



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A. (MD) .No.431 of 2015

WEB COPY

1.Karuppanan @ Karuppana Goundar
2.Pappathi
3.Arasayi

... Appellants/Defendants 1, 3 & 4

Vs.

1.Vellaiyammal
2.Kaliammal
3.Lakshmi
4.Nalluchamy
5.Veeramalai
6.Subramani

... Respondents 1 to 5/Plaintiffs 1 to 5
... 6th respondent/2nd defendant

PRAYER:- Second appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 28.04.2015 passed in A.S.No.2 of 2013 on the file of the Additional District and Sessions Judge, Dindigul, confirming the judgment and decree dated 04.12.2012 passed in O.S.No.26 of 2012 on the file of the Sub Court, Vedasanthur Taluk, Dindigul District.

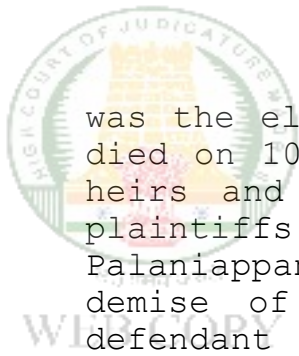
For appellant : Mr.A.R.Sethupathy
For Respondents : Mr.A.Shajahan for RR-1 to 5
No appearance for R-6

J U D G M E N T

The unsuccessful defendants in the courts below are the appellants before this Court. This second appeal arises against the judgment and decree in A.S.No.2 of 2013 of the learned Additional District and Sessions Judge, Dindigul, confirming the judgment and decree of the learned Subordinate Judge, Vedasanthur, Dindigul, in O.S.No.26 of 2012.

2.The facts in brief which are necessary for disposal of the second appeal are as follows:

The plaintiffs have instituted a suit for partition and separate possession of the suit schedule properties. The suit schedule consisted of two schedules viz., 'A' and 'B'. It is the case of the plaintiffs that the property is the ancestral property of the first defendant and one Palaniappan, who is the husband of the first plaintiff and father of the plaintiffs 2 to 5. The brothers had been jointly enjoying the A schedule property and it was the first defendant, who was managing the properties, since he



was the eldest in the family. The younger brother Palaniappan had died on 10.12.2007, leaving behind him the plaintiffs as his legal heirs and they are solely entitled to inherit his estate. The plaintiffs would contend that the first defendant and the deceased Palaniappan were jointly cultivating the suit properties till the demise of the said Palaniappan. After his demise, the first defendant was evading the plaintiffs. It is also their case that since he was in management of the joint family properties, the first defendant had purchased properties from and out of the income from the joint family properties and those properties have been described as the B schedule properties. The plaintiffs would further contend that the first defendant and his son, the second defendant had agreed for a compromise and executed an unregistered undertaking on 17.11.2007 and on the basis of this undertaking, the plaintiffs and defendants had jointly sold the property comprised in S.F.Nos.1626/2 and 1629 on 27.02.2008. The proceeds of the sale were equally divided by the parties, which is yet another proof that the defendants and the plaintiffs owned joint family properties. Mean while, certain issues arose between the plaintiffs and defendants and in view of that, the first defendant filed a false complaint. Thereafter, the plaintiffs came to know that the defendants were trying to alienate the suit properties. In view of the same and having no other alternative, the plaintiffs have been constrained to approach the Court by filing this original suit, for the relief of partition and separate possession.

3.A written statement was filed by the first defendant, which was adopted by the defendants 2 and 3. A schedule properties admittedly were joint family properties. However, B schedule properties were the exclusive properties of the first defendant. For the past 40 years, the first defendant has been solely doing cattle business and therefore, from out of income from this business, he had purchased the said property. The first defendant had further contended that he along with his son had sold away some properties in the year 1994 and his brother Palaniappan was very much aware about the same. Mean while, the first defendant also executed a settlement deed in respect of item No.2 of the B schedule property in favour of his son on 31.10.2008 and they are enjoying the properties as separate and absolute owners. Thus, the defendants sought for dismissal of the suit.

4.The trial Court namely the Sub-Court, Vedasanthur proceeded to frame four issues with reference to the dispute and P.Ws.1 to 9 were examined on the side of the plaintiffs and on the side of the defendants, D.Ws.1 to 7 were examined and documents Exs.B.1 to B.19 were exhibited.

5.The trial court, after evaluating the oral and documentary evidence, came to the conclusion that there was an ancestral nucleus yielding sufficient income and from and out of the income the first defendant had purchased the B



schedule properties. The said order was taken up on appeal before the learned Additional District and Sessions Judge, Dindigul. The learned District and Sessions Judge also confirmed the judgment and decree of the trial court. Aggrieved by the same, the defendants are before this Court.

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6.Learned counsel for the appellants would concede that there is no dispute about the fact that the suit A schedule properties are ancestral properties, but, however, the dispute was only with reference to the B schedule properties, which according to the defendants is their absolute properties and the same have been purchased out of self-earnings of the first defendant. The learned counsel would further submit that the plaintiffs have not been able to let in evidence to show that the ancestral nucleus namely A schedule property yielded surplus funds from out of which, B schedule properties could be purchased. Therefore, he would contend that the judgment and decree insofar as it related to B schedule properties has to be set aside.

7.Learned counsel for the respondents/plaintiffs would refute the arguments.

8.Heard Mr.A.R.Sethupathy, learned counsel appearing for the appellants/defendants and Mr.A.Shajahan, learned counsel appearing for the respondents 1 to 5. None appears on behalf of the 6th respondent. Perused the papers.

9.Admittedly, the suit A schedule properties are joint family properties of the first defendant and his brother Palaniappan, through whom, the plaintiffs are claiming their right. The first defendant, admittedly is the eldest member of their family, who was exclusively in charge of the management and administration of the joint family property. Even as late as in the year 2008, the parties have jointly executed a sale deed with reference to one item of the suit A schedule property. The defendants who have come forward with a case that the first defendant possessed sufficient funds, have not let in any evidence whatsoever to prove the same and except for their pleadings and oral deposition, there is nothing on record to substantiate the same. Considering the fact that the plaintiffs have let in evidence to show that the parties were possessed of joint family property, which yielded income, the presumption that the B schedule properties have been purchased from out of this income has not been countenanced by the defendants by letting in any independent evidence.

10.In view of the above, this Court is of the view that the second appeal does not give rise to any question of law, much less a substantial question of law. Hence, the same is liable to be dismissed, confirming the judgments and decrees of the courts below.



11. Accordingly, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional District and Sessions Judge,
Dindigul.

2. The Sub Court,
Vedasanthur Taluk,
Dindigul District.

Copy to: The Section Officer,
VR Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to Mr.A.SHAJAHAN, Advocate (SR-90136[F] dated 27/09/2019)

+1 CC to Mr.T.R. SUBRAMANIAN, Advocate (SR-90345[F] dated
30/09/2019)

S.A. (MD) .No.431 of 2015
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vs

MK (25.10.2019) 4P 7C