

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.08.2019
CORAM
THE HONOURABLE Ms. JUSTICE P.T. ASHA
S.A.No.15 of 2014
&
C.M.P.No.11457 of 2014

A.Sakthivel

... Appellant

Vs

K.Rathinavelu (Died)

1.Palaniammal

2.Umadevi

3.Gnanambal

4.Durga Parameswari

5.K.Suryakumar

6.Kamalammal

7.A.Nandagopal

8.A.Ganesan

9.N.Thangavelu

A.Dhandapani (Died)

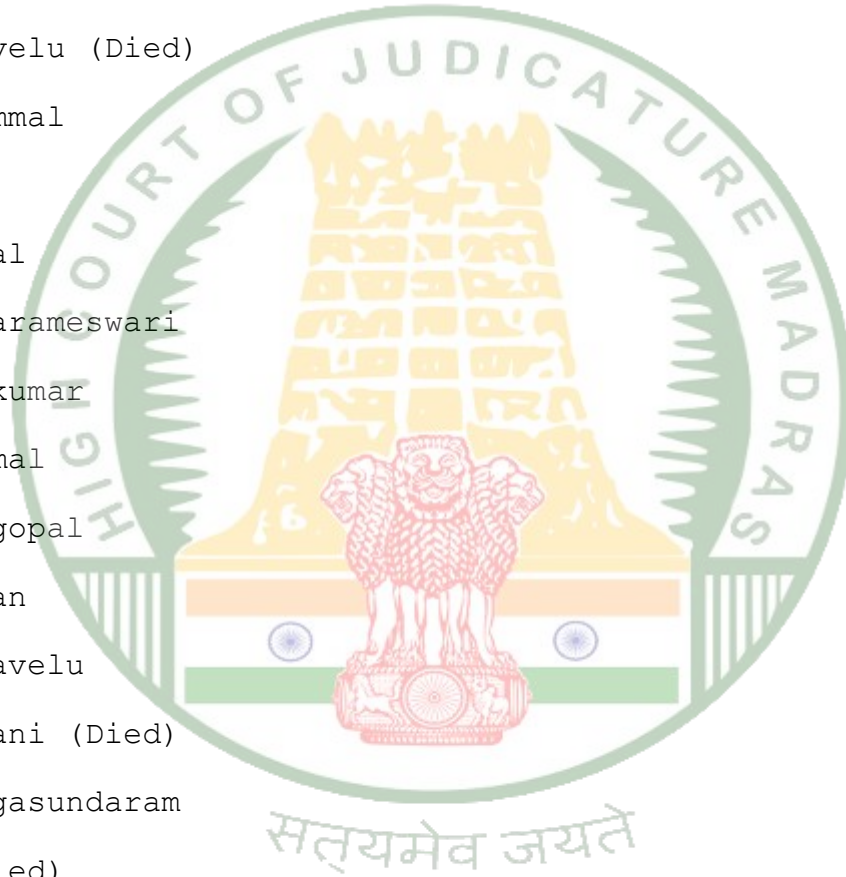
10.Shanmugasundaram

Vijaya (Died)

