



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

S.A(MD)No.21 of 2018
and
C.M.P(MD)No.451 of 2018

Chinnaiya

.. Appellant / Appellant/
2nd Defendant

Vs.

1.Chinnammal

.. Respondent/1st Respondent /
Plaintiff

2.Kayambu

3.Karuppaiah

4.Rajamanickam

5.Adaikammal

.. Respondents/Respondents
2 to 5 / Defendants 1,3,4 & 5

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree, dated 25.06.2013, made in A.S.No.7 of 2011 on the file of the Sub Court, Dindigul, confirming the judgment and decree, dated 31.10.2008, made in O.S.No.2 of 2006 on the file of the District Munsif cum Judicial Magistrate's Court, Natham.

For Appellant : Mr.D.Selvaraj

For Respondent No.1 : Mr.M.Gnanagurunathan

For Respondents 2 to 4 : Mr.M.Thirunavukkarasu

For Respondent No.5 : No appearance

JUDGMENT

The concurrent Judgment and decree passed in O.S.No.2 of 2006 by the District Munsif cum Judicial Magistrate's Court, Natham and in A.S.No.7 of 2011 by the Principal Sub Court, Dindigul, are under challenge in the present second appeal.

2. The first respondent / plaintiff has instituted the suit in O.S.No.2 of 2006 on the file of the trial Court for the reliefs of partition and separate possession of her 1/6th share in the suit

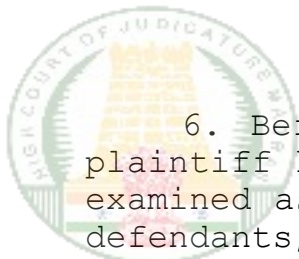


property, wherein the present appellant and the respondents 2 to 5 have been shown as defendants.

3. It is the case of the plaintiff that the suit property is the joint family property of the plaintiff and defendants. The plaintiff and the defendants 2 to 5 are the daughters and sons of one Periyakaruppan. The 1st defendant is the wife of Periyakaruppan. The said Periyakaruppan had purchased the suit property and he was in possession and enjoyment of the same till his lifetime. He died on 31.01.2004 intestate leaving behind the plaintiff and defendants, as his legal heirs. After the demise of Periyakaruppan, the suit property has been in joint possession and enjoyment of the plaintiff and defendants, and therefore, the plaintiff and defendants are having 1/6th share in the suit property. When the plaintiff requested the defendants for separate possession by way of partition, the defendants refused to do so and hence, she instituted the suit.

4. In the written statement filed on the side of the first defendant and adopted by the defendants 3 to 5, it is averred that they are ready to pay the Court fee for their 1/6th share. Therefore, preliminary decree may be passed accordingly.

5. In the written statement filed by the second defendant, it is averred that the relationship between the parties and the nature of the property are admitted. Periyakaruppan renounced the joint family in the year 1980. From March, 1980, the second defendant acted as Kartha of the family and maintained the joint family. The said Periyakaruppan filed a suit in O.S.No.215 of 1981 for the reliefs of declaration and possession against the plaintiff and defendants. The suit was resisted by the 2nd defendant and he won the battle, for which, the second defendant incurred a debt of Rs.16,864/-. In order to meet out the expenses, the second defendant borrowed money from one Amirthammal, who in turn, filed a suit against her in O.S.No.58 of 1984 for recovery of money, followed by E.P.No.60 of 1986, against which he preferred C.R.P.No.1664 of 1988 and he has incurred expenses of Rs.10,000/- for defending the case. He, as a Kartha, maintained the joint family and he only spent money for the education of the third and fourth defendants to make them as engineers and spent Rs.1,00,000/- for each of them. He incurred a sum of Rs.1,00,000/- for deepening the Well. She alone made arrangements for the marriage of the plaintiff and fifth defendant, and a huge amount was incurred for giving srithana articles. The father of the plaintiff and defendants 2 to 5 again filed a suit in O.S.No.341 of 1991, for which, the second defendant incurred debt and so far, he has incurred a sum of Rs.5,00,000/- as debt. Therefore, the plaintiff and the other defendants are not entitled for partition. At the same time, the second defendant agrees for partition and separate possession of the suit property subject to payment of joint family debt with interest, by the plaintiff and other defendants.



6. Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as P.W.1 and one S.Periaiya has been examined as P.W.2 and Exs.A1 to A5 were marked. On the side of the defendants, the fourth and second defendants have been examined as D.W.1 and D.W.2 and one Vellaiyammal, Abdulkalamazad and Subbiah have been examined as D.W.3 to D.W.5 and Exs.B.1 to B.41 were marked. Advocate Commissioner's report and sketch have been marked as Ex.C.1 and Ex.C.2.

7. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the plaintiff to the effect that the plaintiff is entitled to get 1/7 share in the suit property and the joint possession of the suit property by the plaintiff and defendants has to be converted into the separate possession and 1/7 share in the suit property has to be allotted to the plaintiff.

