

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.02.2020

Date of Verdict : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.788 of 2006
and C.M.P.Nos.5228 & 5229 of 2017

1. Amsa
2. Devakumari
3. Shankar
4. Sivakumar

...Appellants/ Appellants/Plaintiffs

Vs.

1. D.Nandagopal
2. Venugopal
3. Janakiraman
4. Umamaheswaran
5. Sundaravadivelan
6. Vijayalakshmi
7. V.Lakshmiammal
8. V.Balakujambal
9. Kotteswaran

.. Respondents/ Respondents/ Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.01.2006 made in A.S.No.17 of 2005 on the file of the Principal District Court, Vellore District confirming the judgment and decree dated 07.02.2005 made in O.S.No.96 of 1994 on the file of the Subordinate Court, Ranipet, Vellore District.

For Appellants : Mr.K.V.Ananthakrishnan
For R1 : Mr.K.Thangavelu
RR2 & 8 : Died
RR3 to 6, 9 : Notice served
R7 : Not ready in notice

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 18.01.2006 passed in A.S.No.17 of 2005 on the file of the Principal District Court, Vellore confirming the Judgment and Decree dated 07.02.2005 passed in O.S.No.96 of 1994 on the file of the Subordinate Court, Ranipet, Vellore District.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for partition and mesne profits. The first plaintiff is the mother and plaintiffs 2 to 4 are her daughters. The first plaintiff is the daughter-in-law of one Duraiswamy Mudaliyar. The suit properties are ancestral properties of Duraiswamy Mudaliyar. He died intestate in the year 1972 leaving behind his sons Mohanam, Dhanasekaran, Nandagopal and Duraiswamy's wife widow Kannammal and daughter Kanakaposhanam. The first plaintiff is wife of one of his sons, namely, Dhanasekaran. He died intestate in the year 1974 leaving behind the plaintiffs as his legal heirs. The daughter of Duraiswamy Mudaliyar died in the year 1993 leaving behind her husband Venugopal, the fourth defendant herein and her children defendants 5 to 8 herein. While pending the suit, the first defendant died intestate leaving behind the plaintiffs and the defendants 3 to 8 and defendants 10 & 11 as her legal heirs to succeed all her assets and liabilities. The second defendant also died intestate leaving behind his heirs, the defendants 10 and 11. The defendants 4 to 8 are the legal heirs of Kanakaposhanam, the deceased daughter of the said late Duraiswamy Mudaliyar. Thus the plaintiffs and the third defendant each entitled to have 6/20 shares, the defendants 10 and 11 together entitled to have 6/20 shares and the defendants 4 to 8 together entitled to have 1/20 shares and the first defendant is entitled to have 1/20 shares. Hence the suit properties are to be divided into 80 equal shares and the plaintiffs are entitled to have 25/80 shares, the third defendant is entitled to have 25/80 shares and the defendants 4 to 8 together entitled to have 5/80 shares. After demise of the Duraiswamy Mudaliyar, notional partition had taken place in which, his three sons, namely, Dhanasekaran, Mohanam and Nandagopal each entitled to have their 1/4th share in the suit properties. Duraiswamy's 1/4th share has to be divided equally between the plaintiffs and defendants 1 to 3 and 4 to 8. Therefore, the plaintiffs are entitled to have 1/4th share and 1/20th shares in the suit properties. After demise of late Duraiswamy Mudaliyar there was no relationship in the family and as such the husband of the first defendant are joined with others denied the shares of the plaintiffs. Therefore, the plaintiffs filed the suit for partition.

4. Resisting the plaintiffs' case, the third defendant filed written statement, which was adopted by the defendant Nos.1, 2, 4, 5, 7 and 8 stating that the suit properties entirely are not owned by the said Duraiswamy Mudaliyar and no partition between the parties held so far. Therefore, they denied the averments and allegations made in the plaint as false and frivolous. The entire suit properties owned by the first defendant and as such the plaintiffs are not entitled to

claim any partition. Except the relationship, all the averments made in the plaint are untenable and the plaintiffs are not entitled to have any share in the suit properties. The plaintiffs also have lost their rights by ouster, as the defendants 2 and 3 acquired their title by adverse possession on the death of the late Duraiswamy Mudaliyar. Therefore, the plaintiffs are not entitled for any mesne profits and prayed for dismissal of the suit.

4.1. The eleventh defendant filed separate written statement, which was also adopted by the tenth defendant stating that the shares claimed by the plaintiffs is admitted and they have no objection to partition the suit property.

