, the xerox copy of which partition deed has been marked as Ex.A1, between the first defendant's father Kali Gounder and his brother, the A-Schedule properties had been allotted to the share of the first defendant's father Kali Gounder. Subsequent thereto, in the partition effected on 05.06.1981, the registered copy of which partition deed has been marked as Ex.A4, between the first defendant's father, first defendant and his brothers, the A-Schedule properties, which are the subject matter of the suit, had been allotted to the share of the first defendant. The parties are not in dispute with reference to the abovesaid partition deeds.

14. Now, according to the plaintiff, the suit properties are the ancestral joint family properties and by virtue of the Hindu Act 1 of 1990 and Hindu Succession Amendment Act 39 of 2005, she is entitled to obtain 1/3<sup>rd</sup> share in the suit properties. The abovesaid claim of the plaintiff is disputed by the defendants. It is not in dispute that the plaintiff's marriage was solemnized on 07.06.1990. In the written statement, a plea has been taken by the defendants that the second item of the suit properties is the separate property of the first defendant's father Kali Gounder and purchased by him and therefore, it is put forth that it is only the first defendant, who is entitled to the same absolutely and the same cannot be construed as the joint family property. However, during the course of evidence, it has been brought out that the first item of the suit properties has been acquired in the name of the first defendant and the same could also be gathered from the sale deed, dated 15.09.1981, the xerox copy of which sale deed has been marked as Ex.B1. Therefore, it is found that the claim of the defendants that the second item of the suit properties had been acquired by the first defendant's father Kali Gounder, as such, is not true.

15. As regards the other items are concerned, it is seen that they had been derived by the family of the first defendant, by virtue of the partition deeds, dated 01.10.1974 and 05.06.1981 as above pointed out. A plea has been taken by the defendants that the second item of the suit properties had been acquired by the first defendant independently and therefore, it is his separate property and not the joint family property. In this connection, it is contended by the plaintiff's counsel that at the relevant point of time, the first defendant, being the Manager of the family and when the first defendant had been admittedly in the possession and enjoyment of the joint family properties and in such view of the matter, it has been contended that the burden is only upon the first defendant to establish that the second item of the suit properties had been acquired by him independently without any recourse to the joint family properties in his possession and enjoyment.

16. In this connection, the first defendant, during the course of cross-examination, has admitted that his avocation is only agriculture and in respect of the family agricultural properties and other properties belonging to the joint family, a partition had been effected on 01.10.1974 and also admitted that in the partition effected, he had been allotted first item of the suit properties and however would put forth that there was no income from the first item of the suit properties and therefore, the case has been projected by the defendants that the second item of the suit properties had not been acquired out of the income derived from the first item of the suit properties.

17. As rightly held by Trial Court, when the first defendant had acquired the second item of the suit properties, admittedly, he being the Manager of the joint family and the first item of the suit properties had been in his possession and enjoyment and the first defendant had admitted the derivement of the first item and other properties by way of the partition deeds dated 01.10.1974 and 05.06.1981 and furthermore, when the first defendant had admitted that his avocation is only agriculture, accordingly, as rightly held by the Trial Court, particularly when the first defendant is seen to be the Manager of the joint family at the relevant point of time, the burden is only upon the first defendant to sustain the case that he had acquired the second item of the suit properties without placing any reliance upon the other family properties in his possession and enjoyment. In such view of the matter, the first defendant should have placed adequate materials to establish that the joint family properties in his possession and enjoyment at the relevant point of time, were not capable of producing any income and he had purchased the second item of the suit properties out of his own resources and income. When according to the first defendant, he is engaged mainly in the avocation of agriculture and in such view of the matter, when the first defendant has failed to establish his separate income or resources to acquire the second item of the suit properties on his own, in all, it is seen that the first defendant having failed to discharge his burden, in such view of the matter, the Trial Court is justified in holding that the second item of the suit properties had also been acquired only out of the income derived from the ancestral nucleus. Only on account of the same, it is seen that the defendants have not even come forward with a clear case as to who had purchased the second item whether the same had been purchased by the first defendant's father or the first defendant.