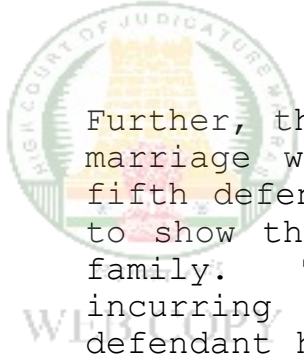
8. Aggrieved by the Judgment and decree passed by the trial Court, the second defendant as appellant had filed Appeal Suit No.7 of 2011. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, allowed the appeal and confirmed the Judgment and decree passed by the Trial Court. Challenging the said concurrent Judgment and decree passed by the Courts below, the present second appeal has been preferred at the instance of the second defendant as appellant.

9. Considering the nature of the issue involved in this case, this second appeal was referred to the Mediation and Conciliation Centre for amicable settlement. But, no settlement was reached and the second appeal was returned to the Court along with the failure report.

10. Heard the learned counsel for the appellant, the learned counsel for the first respondent and the learned counsel for the respondents 2 to 4 and also perused the records carefully.

11. The learned counsel for the appellant / second defendant would submit that though the suit property was purchased by Periakaruppan, he left the family and the second defendant alone maintained the joint family property ie., suit property by acting as Kartha. He spent money for the litigations, for the education of the defendants 3 and 4 and also for the marriage of the plaintiff and fifth defendant, and thus, he incurred a debt to the tune of Rs.5,00,000/-. The joint family members are liable to share the joint family debts. But, the Courts below, without considering the said aspects, has erroneously decreed the suit. Thus, he prayed to set aside the concurrent Judgment and decree passed by the Courts below.

12. The learned counsel appearing for the first respondent/plaintiff as well as the respondents 2 to 4/defendants 1, 3 & 4 in unison submitted that the defendants 3 and 4 had completed their education by getting the Government aid under scholarship.



Further, the second defendant admitted that the Government grant for marriage was received for the marriage of the plaintiff and the fifth defendant. The second defendant has not produced any document to show that he incurred a huge debt for the welfare of the joint family. The suit property is a fertile land and he has been incurring income continuously from the suit property. The second defendant has not produced any document for debt. Thus, they prayed to dismiss the second appeal.

13. It is an admitted fact that Periyakaruppan had three sons and two daughters, namely, the plaintiff and defendants 2 to 5 and another son by name Alagarsamy predeceased the said Periyakaruppan. The first defendant is the wife of Periyakaruppan. It is also an admitted fact that the suit property belonged to Periyakaruppan, which is substantiated through Ex.A.1 to A.4. The said Periyakaruppan died on 31.01.2004, leaving behind the plaintiff and the defendants as his legal heirs.

14. The appellant / second defendant resisted the suit by contending that he incurred huge debt for the joint family welfare ie., for the education of the defendants 3 and 4, for the marriage expenses of plaintiff and fifth defendant, and also for defending the cases filed by their father.

15. Admittedly, the suit property is a fertile land, in which standing trees are also there. According to the defendants 1, 3 to 4, the 2nd defendant maintained the joint family welfare only by the income derived from the joint family property ie., suit property. Though the 2nd defendant has stated that there is no proper income derived from the suit property, he has not produced any document in order to substantiate the same. Though the second defendant stated that he had spent money for the education of the 3rd and 4th defendants and for the marriage of the plaintiff and the 5th defendant, Exs.B5 to B12 would show that the defendants 3 and 4 had completed their studies by obtaining scholarships from the Government and the 2nd defendant himself admitted in his evidence that the Government grant for marriage was obtained for the marriage of the plaintiff and 5th defendant.

16. By relying on some money orders, the second defendant has stated that he had spent some amount for the studies of the 3rd and 4th defendants. It is not in dispute that the defendants 3 and 4 are entitled to get share in the income derived from the suit property. A part of the amount could have been spent for their personal expenses, for which it cannot be concluded that the 2nd defendant has incurred debt for the studies of the defendants 3 and 4. The 2nd defendant has not produced any valid document to substantiate that the debt has been obtained for maintaining the joint family welfare and joint family property. The Court below has held that no relief can be passed in the partition suit for the amounts alleged to have been spent for debts incurred for the Court expenses, educational expenses of brothers and marriage expenses of sisters, even admitted



by the plaintiff in the suit. Moreover, spending amounts for the family by the Kartha will no way curtail the right of the members of the joint family from claiming their share in the property. This Court does not find any reason to interfere with the said finding of the Courts below.

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17. The Courts below have rightly come to a conclusion that the plaintiff is entitled to 1/7 share in the suit property, since one of the sons of Periyakaruppan, namely, Alagarsamy, died leaving behind the first defendant, mother, as Clause (1) legal heir. The Trial Court has held that the first defendant is entitled to 2/7 share in the suit property and that the plaintiff and the defendants 2 to 5 are entitled to 1/7 share each in the suit property. The first appellate Court has also rightly affirmed the same. There is no question of law especially substantial question of law arising for determination. There is no merit in this appeal.

18. In the result, this second appeal fails and accordingly, the same is dismissed, confirming the concurrent judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Sub Judge,
Dindigul.

2.The District Munsif cum Judicial Magistrate,
Natham.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.THIRUNAVKKARASU, Advocate (SR-56005[F] dated 22/03/2019)

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-56062[F] dated 22/03/2019)

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-56188[F] dated 25/03/2019)

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