5. In support of the plaintiffs' case, P.W.1 was examined and marked Exs.A1 to A6. On the side of the defendants D.W.1 and D.W.2 were examined and marked Exs.B1 to B10. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court partly decreed the suit and allotted 25/80 shares insofar as the Item Nos. 2, 6 and 7 of the suit properties and also granted interim injunction insofar as the Item Nos.2, 6 and 7 of the suit property in favour of the plaintiffs. Insofar as the third defendant is concerned he has allotted 25/80 shares, the defendants 10 and 11 jointly entitled to have 25/80 shares and defendants 4 to 8 jointly entitled to have 5/80 shares in the Item Nos.2, 6 and 7 of the suit properties. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.17 of 2005 before the Principal District Judge, Vellore. In the Appeal suit the second defendant also filed Cross Appeal against the plaintiffs. The first Appellate Court on appreciating the materials placed on records, dismissed the appeal filed by the plaintiffs and confirmed the Judgment and Decree passed by the Trial Court. Challenging the same, the plaintiffs have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial question of law was framed :-

Have not the Courts below committed grave error in relying on the Will executed by the deceased first defendant long after the suit, for determining the joint family character of the suit properties?

7. While pending the second appeal, the plaintiffs filed a petition in C.M.P.No.5229 of 2017 to receive additional documents and a petition in C.M.P.No.5228 of 2017 for a direction directing the respondents 1 to 9 to hand over the share in Item Nos.1, 2, 6 and 7 of the suit properties in lieu of the properties sold.

8.The learned counsel for the plaintiffs submitted that the Trial Court granted an order of injunction restraining the respondents from alienating the properties mentioned as Item Nos.2, 6 and 7 in the suit property while pending the suit. Even then the defendants converted all the property into house sites and deliberately sold the property to various persons in violation of the injunction order. The suit is of the year 1994 in which the plaintiffs are entitle to have their 25/80 shares in the Item Nos.2, 6 and 7 of the suit properties. It was also confirmed by the first Appellate Court and even till today, the plaintiffs could not able to enjoy their benefit of decree insofar as the Item Nos.2, 6 and 7 of the suit properties. Whereas, the respondents had taken advantage of the litigation thereby keep on selling the properties despite the order of the injunction. All the allegations are pendente lite is hit by lis-pendens under Section 52 of the Transfer of Property Act. There are numerous procedures and several rights and interest are created as a stumbling block in adding them as a parties to the proceedings. The encumbrance Certificate shows entire sale transactions by several plots. He further submitted that the appellants are claiming partition in respect of Item Nos.1 and 9 of the suit property alone which belonged to their father and ancestral property on the basis of documents Exs.B9 and B10. Ex.B9 is the sale deed purchased in the name of M.Munusamy. In the absence of pleadings in the written statement the issue with regard to the Will dated 03.04.1998, which was marked as Ex.B10 and without affording proper and adequate opportunity to the plaintiffs to disprove the Will, the Courts below have wrongly concluded that the validity of the Will and the title of the Item No.9 of the suit property is self acquired property of Kannammal. He further submitted that the death certificate of grand father of the fourth plaintiff revealed that the Chinna Duraiswamy's father name is M.Munusamy, whereas, Ex.B4-sale deed dated 05.03.1934 mentioned the Kannammal's father name as W.Munusamy. Therefore, the Duraiswamy's grand father is predecessor in title and taking the similarity in the name, the said Kannammal claimed the property in Item No.9 as her separate property. It was executed by one Narayanasamy Mudaliyar in favour of M.Munusamy, S/o. Muthusamy. This is totally false claim by suppression of facts and misleading the Court. Therefore, Item No.9 should be considered for partition and the plaintiffs are entitle to have their share in the Item No.9 of the suit property. He further submitted that on the strength of the sale deed dated 04.03.1992, which is filed as additional document, the partition deed in respect of Item No.1 of the suit property since it was not produced before the Trial Court and as such both the Courts below concluded that the Item No.1 of the suit property acquired by Kannammal. Therefore, the Item Nos.1 and 9 of the suit properties are joint family properties and hence, the plaintiffs are entitled to have their respective shares. He also submitted that the additional documents which are intended to mark on behalf of the plaintiffs are subsequently obtained by the fourth

plaintiff that too after made all efforts. These documents have been filed to prove that the Item Nos.1 and 9 of the suit properties are the ancestral property since those documents are necessary to decide the main appeal itself. Therefore, he prayed to receive the additional documents on behalf of the plaintiffs.

8.1 The learned counsel for the plaintiffs, in support of his contention, relied upon the following judgments:

(i) Ramsewak Kaji and others vs. Ramgir Choudhary and others reported in AIR 1958 PATNA 448 (V 45 C 144).

(ii) Babburu Basavayya and others vs. Babburu Guravayya and another reported in AIR 1951 MADRAS 938.

(iii) Lucy Kochuvareed vs. P.Mariappa Gounder and others reported in AIR 1979 SUPREME COURT 1214.

