

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 01.10.2019

Judgment pronounced on : 25.10.2019

Coram

The Honourable Mr. Justice R. Subbiah
and

The Honourable Mrs. Justice T. Krishnavalli

Original Side Appeal Nos. 382, 384, 396, 434, 451 and 469 of 2018
and
O.S.A. No. 1 of 2019

1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.382 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.384 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.396 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.434 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.451 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.469 of 2018
1	DR.S.SELVAKUMAR	... APPELLANT in OSA No.1 of 2019

Vs.

1	DR.A.B.SELVARANGAN
2	S.BALASUBRAMANI
3	THE MANAGER INDIAN BANK KILPAUK BRANCH NO.103 NEW AVADI ROAD KILPAUK CHENNAI-600010 ... RESPONDENTS in OSA No.382 of 2018
1	DR.A.B.SELVARANGAN
2	MR.S.BALASUBRAMANI
3	THE MARINE PRODUCTS EXPORT DEVELOPMENT AUTHORITY MINISTRY OF COMMERCE & INDUSTRY GOVERNMENT OF INDIA AH-125 4TH ST 8TH MAIN RD SHANTHI COLONY ANNA NAGAR CHENNAI 600040

4 THE MANAGER INDIAN OVERSEAS
BANK 1-28 FIRST AVENUE ANNA NAGAR EAST
CHENNAI 600102 ... RESPONDENT in OSA No.384 of 2018

1 Dr.A.B.SELVARANGAN

2 S.BALASUBRAMANI

3 PARATHASARATHY

4 THANIGAI ARASU

5 S.RENKA DEVI

6 P.KAMASHI

7 T.SHANMUGARAJ

8 ARRAHAM VERGHESE

9 T.V.SUBRAMANIAM

10 RAJNI NAVEEN

11 A.LALITHA

12 SHOP RADHIKA MANAGING DIRECTOR
VAYAIN FLAT NO.129/64 HARRINGTON ROAD
CHENNAI 30 ... RESPONDENTS in OSA No.396 of 2018

1 Dr.A.B.SELVARANGAN

2 S.BALASUBRAMANI ... RESPONDENT in OSA No.434 of 2018

1 A.B.SELVARANGAN

2 S.BALASUBRAMANI

3 THE MARINE PRODUCTS EXPORT DEVELOPMENT AUTHORITY
MINISTRY OF COMMERCE
AND INDUSTRY GOVERNMENT OF INDIA AH - 125
4TH STREET 8TH MAIN ROAD SHANTHI COLONY
ANNA NAGAR CHENNAI 600 040.

4 THE MANAGER INDIAN OVERSEAS BANK
1-28 FIRST AVENUE ANNA NAGAR EAST
CHENNAI - 600102 ... RESPONDENT in OSA No.451 of 2018

1 DR.A.B.SELVARANGAN

2 S.BALASUBRAMANI

3 THE MANAGER
INDIAN BANK KILPAUK BRANCH NO.103 NEW
AVADI ROAD KILPUAK CHENNAI
... RESPONDENT in OSA No.469 of 2018

1 Dr.A.B.SELVARANGAN

2 S.BALASUBRAMANI

3 THE MARINE PRODUCTS EXPORT
DEVELOPMENT AUTHORITY MINISTRY OF COMMERCE
AND INDUSTRY GOVERNMENT OF INDIA) AH-125
4TH ST 8TH MAIN RD SHANTHI COLONY
ANNA NAGAR CHENNAI- 40

4 THE MANAGER INDIAN OVERSEAS BANK 1-28
FIRST AVBENUE ANNA NAGAR EAST
CHENNAI- 102 ... RESPONDENT in OSA No.1 of 2019

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the Judgment and decree dated 13.07.2018 in O.A.No. 459/2018 in C.S. 288/2019.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the Judgment and decree made in Application No. 641/2018 in C.S.288/2018 dated 13.07.2018.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the Judgment and decree made in O.A. No. 506/2018 in C.S. No. 288/2018 dated 13.07.2018.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Appeal against the interim Judgment and decree made in O.A. No. 458/2018 in C.S.288/2018 dated 13.07.2018.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Appeal against the interim Judgment and decree made in O.A. No. 640/2018 in C.S.288/2018 dated 13.07.2018.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Appeal against the interim Judgment and decree made in O.A. No. 507/2018 in C.S.288/2018 dated 13.07.2018.