11.N.Bhagyam

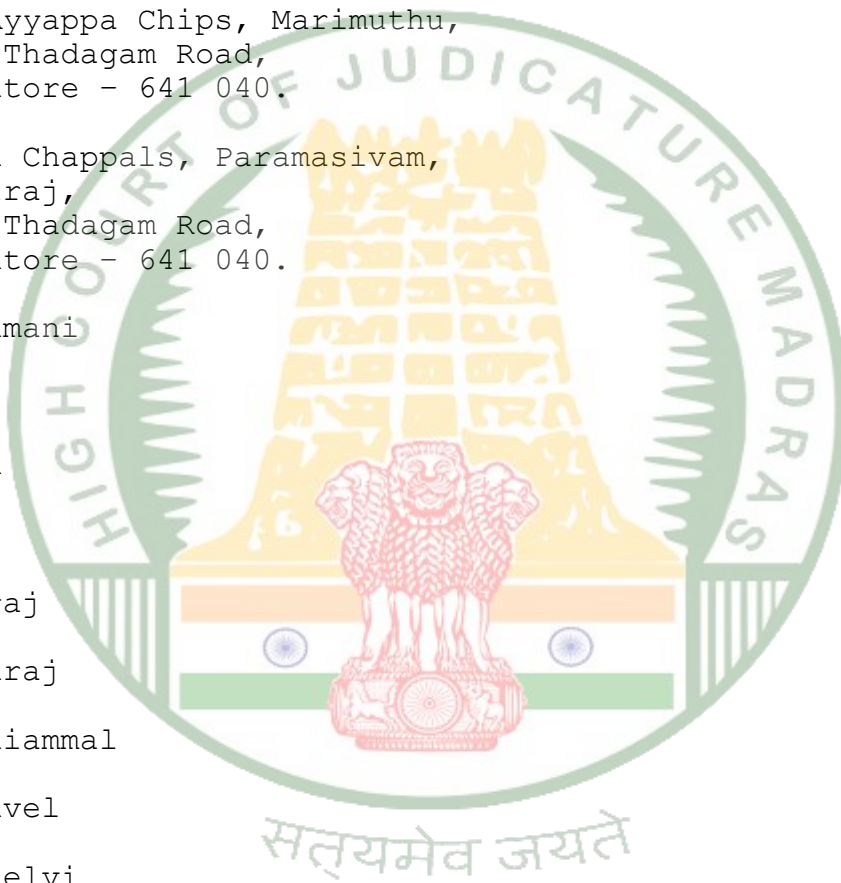
12.Palaniappa Medicals,
No.1408, Thadagam Road,
Coimbatore.

13.Ponni Rice Mundy R.C.Palanisamy Mudaliar,
1409, Thadagam Road,
Coimbatore - 641 040.



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- 14.Greenland Saloon Shanmugam,
1410, Thadagam Road,
Coimbatore - 641 040.
- 15.Two Lines Tailor, Mani,
1411-A, Thadagam Road,
Coimbatore.
- 16.New Central Cycle Stores, Chandran,
1411, Thadagam Road,
Coimbatore - 641 040.
- 17.Swamy Ayyappa Chips, Marimuthu,
1406, Thadagam Road,
Coimbatore - 641 040.
- 18.Tha-Tha Chappals, Paramasivam,
Thuraiiraj,
1407, Thadagam Road,
Coimbatore - 641 040.
- 19.Shanthamani
- 20.Chitra
- 21.Kavitha
- 22.Radha
- 23.K.Nataraj
- 24.K.Rangaraj
- 25.R.Palaniammal
- 26.K.Gnanavel
- 27.Paneerselvi
- 28.K.Paramasivam
- 29.K.Bhuvaneswari
- 30.K.Marudhachalam
- 31.K.Sivagami
- Muthulakshmi (Died)
- Raju (Died)



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32.G.Kandasamy
33.K.Damodaran
34.K.Jegadeeswari
35.K.Agilandeswari
36.N.Karthikeyan
37.T.Thilagamani
38.N.Madeswaran
39.K.Rukmani
40.K.Senthilkumar
41.K.Chandrakumar
42.R.Akilandeswari
43.R.Dhanalakshmi
44.K.K.Srinivasan
45.Saraswathy
46.Poongothai
47.Senthil
48.Thilagavathi
49.Kishore

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 10.06.2013 made in A.S.No.21 of 2011 on the file of the learned III Additional Sub Court, Coimbatore confirming the Judgement and Decree dated 28.10.2010 made in O.S.No.1143 of 1996 (O.S.No.390 of 1991 - Sub Court) on the file of the learned II Additional District Munsif Court, Coimbatore.

For Appellant	:	Mr.N.Manokaran
For Respondent 1	:	Died
For Respondents 2 to		
5, 9 to 11, 19 to 35,		
37, 39 to 43, 45 & 49:		No Appearance

For Respondents

6 to 8 : No Appearance

For Respondents

12 to 18 : Notice dispensed with vide order dated 15.03.2018.