(iv) Gnanaprakasa Mudaliar and others vs. B.Anandathanadavan and others reported in AIR 1999 MADRAS 312 (FB).

(v) M. Muthuroyappa vs. Muniappa and others reported in AIR 2000 MADRAS 334.

(vi) Kanwarjit Singh Dhillon vs. Hardyal Singh Dhillon and others reported in 2008 (1) CTC 80.

(vii) Elizabeth Antony vs. Michel Charles John Chown Lenger reported in (1990) 3 SCC 333.

(viii) Malyalam Plantations Ltd. vs. State of Kerala and another reported in AIR 2011 SC 559.

(ix) Arjun Singh vs. Kartar Singh and others reported in AIR 1951 SC 193.

9. Per contra, the learned counsel for the first defendant submitted that insofar as the Item No.6 of the suit property is concerned, he is also entitled to have 25/80 share and he had no knowledge about the total extent of the property whether 155 cents or 55 cents in the land comprised in S.No.197. The first defendant did not alienate any of the property as alleged by the plaintiffs. In fact, the land comprised in S.No.197/2 ad-measuring 3.3 acres originally belonged to his father Duraiswamy and his brothers M.Munusamy and Kannayiram. One Narasimhan said to have purchased 50% of the above land and he expired leaving behind his legal heirs

Beeman and Gopal. Thereafter Kannayiram also expired leaving behind his legal heirs. Ex.A6 evidenced that their father Duraiswamy and his uncle's son the said Gopal and Beeman became co-owners for the entire property comprised in S.No.197/2. In the year 1995 they decided to sell their respective share. In fact, they are not the party to the suit. Only on their request, the first defendant joined along with them and executed Power of Attorney in favour of one K.Balu. Only as co-owner of the said property, the first defendant signed in the said document without receiving any consideration. Further he intended to sell his share and as such the allegations made as against the first defendant are not tenable. He further submitted that his maternal grand father name is W.Munusamy. The initial 'W' denotes village name Wallaja. He was used to call as Wallaja Munusamy and not as M.Munusamy. On perusal of Ex.B9 dated 16.04.1915, the maternal grand father purchased the Item No.8 of the suit property in his name. The first defendant's mother Kannammal inherited the above property from her father and bequeathed the same in favour of the first defendant till his life time and thereafter it goes to his male children with absolute right. Whereas the plaintiffs misread the name as M.Munusamy instead of W.Munusamy. In respect of Item No.1 of the suit property is belonged to his mother. She owned the said property much earlier to the year 1994 and sold out during her life time itself. The said sale deed is enclosed by the plaintiffs as additional document. Therefore at the time of filing the suit there was no property owned by her family in S.No.42/8C/2 and as such it was not available for partition. In fact, the first defendant joined in the execution of sale deed in the year 1992, since he is also one of the son of Kannammal. The Exs.B4 and B5 are Adangal and Patta stands in the name of his mother and other third parties and his father name is not found in those documents and as such the Item No.1 of the suit property is not at all the ancestral property. Therefore, the Courts below rightly concluded that the plaintiffs are entitle for their shares only in the Item Nos.2, 6 and 7 of the suit properties and prayed for dismissal of the appeal.

10. Heard Mr.K.V.Ananthakrishnan, learned counsel appearing for the appellants and Mr.K.Thangavelu, learned counsel appearing for the first respondent.

11. This Court considered the rival submissions made by the learned counsel on either side, and the principles of law outlined in the above said positions are taken into consideration and followed as applicable to the case on hand.

12. The suit is filed for partition and mesne profits. Though the plaintiffs filed an appeal for partition in respect of the Item Nos.1, 3, 4, 5, 8 and 9 in the suit property, now the plaintiffs restricted their claim only inssofar as Item Nos.1 and 9 alone. This Court has dealt with

the factual matrix of the case in detail as above, and no need to reiterate the same any further. However, for the purpose of deciding the substantial question of law, certain facts which are absolutely germane and necessary, the above will be reiterated and discussed here under. According to the plaintiffs, the suit properties are belonged to one Duraiswamy Mudaliyar and the suit properties are ancestral properties. He died intestate leaving behind his three sons, widow wife and daughter. The first plaintiff is his daughter-in-law and her husband died leaving behind the plaintiffs as his legal heirs, who is one of the sons of deceased Duraiswamy Mudaliyar. The specific case of the plaintiffs is that the suit properties are ancestral property and as such they have to prove that all the properties are belonged to Duraiswamy Mudaliyar insofar as the Item No.1 of the suit property is concerned. The extract of the 'A' register was marked as Ex.A4 in which the first item of the suit property has been mentioned. The name of her father-in-law Duraiswamy Mudaliyar did not find place and as such the plaintiffs failed to prove that the first item of the suit property is ancestral property and belonged to Duraiswamy Mudaliyar. Now the plaintiffs filed a petition in C.M.P.No.5229 of 2017 to receive the additional documents such as:

