

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2020

Date of Verdict : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.890 of 2006
and M.P.No.1 of 2006

C.Arul Varadarajan ... Defendant/Appellant/Appellant

Vs.

1.S.Panchali Ammal (Deceased)
2.Veerammal
3.Panchamirtham
4.Jayalakshmi
5.Maheswari
6.Selvi
7.Indira
8.Venkatesan
9.Kamatchi

... Plaintiffs/Respondents/Respondents

(Respondents 2 to 9 are brought on record as legal heirs of the deceased sole respondent vide order of the Court dated 24.11.2014 made in M.P.No.1 of 2014 in S.A.No.890 of 2006)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.04.2006 passed in A.S.No.29 of 2005 on the file of the Principal Subordinate Judge, Tindivanam, confirming the Judgment and the Decree dated 09.03.2005 passed in O.S.No.64 of 2004 on the file of the Principal District Munsif's Court, Tindivanam.

For Appellant : Mr.C.B.Muralikrishnan

For R1 : Died

For R2 to R5 &
R7 to R9 : Mr.K.Chandrasekaran

For R6 : Notice served

J U D G M E N T

This appeal has been filed as against the Judgment and the Decree dated 26.04.2006 passed in A.S.No.29 of 2005 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and the Decree dated 09.03.2005, passed in O.S.No.26 of 2004 on the file of the Principal District Munsif's Court, Tindivanam.

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

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

3.1.The suit is filed for partition. The plaintiff is the sister of the defendant. The suit property belonged to their mother and after the demise of their mother, the item Nos.1 to 7 of the suit properties are in possession and enjoyment of the plaintiff and the defendant and their father Chinnamunusamy. The income derived from the suit properties i.e. from item Nos.1 to 7, the father was being the Kartha of the family had purchased other suit properties from item Nos.8 to 25. While being so, their father Chinnamunusamy was died before 2 ½ years. Thereafter, the suit properties absolutely belonged to the plaintiff as well as the defendant. The item Nos.9, 10, 11, 12, 15, 16 and 17 of the suit properties are in possession and enjoyment of the plaintiff and the remaining properties are in possession and enjoyment of the defendant. Though the plaintiff is in possession and enjoyment of the above items of the suit properties, the defendant did not agree for the partition. Even after the panchayat conducted on 15.07.1990, the defendant did not come forward for the partition. Hence the suit.

4.The defendants resisted the plaintiff's case by filing the written statement. Except the relationship between the plaintiff and the defendant, the other averments are denied as false and frivolous. Their mother died long before in the year 1944. Even before the death of their mother the plaintiff was married to one Subbarayan in the year 1942. Therefore, the plaintiff was never in the joint family. After her marriage, there was no joint family at all. In fact the suit properties are the properties of the joint family consisted of the defendant and his brother and father Chinnamunusamy. The suit item Nos.8 to 25 were purchased out of the joint exersion of the defendant, his brother along with the father out of the joint family income. Since their father is the elder of the family, the properties were purchased in the name of their father. The defendant along with his father and brother divided the joint family properties by way of family arrangement through koorchit dated 01.01.1959. Ever since from the date of the said family partition, the

properties that were allotted to the share of the defendant and he has become the absolute owner of the properties and he has been in exclusive possession and enjoyment of the properties and he has been paying tax to the suit properties. Their father died on 27.02.1988 and the brother of the defendant died on 14.02.1970. The brother of the defendant also died as bachelor and he has no issues. Therefore, there is no occasion for the plaintiff to have possession and enjoyment of the properties which were alleged in the plaint. Therefore, the entire properties were separated and the defendant has absolute right over the properties and the plaintiff is not at all having any right to claim the suit properties. In fact, the defendant has also got perspective right by way of adverse possession.

4.1. Even according to the plaintiff, the suit properties are the joint family properties and the plaintiff failed to claim right over the suit properties during the life time of her father. Immediately after the death of their father the present suit has been instituted. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. On the side of the plaintiff PW1 and PW2 were examined and sixteen documents were marked as Ex.A1 to Ex.A16. On the side of the defendant DW1 to DW6 were examined and Ex.B1 to Ex.B35 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the Judgment and Decree of the trial Court, the defendant preferred an appeal suit in A.S.No.29 of 2005 before the Principal Subordinate Court, Tindivanam. The first appellate Court on appreciating the materials placed on records dismissed the appeal, by confirming the Judgment and the Decree passed by the Principal District Munsif's Court, Tindivanam. Challenging the same, the defendant has come forward with the present second appeal.

6. At the time of admission of the second appeal on 18.08.2006, the following substantial questions of law were framed :-

(i) Whether in law the Courts below are right in disbelieving Exs.B31 and B32 wills which were proved as per the mandatory requirements of the Evidence Act and the Indian Succession Act?

(ii) Whether in law the Courts below are right in granting a decree for the plaintiff half share when at the most she might be entitled to only a share in her father's

share.

(iii) Whether in law the Courts below are right in not framing proper issues and points for determination and not adjudicating on the issue involved?