Original Side Appeal filed under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letter Patent Appeal against the interim Judgment and decree passed in Application No. 642/2018 in C.S.288/2018 dated 13.07.2018.

For Appellant: Mr.S. Namasivayam in all Cases

For Respondents:

O.S.A. 382 & 469/2018: Mr.S. Vasudevan for R3
Mr.E. Prabhu for R2
R1- No Appearance

O.S.A.384 & 451/2018
and O.S.A.1/2019 : Mr. Jahesh B. Dolia for
M/s. Aiyar and Dolia for
Mr.T. Natarajan for R1
Mr.V. Suriya Sankar for R2
Mr.V.M. Thilagavathy for R4
R3- No Appearance

O.S.A.396/2018 : Mr. Jahesh B. Dolia for
M/s. Aiyar and Dolia for R1
Mr.K.Prabhu for R2
R3 to 12 No Appearance

O.S.A.434/2018 : R2- No Appearance

O.S.A.396/2018 : M/s. Aiyar and Dolia for
for Mr.T.Natarajan for R1.

COMMON JUDGMENT
R. SUBBIAH, J

These Original Side Appeals are filed against the common order dated 13.07.2018 passed in O.A. Nos. 458, 459, 506, 507, 640, 641, 642 of 2018 in C.S. No. 288 of 2018. Thus, all these appeals arise out of a common order dated 13.07.2018 passed by the learned single Judge in various applications filed by the plaintiff, pending disposal of the suit in C.S. No. 288 of 2018.

2. For the sake of convenience, the parties to these appeals are referred to as per their rank in the suit.

3. The appellant herein, as plaintiff, has filed the suit in C.S. No. 288 of 2018 for a declaration to declare that the properties described in Schedules A, B, C, D, E and F of the plaint are Hindu Undivided Family (HUF) Properties and for other reliefs. In effect, the relief sought for in the plaint is set out hereunder for ready reference:-

"a) For a Declaration that the schedules A, B, C, D, E and F properties are HUF properties

b) For a declaration that the settlement deed dated 23.03.2001 registered as document No. 1137 of 2002 in SRO, Kundrathur executed by the first defendant favouring the second defendant as null and void

c) For a declaration that the settlement deed dated 26.03.2015 registered as document No. 1306 of 2015 in SRO, Anna Nagar executed by the first defendant favouring the second defendant as null and void and not binding on the plaintiff

d) consequently to partition the suit A, B, C, D, E & F schedule properties into three equal shares and thereby to allot one share (1/3rd share) to the plaintiff with separate possession

e) For a permanent injunction restraining the defendants from alienating and creating any encumbrances over the A, B, C, D, E & F schedule property

f) To pay the cost of this suit; and

g) To pass such further or other orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

4. The first defendant is the father and the plaintiff and the second defendant are his sons. The sum and substance of the plaint averments is to the effect that in the year 1980, the first defendant formed a HUF in which the first defendant was the Kartha and the plaintiff and the second defendant are the co-parceners. Rajalakshmi, mother of the plaintiff and second defendant was not a co-parcener of the HUF, however she is a member. The first defendant, as Kartha of the HUF called A.B. Selvarangam - HUF, filed Income Tax returns, paid taxes and charges in respect of the income and expenditure in his name on behalf of the HUF. The income and expenses of the HUF were also subjected to audit, assessed to tax and returns were regularly filed. The plaintiff and the second defendant were given in marriage and even thereafter, the properties of the HUF were enjoyed in common without any division. However, the father-in-law of the plaintiff has created a rift in the close bondage, affection and understanding shared among the plaintiff and the defendants.

