

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

A.S.No. 281 of 2011

J.Ramakrishnan Appellant/Defendant-1

Vs.

1.B.Suryakala
2.P.Yashoda (Deceased)
3.J.Lakshmipathy
4.J.Vijayakumar
5.R.Soundari
6.S.Thulasi
7.K.Mythili @ Durga
8.P.Ashok

(R8 brought on record as LR of deceased
R2 vide order dated 09.09.19 made
in CMP No.16332 of 2017 in AS No.281 of 2011)

... Respondents/Defendants 2 to 7

PRAYER : Appeal filed under Section 96 of C.P.C to set aside and reverse the judgment and decree dated 21.10.2010 passed in O.S.No.156 of 2008 by the Additional District Court, Fast Track Court - 2 at Poonamallee.

For Appellant : Mr.CPG.Yoganand for
M/s.CPG.Yoganand Associates

For Respondents : Mr.K.J.Parthasarathy for R1
Mr.S.V.Jayaraman, Senior Counsel
for Mr.V.Kasinathabharathi
for R6 to R8
Mr.B.K.Sreenivasan
for impleaded respondent

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

The first defendant is the appellant in a suit for partition and separate possession. The suit has been laid by the plaintiff/first respondent, who is the sister of other defendants. All of them were children born from the wedlock between one Jagadeeswaran and Padmavathi, since deceased.

2. There are three items of suit properties. Item 1 is the land and building covered by Document No. 9138/1989 dated 10.11.1989. This property stands in the name of the father. Item 2 is the immovable property standing in the name of mother, registered in her name on 07.09.1959. At the time of registration of Item 2, the appellant was studying eighth standard. Item 3 consists of movables. These items are gold jewels and it is the case of the plaintiff/first respondent that the defendants, namely, the sons are in possession of these items.

3. The sum and substance of the case of the plaintiff/first respondent is that all these items are self-acquired properties of the deceased father. Item 2 has been purchased by him in the name of the mother. Therefore, on that basis, the plaintiff/first respondent sought for partition.

4. The appellant, defendants 3 to 5 filed a joint written statement. They have contended that they have been doing a joint exertion along with the deceased father. Item 2 has been purchased from the joint family nucleus. The plaintiff/first respondent examined herself as P.W.1 while marking Exs.A1 to A8. On behalf of the first defendant/appellant, he examined himself as D.W.1 and marked Exs.B1 to B4. Ex.B3 is the settlement deed in favour of the sixth defendant which states that the suit properties are the self-acquired properties of the father, settled in favour of daughter.

5. The trial Court, framed the following issues:-

- "1.Whether Plaintiff is entitled to equal share in the suit property?
- 2.Whether Plaintiff is entitled for Partition?
- 3.Whether Plaintiff is entitled for mesne profits?
- 4.For what relief Plaintiff is entitled?"

6. Upon consideration of the evidence and arguments, the trial Court was pleased to hold that the appellant being the eldest son was only doing eighth standard at the time of execution of Ex.A1, dated 07.09.1959 and there is absolutely no iota of evidence on the existence of joint family nucleus. On Ex.A2, which is Item 1 of the suit property, the trial Court found that even the evidence of the appellant would show that it was purchased by the father. Much reliance has been made on Ex.B3 which states that the property in question was an absolute property of the deceased father. Accordingly, the suit was decreed. The plaintiff/first respondent herself has given up the claim regarding movables and, therefore, no finding has been given on that. Challenging the judgment and decree rendered by the trial Court, the present appeal has been filed.

7. During the pendency of the appeal, an application has been filed in C.M.P.No.23751 of 2019 by one L.Dilli Babu seeking to implead himself on the premise that he ought to have been impleaded as a party defendant since the defendants have taken a plea that the suit properties were joint family properties. L.Dilli Babu is the son of J.Lakshmipathy, the third defendant herein, who incidentally has not filed any appeal. We may note that the other defendants have not come on appeal except the first defendant/appellant.

8. The point for consideration in this appeal is as to whether the suit properties are self-acquired properties of the deceased father or a joint family property having sufficient nucleus.

