



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.11.2020	Pronounced on: 20 .11.2020
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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.861 of 2009

1.Narasimhan
S/o Narayanan

2.Damodharan
S/o Narayanan

3.Anandhapadmanabhan
S/o Narayanan
Rep.by their power agent
Mr.Narayanan,
S/o Rasaiya

..Appellants/plaintiffs

/versus/

1.Sadagopan
S/o Palanivel

2.Gajapathy
S/o Palanivel

3.Thilagavathy
W/o Sethuraman

4.Shanmugavel
S/o Natesan

5.Palaniraja
S/o Shanmugavel

6.Nidhya
D/o Shanmugavel

.. Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 4.10.2007 made in A.S.No.230 of 2006 on the file of the Sub-Judge, Mannargudi reversing the judgment and decree dated 12.09.2006 made in O.S.no.25/2004 on the file of the District Munsif, Thiruthuraipoondi.

For Appellants : Mr.T.Sathyamoorthy for
M/s G.M.Mani Associates

For Respondents: Mr.Jyotsna Sivakumar for
M/s Srinath Sridevan for R1 to R6

JUDGMENT

(The case has been heard through video conference)

The suit filed for declaration and consequential injunction in respect of the suit property was allowed by the trial Court but was partly reversed by the first appellate Court declining the relief of declaration. Hence, the second appeal, by the aggrieved plaintiffs.

2.The relevant facts necessary for deciding this appeal in nutshell:

Case of the plaintiffs:

The plaintiffs are grand sons of Rasaiya Pillai-Sundarakannu ammal couple. Narayana Pillai is one of his five sons. Rasaiya Pillai died in the year 1953. Leaving behind his wife, 5 sons and a daughter. After his demise, the sons of Rasaiya pillai effected partition of the family properties of Rasjaiya Pillai through the family arrangement reduced into writing on 23/11/1959. They continued to be as a joint family and through joint exertion of family members, they purchased properties in the name of the family members. In the year 1977, Sundarakannu Ammal died. Before her death, in the year 1975 during the later part of the July month in the presence of elders arrangement between the family members arrived. 2.13 acres land in R.S.No. 58/4 at Rayanallur Village purchased in the name of the mother Sundarakannu Ammal in the year 1970 was allotted to the third defendant Jayalakshmi. Out of total extent of 3.19 acres land in 6 different survey numbers at Chettimoolai village purchased in the name of Jayalaksmi from one Velautham Pillai on 21/04/ 1973, 1.68 acres form part of the first three items and 56 cents out of 1.72 acres in the 6th item shown in the sale deed was allotted to the branch of Narayana Pillai. The said property was divided among the sons of Narayana Pillai and those properties are the subject matter of the suit shown as 'A', 'B' and 'C' schedule of the plaint. The plaintiffs, as per the family arrangement of the year 1975, are in possession and enjoyment of the property, after effecting mutation of revenue records. Patta for the suit properties stands in the name respective plaintiffs. Chitta and adangal stands in their respective names and they are paying kist and enjoying it absolutely raising loan creating encumbrance to the property.

3. When the Government acquired 2.17 acres of land, out of 12.19 acres purchased in the name of their mother Sundarakannu ammal, which was given to the shares of her 5 sons, as per the family arrangement, the 3rd defendant sought a share in the compensation amount. The plaintiffs refused to accede her request, since under the family arrangement, she had no right in it. Disgruntled by the refusal, the 3rd defendant through her sons, who are the first and second defendants, out of animosity started troubling the plaintiffs enjoyment of the suit property. In this connection, police complaint was given against the defendants by Narayana Pillai. To protect their title and possession, the suit laid.

4. The case of the defendants:

The claim of the plaintiffs that the properties of Sundarakannu ammal was divided among her children by way of family arrangement during the month of July 1975 denied. 3rd defendant have 1/6th right in the properties left by Sundarakannu ammal. The alleged Will of Sundarakannu ammal 01/01/1965 is denied. As far as the suit properties, the 3rd defendant from out of her sridana and from the savings of her husband, who was working as a Teacher, purchased 3.19 acres of land at Chettimoolai Village from Velautham Pillai under sale deed dated 21/04/1973. It is the absolute property of 3rd defendant and not purchased from the joint exertion of the family members as alleged by the plaintiffs. The family arrangement of the year 1975 is denied. After the demise of the 3rd defendant's husband in the year 1979, since her sons the first and second defendants were very young, the property was given to Narayana Pillai for administration. The third defendant is not aware, how the patta for her property was issued in the name of the plaintiffs. Since the third defendant sought for her lawful share from the compensation amount given by the Government for acquiring the property stood in the name of her mother, with motive the suit is filed claiming title and right over her self-acquired property as if it is the joint family property.