For Respondents 36,

38, 46 to 48 : Not ready in notice

For Respondent 44

: Mr.S.Gunalan

J U D G E M E N T

The unsuccessful plaintiff is the appellant before this Court. The Second Appeal arises out of the suit for partition that had been filed by the plaintiff. The parties are referred to in the same array as in the suit. In the present Second Appeal this Court is only concerned with Item Nos.2 and 3 of the suit schedule. The facts in brief necessary for disposing of the above Second Appeal are as follows:

2.Plaintiff's case:

2.1. The plaintiff had come forward with a case that the 1st item of property is an ancestral joint family property. The 2nd item of the property which stands in the name of the 2nd defendant and the 3rd item of property which stands in the name of one Karuppannan, the husband of 2nd defendant have been purchased from out of the income that their father Nachimuthu had earned from out of his Civil Contract business.

2.2. The case of the plaintiff is that they had mortgaged the 1st item of the property and utilized that income into their business and from out of the income from the business the properties had been purchased in the name of his son Karuppannan and daughter-in-law Palaniammal, the 2nd defendant herein. It is also the case of the plaintiff that the said Karuppannan was only drawing a salary of Rs.53/- per month at the relevant point of time when the 3rd item of property was purchased and therefore he did not have the means to purchase the property and it was only the income that had been generated from out of the contract work which his father had carried that had contributed towards the purchase of the suit schedule property.

3.Written Statement:

3.1.(a) The 1st defendant who is the son of Karuppannan through his first wife had filed a written statement inter alia contending that the four sons of Nachimuthu namely Karuppannan,

Ayyasamy, Krishnan and Thangavelu were entitled only to the 1st item of property. The 2nd item of the property was the separate property of the 2nd defendant and the 3rd item of the property was purchased by the late Karuppannan from out of his own income. On the death of Karuppannan, defendants 1 to 6 who are the legal heirs had divided the properties by filing O.S.No.766 of 1985 on the file of the Sub Court, Coimbatore and they are in possession of their respective shares.

(b) Neither the plaintiff nor the defendants are entitled to any share in the 2nd and 3rd items of the property since each son of late Nachimuthu was carrying on their own business and had acquired properties individually and therefore there was no merits in the suit and the same deserves to be dismissed.

3.2. The defendants 7 to 12 had adopted the stand of the plaintiff.

3.3. The 20th defendant who had purchased the property from the 5th defendant who traces his title to the property through the 1st defendant had adopted the stand taken by the 1st defendant.

4.Trial Court:

4.1. The Trial Court, namely, the II Additional District Munsif, Coimbatore by Judgement and Decree dated 28.10.2010 was pleased to decree the suit with reference to the 1st item of the property and dismissed the suit with reference to 2nd and 3rd items of suit property. The Trial Court had infact framed two additional issues on 08.03.2010 and 27.10.2010 as to whether the 3rd item of property was purchased by the 2nd defendant's husband from out of his self earning and whether the 2nd item of property was purchased out of the joint family income, respectively.

4.2. The plaintiff had marked Ex.A.1 to Ex.A.28 and had examined himself as P.W.1 apart from examining three other witnesses. On the side of the defendants, 2nd defendant had examined herself as D.W.1, the 1st defendant as D.W.2 and 4 other witness were examined as D.W.3 to D.W.6 and Ex.B.1 to Ex.B.23 were marked on their side. The Trial Court had returned a finding holding that the 3rd item of the property was the exclusive property of the late Karuppannan, namely, the husband of the 2nd defendant and the 2nd item of the property was not purchased from out of joint family income.

5.Appellate Court:

5.1. The decree in so far as it related to the 1st item of the suit property was neither challenged by the plaintiff nor by the defendants and it was only with reference to 2nd and 3rd item

of the property that the plaintiff had filed A.S.No.21 of 2011 on the file of the III Additional Subordinate Judge, Coimbatore. The III Additional Subordinate Judge, Coimbatore by Judgement and Decree dated 10.06.2013 had confirmed the Judgement and Decree passed in O.S.No.1143 of 1996 by the II Additional District Munsif, Coimbatore. Challenging this concurrent Judgement and Decree the plaintiff is before this Court.

6.Second Appeal:

When the matter had come up for admission on 31.01.2014, notice of motion had been ordered and the matter has been listed today.