18. It has been mainly contended by the defendants' counsel that the mere existence of ancestral nucleus is not sufficient and according to him, the ancestral nucleus should be capable of yielding income and only on that establishment, the second item of the suit properties could be held to be derived from the ancestral nucleus and therefore, according to him, when with reference to the abovesaid factor, there is no document marked on the part of the plaintiff, according to him, the Trial Court has erred in upholding the plaintiff's case. In this connection, the defendants' counsel relied upon the decisions in the case of Mudi Gowda Gowdappa Sankh vs. Ram Chandra Ravagowda Sankh, reported in 1969 (1) SCC 386 and R.Deivanai Ammal (Died) and another vs. G.Meenakshi Ammal and others, reported in 2004 (4) CTC 208. The principles of law outlined in the above cited decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. As rightly contended by the defendants' counsel, the mere existence of ancestral nucleus is not sufficient and on the other hand, it should be of such character as could reasonably lead to the conclusion that the property alleged to be part of joint family property came to be acquired with such nucleus and for the same, it should be established that the nucleus yields income. However, as rightly determined by the Trial Court, when the first defendant, as above pointed out, is the Kartha of the joint family at the relevant point of time, the burden being upon him to establish the acquisition of the second item of the suit properties on his own i.e., out on his own resources and income and when the first defendant has failed to establish the same, in such view of the matter, as rightly contended by the plaintiff's counsel, the claim of the defendants that the second item of the suit properties had been independently acquired by the first defendant, as such, cannot be countenanced.

20. In this connection, the plaintiff's counsel relied upon the decision in the case of Adivappa and others vs. Bhimappa and another, reported in (2017) 9 SCC 586, for the proposition that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family and the burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired properties.

21. Considering the principles of law outlined by the Apex Court in the abovesaid decision and more so, as far as the present case is concerned, when the first defendant is the kartha of the joint family, the burden only rests upon him to establish his case of self-acquisition of the second item without recourse to the ancestral nucleus. When the abovesaid case of the defendants has not been established in any manner, in such view of the matter, the defendants in toto having failed to establish their case, it cannot be held that the second item is the separate property of the first defendant.

22. Furthermore, though the defendants would putforth the contention vehemently that the plaintiff is not entitled to claim any share in the suit properties, however, by way of the written pleas, they have admitted that the plaintiff has share in the suit properties. The defendants would putforth their case that the plaintiff had been provided with adequate seer by way of cash, jewel and kind at the time of marriage and the defendants have incurred heavy expenses with reference to the same and it is putforth that the plaintiff had accepted to

receive the same in lieu of her share in the suit properties and thereby, orally relinquished her share in the suit properties. By way of the abovesaid defence, as rightly put forth by the plaintiff's counsel, the defendants having admitted the claim of share of the plaintiff in the suit properties and would only put forth the case that the plaintiff had orally relinquished her share in the suit properties by accepting the seer as put forth by the defendants, in such view of the matter, it is for the defendants to establish that the plaintiff had relinquished her share in the suit properties as put forth by them. In this connection, as rightly held by the Trial Court, when there is no acceptable material projected on the part of the defendants that they had provided adequate seer by way of cash, jewel and kind to the plaintiff at the time of marriage and when with reference to the same, there is no document forthcoming on the part of the defendants and also the defendants having not substantiated that they had incurred any debts from third parties with reference to the same, in such view of the matter, the claim of the defendants that they had provided adequate seer to the plaintiff at the time of marriage cannot be readily accepted. Furthermore, the first defendant examined as D.W.1, during the course of cross-examination, has stated that he had also obtained a written instrument from the plaintiff as regards the relinquishment of her share in the suit properties, however, would state that he has not produced the document.