5. According to the plaintiff, his father - the first defendant is a Doctor by profession and he started a clinic on 20.04.1973 in the name and style of Selvarangam Nursing Home in the premises belonged to Mrs. Rajalakshmi, his wife. The property was in fact purchased by the mother of the plaintiff and second defendant namely Mrs. Rajalakshmi in a public auction conducted by Tamil Nadu Housing Board from her savings and she constructed a building thereon. The Nursing Home was run as a Proprietary concern from 1973 to 1989 by the first defendant and in the year 1989, he was suddenly incapacitated and could not run the Nursing home. In those circumstances, the plaintiff who was employed in United Kingdom, returned to India specifically to take care of his parents, the first defendant/father and his mother Rajalakshmi and also revived the Clinic business by taking complete control of the clinic. The plaintiff also put in all his investment in the hospital business and has become a partner of the firm "Selvarangam Hospital Partnership Firm". The first defendant recognised the plaintiff's hardwork which had in fact revived the Hospital and therefore, he retired from the partnership business on 16.06.2015 relinquishing all his right, shares and interest in the partnership business, including liability of around Rs.1.9 crores arising out of expansion. However, due to misunderstanding, there was a division among the plaintiff, the first defendant (father), mother and the second defendant (brother) even though they are residing in the same premises. It is the specific contention of the plaintiff that all the properties mentioned in the Schedule of the plaint have been purchased from the proceeds of the HUF which was also declared by the first defendant himself, as Kartha of HUF, before the Income Tax and other authorities. However, for the reasons best known to him, he has been treating the plaint schedule properties as his own. In fact, the second defendant brother has filed a suit before this Court for partition in which the mother of the plaintiff filed a written statement repudiating the plaint averments and had stated that the properties are joint family properties and thereby admitted the existence of HUF. According to the plaintiff, there were also misunderstanding between him and his wife and he is confronting matrimonial litigation. Taking advantage of his pre-occupation with his profession and baseless litigations, the first defendant has committed breach of trust of HUF properties and has been playing fraud on the plaintiff and his mother. The second defendant, who is never successful in any of his ventures wanted to make quick money by illegal means. The defendants, in collusion, exploited the HUF funds and properties to make unjust enrichment. The first defendant has, against all ethics and practice that is expected from a Kartha of HUF has purchased the plaint described properties in his own name and in the name of the second defendant by outright purchase as also

settled some of the properties in the name of the others. The plaintiff is one of the co-parceners of the HUF and he has every right, interest and share in the plaint schedule properties. Since the action of the defendants had deprived his right and interest in the plaint described property, the plaintiff has filed the aforesaid suit.

6. The first defendant as well as the second defendant have filed separate written statement, resisting the plaint averments.

7. When the suit was pending, seven applications have been filed by the plaintiff namely O.A. Nos. 458, 459, 506, 507, 640, 641, 642 of 2018 in C.S. No. 288 of 2018. The relief sought for in those applications are stated hereunder.

(i) O.A. No. 458 of 2018 - for grant of an ad-interim injunction restraining the respondents therein from alienating or encumbering the property described in the schedule of the Judge's Summon

(ii) O.A. No. 459 of 2018 - for grant of mandatory injunction to the third respondent/Manager, Indian Bank, Kilpauk Branch to freeze the HUF Bank Account maintained in Account No. 449379383.

(iii) O.A. No. 506 of 2018 - To grant a mandatory injunction directing the respondents 3 to 12 therein to deposit their share of rent in respect of the property indicated in the Schedule to the Judge's summon to the credit of the suit in C.S. No. 288 of 2018.

(iv) O.A. Nos. 507 of 2018 - for grant of Mandatory injunction directing the third defendant/Manager of Indian Bank, Kilpauk Branch, Chennai to furnish statement of account for the last seven years of the HUF Bank Account maintained in Account No. 449379383 including the details of the fixed deposits held in the name of HUF.

(v) O.A. No. 640 - To grant mandatory injunction directing the third respondent to deposit the rent in respect of the property mentioned in the schedule to the Judge's summons to the credit of the suit in C.S. No. 288 of 2018

(vi) O.A. No. 641 of 2018 - To grant mandatory injunction directing the fourth respondent to submit statement of accounts in respect of SB Account No. 12521 standing in the name of the first respondent for the last seven years

(vii) O.A. No. 642 of 2018 - To grant mandatory injunction directing the fourth respondent not to renew the loan facility based on equitable mortgage of the property morefully described in Schedule B of the Judge's summon after expiry of the mortgage.

8. The learned single Judge, after hearing both sides, by the common order dated 13.07.2018 granted interim injunction in

O.A. Nos. 458 and 459 of 2018. In application Nos. 506 and 507 of 2018, notice was ordered to the respondents in the respective application. At the same time, the learned single Judge closed Application Nos. 640 to 642 of 2018 on the ground that the plaintiff, in the plaint, had suppressed the pendency of other suits in respect of the same property.