7.Submissions:

7.1. Mr.N.Manokaran, learned counsel who had entered appearance on behalf of the plaintiff/appellant would contend that the 2nd item of the property which stand in the name of Palaniammal and the 3rd item of the property stand in the name of Karuppannan had been purchased from out of the income generated from the contract business run by the father Nachimuthu.

7.2. It was his further argument that the 1st item of property had been mortgaged by their father Nachimuthu for the purpose of obtaining the loan for running his business. The mortgage amount had been invested in the business and from out of this income suit 2nd and 3rd items of the property had been purchased. He would further argue that the father of the 1st defendant was only earning a sum of Rs.53/- per month as a salary from the Coimbatore Municipality in which he was an employee and therefore no stretch of imagination he could have purchased the 3rd item of the property at a sum of Rs.9,000/- on 21.10.1959 and the 2nd item of property at a sum of Rs.24,500/- on 06.02.1982.

7.3. He would further argue that there is no proof from the defendants 1 to 6 that their father, Karuppannan had purchased the property. He would submit that the money that is shown as the source for purchasing the 2nd item was from the retiral benefits of late Karuppannan which was only a sum of Rs.7,590/-, whereas, the sale consideration of the 2nd item was Rs.24,500/-. Likewise, the sale consideration for the 3rd item of the property was Rs.9,000/- and the monthly income of the said Karuppannan was only a sum of Rs.53/- per month.

7.4. He would argue that after the death of the said Nachimuthu in the year 1969 the business was carried on by all the sons of Nachimuthu and therefore the purchase of the 2nd item in the year 1982 was also from out of the income derived from the business.

7.5. He therefore contended that the Courts below have clearly committed an error in non suiting the plaintiff with reference to 2nd and 3rd item of the property and they ought to have held that the same was ancestral joint family property and directed its division.

7.6. The learned counsel for the defendants argued that the plaintiff has not proved any of the statements made by them and therefore the finding of the Courts below cannot be upset and had to be confirmed.

8. Discussions:

8.1. Heard the counsels and perused the papers. The plaintiff has come forward with a specific case that the 1st item of the property which is admittedly ancestral property had been mortgaged by their father Nachimuthu and the mortgage amount had been invested into the business, namely, the contract work being done by the said Nachimuthu. There is no proof let in by the plaintiff to show this mortgage. There is also no details as to when the mortgage have taken place and the amount that had been invested in the business. Except for the ipsi dixit of the plaintiff there is no document to prove the statement.

8.2. Admittedly, in the year 1959 the said Karuppannan was earning a monthly income of Rs.53/- and the property has been purchased for Rs.9,000/- since the documents stand in the name of the said Karuppannan and the plaintiff had not been able to prove the fact that the income from out of the joint family funds had gone into the purchase of the 3rd item of the property, it has to be presumed that the property had been purchased from out of the self earning of the said Karuppannan.

8.3. The defendants 1 to 6 have also taken a stand that the said Karuppannan was also carrying out contract works and the Ex.B2 to Ex.B.6 would also confirm the same. It is also the case of the 1st defendant that each of the sons of the said Nachimuthu are separately carrying on contract business. In these circumstances, the onus is on the plaintiff to prove that the contract work was carried out as a joint family venture. The plaintiff had miserably failed to prove the same and therefore the findings of both the Courts below regarding 3rd item has to be confirmed.

8.4. With reference to the 2nd item, the said property has been purchased in the year 1982 much after the death of Nachimuthu and considering the fact that the documents stand in the name of the 2nd defendant and there is no evidence to the contra to show that the money that has been used for the purchase emanates from the joint family funds, the findings of the Courts below cannot be countenanced. I do not find any

question of law much less a Substantial Question of law for interfering with the concurrent Judgement and Decree of the Courts below.

9. The Second Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

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To

1.The III Additional Subordinate Judge,
Coimbatore.

2.The II Additional District Munsif,
Coimbatore.

Copy to: The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, SR.No.71025.
+1cc to Mr.S.Gunalan, Advocate, SR.No.71407.

S.A.No.15 of 2014 &
C.M.P.No.11457 of 2014

EV(CO)
CSR: 24.01.2020

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