7.The learned counsel appearing for the appellant/defendant submitted that the plaintiff failed to prove that the suit properties are joint family properties and all the properties entitled to have partition. When the plaintiff failed to prove the properties are joint family properties, the plaintiff is not entitled for the share over the suit properties. He further submitted that the plaintiff was never in joint family possession with the defendant in the suit properties and the plaintiff ought to have valued the suit under Section 37(1) and not under Section 37(2) of the Court Fee Act. Both the Courts below failed to see the Ex.B31 and Ex.B32 wills executed in favour of the defendant in respect of the suit properties. Therefore, the plaintiff absolutely has no right over the suit properties and to have half share in the suit properties.

8.In support of his contention, the learned counsel appearing for the appellant/defendant relied upon the following judgments :-

1.Vathsala Manickavasagam and others Vs. N.Ganesan and another reported in (2013) 9 Supreme Court Cases 152;

2.Sridhandappa @ Rajappa Vs. Muniamma reported in 2014(3) MLJ 684 : 2014(3) CTC 247 : 2014(140) AIC 435 : 2014(30) R.C.R.(Civil) 824;

3.Union of India Vs. Moksh Builders and Financiers Ltd., and others reported in (1977) 1 Supreme Court Cases 60; and

4.Pentakota Satyanarayana and others Vs. Pentakota Seetharatnam and others reported in (2005) 8 Supreme Court Cases 67.

9.Per contra, the learned counsel appearing for the respondent/ plaintiff submitted that the suit properties i.e. Item Nos.1 to 7 are belonged to their mother viz., Alliammal. Thereafter, out of the income derived from the suit properties i.e. Item Nos.1 to 7, their father Chinnamunusamy had purchased the other Items Nos.8 to 25 of the suit properties. Admittedly, the suit properties item Nos.1 to 7 were belonged to their mother and construed as joint family properties. Therefore, the plaintiff is very much entitled to have half share in the suit properties i.e. Item Nos.8 to 25. Though the defendant stated that the suit properties were already partitioned between the family members by way of koorchit dated 01.01.1959 and the properties were derived by the wills executed by their father, the defendant failed to prove the same. Therefore, the plaintiff is entitled to have half share

and prayed for dismissal of the suit for partition.

10.Heard Mr.C.B.Muralikrishnan, learned counsel appearing for the appellant and Mr.K.Chandrasekaran, learned counsel appearing for the respondent Nos.2 to 5 and 7 to 9.

11.This Court considered the rival submission made by the learned counsel on either side. Admittedly, the plaintiff and the defendant are sister and brother. Originally, the suit properties i.e. Item Nos.1 to 7 were owned by their mother viz., Alliammal. Thereafter, she died in the year 1944. The Settlement Deed executed in favour of their mother were marked as Ex.A1 and A2, in respect of the suit properties i.e. Item Nos.1 to 7. Admittedly, the other item Nos.8 to 25 of the suit properties were purchased by their father viz., Chinnamunusamy out of the income derived from the Item Nos.1 to 7 of the suit properties and it has categorically seen from the Ex.B15 to Ex.B25 such as Sale Deed, Exchange Deed and Extract of Chitta Register etc. Therefore, the item Nos.1 to 7 of the suit properties were derived by their mother as individual properties. The other item Nos.8 to 25 of the suit properties were purchased out of the income derived from Item Nos.1 to 7. Though the defendant's claimed the title over the suit properties by way of the family arrangement through koorchit dated 01.01.1959 and the same was marked as Ex.B30, on perusal of the koorchit the date was found as 01.01.1969 instead of 01.01.1959. Further the witness to the said document also did not support in favour of the defendant. The defendant also marked a will dated 20.01.1970, which was marked as Ex.B31 executed by their father in favour of the defendant and it is an unregistered one. He also marked another will dated 09.03.1972 which was marked as Ex.B32 executed by their father in favour of the defendant.

12.It is curious to note that in the written statement filed by the defendant there is no whisper about those wills and those documents cannot be looked into. Therefore, the plaintiff is entitled to have half share in the suit properties. Since, the Item Nos.1 to 7 of the suit properties were belonged to their mother, the other Item Nos.8 to 25 of the suit properties were purchased by their father out of the income derived from the Item Nos.1 to 7 of the suit properties. Therefore, both the Courts below have rightly held that the plaintiff is entitled to have her half share and decreed the suit in favour of the plaintiff. The principles of law outlined in the above said discussions are taken into consideration and the same is applicable to the case on hand.

13.In view of the above discussion, this Court does not find any valid reason to interfere with the findings rendered by the Courts below for upholding the case of the plaintiff and as such the Courts below have analyzed 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 plaintiff. 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 plaintiff and as against the defendants.

14. In fine, this Second Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No order as to cost.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Tindivanam

2. The Principal District Munsif,
Tindivanam.

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

+1cc to Mr.K.Chandrasekaran, Advocate SR.No.13421

+1cc to Mr.C.B.Muralikrishnan, Advocate SR.No.13462

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and M.P.No.1 of 2006

AD(CO)
GMY(11/05/2021)