Sl.No	Date	Description
1.	29.08.2016	Death Certificate of Chinna Duraiswamy dated 12.05.1972
2.	09.03.1998	Sale Deed Doc.No.844/95 for S.No.197/2, 198/1.
3.	13.02.1995	Power of attorney given (under Doc.No.12/95) by Mohan, Nandagopal, Beeman and M.Gopal for S.No.197/2 and 198/1.
4.	05.03.1992	Sale Deed Doc.No.779/92 for S.No.48/8C/2
5.	13.02.2014	EC with lay out plan for S.No.197/2, 198/1.
6.	25.02.2014	EC with lay out plan for S.No.48/8C/2.
7.	21.10.2014	Adangal for S.No.42/4A/2 extent 2 acres 33 cents.

in which the sale deed dated 04.03.1992 registered as Document No.779 of 1992 in respect of part of the first item of the suit property. On perusal of the said sale deed the recital shows that the property belonged to the executants, namely, the wife of Duraiswamy Mudaliyar and his sons and daughter. In the schedule of property column they said that the property was enjoyed by them. Except this recital there is no recital

to prove that the property belonged to the said Duraiswamy Mudaliyar and the said property is an ancestral property. There is absolutely no recital to show their title in the sale deed. In pursuant to the same the encumbrance certificate also filed dated 25.02.2014 in respect of the first item of the suit property in which so many sale deeds executed by the wife of Duraiswamy, namely, Kannammal and his sons along with daughter. It is also seen that along with Kannammal other sons and daughter also executed sale deed only by way of abounded caution, since no recital is mentioned in the sale deed so as to prove that the said property is ancestral one and originally belonged to Duraiswamy Mudaliyar. Therefore, those documents are not helpful and are not necessary for the disposal of this appeal.

13. Insofar as the Item No.9 of the suit property is concerned, Exs.B9 and B10 stands in the name of one M.Munusamy. According to the plaintiffs Duraiswamy's father name is M.Munusamy. Whereas, the father's name of Kannammal is W.Munusamy. Taking advantage of the similarity in the name, Kannammal, namely, wife of Duraiswamy claimed the property, namely, Item No.9 of the suit property as her separate property. Further, contended that Ex.B9 sale deed dated 16.04.1915 executed by one Narayanasamy Mudaliyar in favour of M.Munusamy, S/o. Muthusamy and as such they are taking advantage of the same and claimed that the said property is acquired by the said Kannammal. The learned counsel for the first defendant rightly pointed out that on perusal of Ex.B9, the sale deed dated 16.04.1915, the said property purchased by W.Munusamy from one Narayanan Naidu. It is very unfortunate to said that learned counsel for the appellant filed additional typed set of papers in which they re-typed the sale deed and stated as M.Munusamy instead of W.Munusamy. Therefore, the contention of the appellant is untenable. In fact, it is also seen from Ex.B4, the sale deed executed in favour of Kannammal categorically stated that the daughter of W.Munusamy. Whereas, in the typed copy filed by the plaintiffs they stated that M.Munusamy instead of W.Munusamy likewise the Ex.B5, the sale deed executed in favour of Kannammal in which also they categorically mentioned as Wa.Munusamy in tamil i.e., W.Munusamy. Therefore, the contention of the learned counsel for the plaintiffs cannot be considered and are untenable. Therefore, both the Courts below rightly held that the plaintiffs are not entitled to have any share except Item Nos.2, 6 and 7 in the suit property. The plaintiffs filed a petition to receive the additional documents in which all the documents are not necessary to dispose of this appeal and as such the C.M.P.No.5229 of 2017 is dismissed. In respect of other petition in C.M.P.No.5228 of 2017 is concerned, the plaintiffs are directed to workout their remedy in the final decree application insofar as the Item Nos.2, 6 and 7 of the suit properties and at this stage it cannot be considered. Accordingly, C.M.P.No.5228 of 2017 is also dismissed.

14. In view of the above, this Court does not find any valid reason to interfere with the reasoning and findings rendered by the Courts below as such the Courts below have analysed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiffs. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiffs.

15. Accordingly, this Second Appeal stands dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Vellore.

2. The Subordinate Judge,
Ranipet,
Vellore District.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.K.Thangavel , Advocate SR.No. 23036

+1cc to Mr.K.V.Anantha krishanan , Advocate SR.No. 23905

S.A.No.788 of 2006

and C.M.P.Nos.5228 & 5229 of 2017

A.SK(30/09/2020)