9. Assailing the order passed by the learned single Judge, the learned counsel appearing for the plaintiff/appellant would only contend that the learned single Judge rendered a finding that the plaintiff had suppressed the pendency of other suits in respect of the very same property which is the subject matter of the suit. The learned single Judge further held that while obtaining orders in O.A. Nos. 458 and 459 of 2018 the plaintiff had suppressed the suit filed by him in C.S. No. 785 of 2015 before this Court for a declaration as also C.S. No. 410 of 2018 for permanent injunction restraining the defendants therein from interfering with the peaceful possession and running of the hospital. According to the learned counsel for the plaintiff, the plaintiff did not suppress any material particulars, as concluded by the learned single Judge. In fact, the plaintiff, in para No.20 of the plaint made reference to the suit filed by the first defendant, however, he has not indicated the case number. The learned counsel for the appellant also invited the attention of this Court to para No.20 of the plaint, wherein it was stated as follows:-

"20. The Plaintiff states that earlier, the second defendant has filed a suit before this Honourable Court, against this plaintiff, the first defendant and his mother seeking for partition and separate possession of his 1/3rd share pertaining to the properties in the name of his mother and mischeviously including Flat No.E, at No.120, F-Block, Anna Nagar, Chennai which is the self-earned and self-acquired property of the plaintiff and and this plaintiff and h is mother have filed written statements in the said suit denying the allegations....."

10. By placing reliance on the above statement made in the plaint, the learned counsel would contend that merely because the plaintiff did not mention the number of the suit, it cannot be concluded that he had suppressed the material particulars relating to the lis. The learned single Judge, without considering the above has closed the applications in O.A. Nos. 640 to 642 of 2018 by vacating the interim order granted on 28.04.2018 in O.A. No. 458 and 459 of 2018. The learned counsel for the appellant therefore prayed this Court to allow the Original Side Appeals as prayed for.

11. Mr. V. Raghavachari, learned counsel takes notice for the first respondent in O.S.A. No. 451 of 2018, arises out of O.A. No. 640 of 2018. According to the learned counsel, the first respondent has not been arrayed as party to some of the applications and therefore, he cannot raise any objection in these appeals. Further, the learned single Judge has passed the order dated 13.07.2018 in several applications, however, the appellant has chosen to file these appeals only against the order passed in seven applications and therefore these appeals are not maintainable.

12. On the above contention, this Court heard the learned counsel appearing for the respective parties and perused the records.

13. The main ground on which these appeals have been filed by the appellant is that the learned single Judge had rendered a finding that the plaintiff had suppressed the pendency of other suits in connection with the same property. According to the learned counsel for the appellant, the appellant did not indicate the case number of the suit, however, he had categorically mentioned about the suit filed by the second defendant, his brother, in para No.20 of the plaint and also referred to the written statement filed by him and his mother in the said suit. Thus, the plaintiff did not suppress any material particulars with respect to the pendency of the suit. While so, we are not in agreement with the view of the learned single Judge in passing the impugned order dated 13.07.2018 on the ground that the plaintiff/appellant has suppressed the material particulars with respect to the other suits filed in connection with the very same property covered in the plaint in C.S. No. 288 of 2018.

14. In view of the above, all the Original side appeals are allowed by setting aside the order dated 13.07.2018 passed by the learned single Judge in O.A. Nos. 458, 459, 506, 507, 640, 641, 642 of 2018 in C.S. No. 288 of 2018. No costs. The respondents in the aforesaid Original Applications are directed to file their counter. Thereafter, the learned single Judge is required take up the applications and dispose of them as early as possible. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. THE MARINE PRODUCTS EXPORT DEVELOPMENT
AUTHORITY MINISTRY OF COMMERCE &
INDUSTRY GOVERNMENT OF INDIA AH-125 4TH STREET
8TH MAIN ROAD SHANTHI COLONY ANNA NAGAR
CHENNAI 600040
2. THE SUB ASSISTANT REGISTRAR (ORIGINAL SIDE)
HIGH COURT, MADRAS 104.
3. THE MANAGER
INDIAN OVERSEAS BANK
1-28, 1ST AVENUE
ANNA NAGAR EAST
CHENNAI 600 102.
4. THE MANAGER
INDIAN BANK
KILPAUK BRANCH
103, NEW AVADI ROAD
KILPAUK, CHENNAI 10.

+2 Ccs to Mr.S. Namasivayam, Advocate sr 89524.
+2 Ccs to Mr.S. Vasudevan, Advocate sr 89772, 89538.
+3 Ccs to Mr.R. Munuswamy, Advocate sr 90193, 90194, 90195.

OSA Nos. 382, 384, 396,
434, 451 and 469 of 2018
and
O.S.A. No. 1 of 2019

CNR(CO)
SP(18/12/2019)