23. As above noted, the defendants have pleaded only oral release on the part of the plaintiff with reference to her relinquishment of her share in the suit properties, but contradictorily, during the course of evidence, they have put forth that a document has been obtained as regards the relinquishment on the part of the plaintiff. The said contradiction would only go to show that as the case of the defendants is not true, accordingly, it is found that they are not able to take a clear and definite case as to their claim of relinquishment on the part of the plaintiff of her share in respect of the joint family properties.

24. That apart, when the defendants have taken a plea that the plaintiff had relinquished her share in the suit properties, as rightly put forth by the plaintiff's counsel, when the same had not been secured by way of a written instrument as per law, it does not stand to the reason as to how the abovesaid stand of the defendants could be legally acceptable. Thus, in toto, the claim of the defendants that the plaintiff had relinquished her share in the suit properties at the time of marriage by accepting the seer from them cannot be countenanced in any manner.

25. The plaintiff's counsel would putforth the argument that the properties derived by the family of the first defendant by way of the partition deeds, dated 01.10.1974 and 05.06.1981, are not the joint family properties and they are only the separate properties of the first defendant. In this connection, he would place reliance upon the decision in the case of Arunagiri vs. Ayyar Muthuraja and others, reported in 2014 (1) CTC 73.

26. As rightly contended by the plaintiff's counsel, the above cited decision is not applicable to the case on hand. The said case is with regard to the suit laid by the grandson for partition seeking share in the properties inherited by his grandfather and grandmother during the lifetime of his father. However, sofar as this case is concerned, the suit properties having been derived ancestrally by the first defendant's family, through his father, by way of the partition deed, dated 01.10.1974 and subsequently through his father again by way of the partition deed, dated 05.06.1981, and as above pointed out, the defendants having failed to establish that the second item of the suit properties had been acquired by the first defendant out of his own resources and income, in all, it is seen that the determination of the Trial Court that the suit properties are the ancestral joint family properties of the plaintiff and the defendants does not warrant any interference and accordingly, it is found that the plaintiff would be entitled to claim her lawful share in the suit properties.

27. The suit properties are the Hindu ancestral joint family properties. In such view of the matter, the first defendant is found to be not entitled to effect any settlement in respect of the undivided ancestral joint family properties in favour of the second defendant. When as per law, the first defendant is not entitled to effect any settlement in favour of the second defendant qua the undivided joint family properties, particularly, without the consent of the coparcener, namely, the plaintiff, in such view of the matter, as rightly contended by the plaintiff's counsel, the settlement deed, dated 21.06.2010, effected by the first defendant in favour of the second defendant is found to be invalid and not binding upon the plaintiff. In such view of the matter, the settlement being void ab initio, there is no need on the part of the plaintiff to challenge the same as contended by the defendants' counsel and therefore, it is seen that the plaintiff is entitled to ignore the same and seek 1/3<sup>rd</sup> share in the suit properties as putforth by her.

28. In the light of the abovesaid discussions, I hold that the claim of the defendants that the plaintiff had orally relinquished her claim of share in the suit properties by way of

accepting seer and cash from them at the time of her marriage is not true and valid. I further hold that the settlement deed, dated 21.06.2010 is not valid and binding on the plaintiff. I further hold that the suit properties are the ancestral joint family properties as putforth by the plaintiff. I therefore hold that plaintiff is entitled to obtain partition and separate possession of 1/3<sup>rd</sup> share in the suit properties as putforth by her and as determined by the Trial Court. Accordingly, the Point Nos.1 to 4 are answered.

Point Nos.5 and 6:

29. For the reasons above stated, the Judgment and Decree, dated 10.12.2013, passed in O.S.No.32 of 2011, on the file of the Principal District Court, Namakkal, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Principal District Judge,  
Namakkal.

Copy To  
The Section Officer,  
VR Section, High Court,  
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.102409  
+1cc to Mr.C.Jagdish, Advocate, S.R.No.102373

A.S.No.104 of 2014

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