9. The learned counsel appearing for the appellant would submit that the trial Court has committed an error in fixing the onus on the appellant/first defendant with respect to Item 1 of the suit properties. There is an element of joint exertion as admitted by the plaintiff/first respondent herself in her evidence. The properties which stand in the name of mother were purchased in the year 1959. There was no sufficient evidence to show that it was purchased from the income of the deceased father alone. The movables have not been partitioned as the plaintiff has not pressed the relief sought for. After all, in a suit for partition, all the defendants do have the status of plaintiffs.

10. The learned counsel appearing for the first respondent/plaintiff would submit that the decree of the trial Court will have to be confirmed. On merit, the trial Court found that the properties are self-acquired properties of the father. The evidence of D.W.1 himself has been taken into consideration by the trial Court coupled with Ex.B4. The oral partition followed

by an attempt for partition in writing have not been proved. In any case, once it is proved that the properties are self-acquired properties of the deceased father, the consequence will have to follow. There is no finding with respect to the persons owning Item 3. Hence, the appeal will have to be dismissed.

11. The learned counsel appearing on behalf of the son of the third defendant, who filed the impleaded application, submitted that in view of the stand taken by the defendants, he ought to have been made as a party defendant.

12. It is no doubt true that it is for the plaintiff/first respondent to show that the suit property stands in the name of Kartha as self-acquired properties. However, in the case on hand, the trial Court has rightly held that even the evidence of D.W.1 was to the effect that the property was purchased by the father and he was running Jagadeeswara Engineering Works. Prior to that, he was working and thereafter doing the same business on his own in a rented premises. After he started the business, the other defendants joined. Therefore, the mere admission by the plaintiff/first respondent that her brothers were running the business along with the father after the purchase would not help the case of the appellant. The appellant has further stated that he did not run the Company. Hence, the finding of the trial Court that there was absolutely no other material available to show the nucleus coupled with the evidence of the appellant would show the father was doing the business on his own apart from working earlier. The said finding, therefore, cannot be assailed.

13. Coming to Item 2, the trial Court has given a categorical finding that at the time of purchase, the appellant was studying only eighth standard. It is a case of both sides that the property was purchased in the name of the mother by the father. Now, even the evidence of the appellant would non-suit his case. Admittedly, the father was having sufficient income. He was earlier working and thereafter running the business on his own. Thus, on these items, we do not find any reason to interfere with the finding of the fact rendered by the trial Court.

14. On Item 3, the appellant has not shown that the jewels are with any particular defendant. In fact, it is nobody's case that the jewels are with the plaintiff. On the contrary, the plaintiff/first respondent contended that they are with the appellant and the other defendants, who filed the written statement. Therefore, on this item, the appellant cannot have

any grievance with respect to the judgment and decree of the trial Court. We also note that even before this Court, the plaintiff/first respondent has given up claim regarding Item 3. The averments in the affidavit stands recorded.

15. C.M.P.No. 23751 of 2019 is also liable to be dismissed since the petitioner therein seeks to contend that it is a joint family property. Admittedly, he is not a party to the suit. The findings are to the effect that the suit properties are the self-acquired properties of the deceased grandfather. (*) **Perhaps, this petitioner can initiate a separate proceeding,** if so advised. Suffice it to state that in view of the findings, he is neither necessary nor a proper party, as according to the plaintiff, the suit properties are self-acquired properties.

16. In such view of the matter, the issues have been correctly answered by the trial Court and the point for determination is held against the appellant and in favour of the contesting respondents. Accordingly, the appeal stands dismissed. No costs. Consequently, C.M.P.No.23751 of 2019 is dismissed.

(*)Corrected as per order dated 28/01/2020 made herein.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Additional District Court,
Fast Track Court - 2,
Poonamallee.

Copy to

The Record Keeper,
VR Section, High Court,
Madras-104.

+1cc to Mr.Ln.V.Kasinatha bharathi,Advocate Sr.1735
+2cc to M/s.K.J.Parthasarathy, Advocate Sr.6110 [03/02/2020]

A.S.No. 281 of 2011

rsi[col]
srg 30/01/2020