5. The trial Court framed the following issues:-

1. Whether the plaintiffs 1 to 3 are entitled for the relief of declaration as prayed ?
2. Whether the plaintiffs are entitled for consequential injunction against the defendants ?
3. What other relief the plaintiffs are entitled for ?

6. Pending suit, the 3rd defendant Jayalakshmi died and her remaining legal heirs were brought on record as Defendants 4 to 7. Narayana Pillai, the father of the plaintiffs and his brother Ramanujam were examined as PW-1 and PW-2. Through them, 57 documents were exhibited as Ex.A-1 to Ex.A-57. Sadagopan the first defendant, who is the son of 3rd defendant Jayalakshmi,

was examined as DW-1. 21 documents were marked through him as Ex.B-1 to Ex.B-21.

7.The trial Court, on considering Ex.A-1 dated 21.04.1973, the partition deed Ex.A-32 dated 23/11/1959 between the 5 sons of Rasaiya Pillai and subsequent purchase of properties in the name of family members through Ex.A-35 dated 17/01/1967 in the name of Narayanansami Pillai (father of the plaintiffs), Ex.A-34 dated 01/06/1970 in the name of Sundarakannu ammal, Ex.A-51 dated 14/07/1972 and Ex.A-49 dated 30/07/1972 both in the name of Paranjothi, S/o Venkidusamy the eldest son of Rasaiya and the alienation by the 3rd defendant, 2.13 acres land in Rayanallur village under Ex.A-30 sale deed dated 26/02/1992 and 0.33 acres of land in Chettimoolai Village under sale deed Ex.B-31 dated 26/02//1992 purchased in the name of Sundarakannu ammal, accepted the case of the plaintiffs that, subsequent to the earlier partition Ex.A-32 dated 23/11/1959 the family members have purchased properties in the name of the family members, from out of common exertion and later divided among themselves in the year 1975. In the said family arrangement a portion of the property purchased in the name of 3rd defendant was allotted to the sons of Narayanan. Portion of the property purchased in the name of the mother Sundarakannu ammal was allotted to the 3rd defendant. The parties to the family arrangement had acted upon the arrangement. The plaintiffs have mutated the revenue records, obtained patta (Ex.A-3, Ex.A-7 and Ex.A-11) in their respective names in the year 1983 and enjoying it. The 3rd defendant had sold part of her share allotted under the family arrangement to one Ramachandran under Ex.A-30 and Ex.A-31 both dated 26/02/1992.

8.The oral evidence of PW-2 who is the brother of Narayanan (father of the plaintiffs) and Jayalakshmi (3rd defendant), had spoken about the family arrangement of the year 1975 and enjoyment of the their respective shares by the respective family members was relied by the trial Court to hold in favour of the plaintiffs in respect of title and possession.

9.Aggrrieved, the defendants went on appeal before the Subordinate Court, Mannarkudi in A.S.No.230/2006.

10.The first appellate Court reversed the trial Court finding on title of the plaintiffs derived through family arrangement alleged to have effected during the month of July 1975. The first appellate Court had entertained doubt about the necessity for an oral second family arrangement between the sons of Rasaiya Pillai in the year 1975, when there was a written family arrangement (Ex.B-32) between them in the year 1959.

11.After scrutinising the recital of the sale deed Ex.A-2 dated 21/04/1973 in the name of the 3rd defendant, the first appellate Court held that the sale consideration has been paid by Jayalakshmi and not by her brothers. PW-2 admits in the cross

examination that she was not a name lender. Even assuming that the sale consideration was given by her brothers, it was purchased in the name of 3rd defendant for her interest and welfare, therefore the property under Ex.A-2 is her absolute property and not the joint family. The first appellate Court also accepted the plea of the defendants that the 3rd defendant had given to her brother Narayana Pillai for administration, after the demise of her husband. Therefore, confirming the finding of the trial Court that the possession of the suit property is with the plaintiffs, granted the relief of injunction, but dismissed the relief for declaration.

12.The second appeal is filed by the plaintiffs against the disallowed portion of the declaration relief.

13.Appellants submission:

The learned counsel for the appellants submitted that, there is no restriction under law for a hindu joint family to arrive at an arrangement more than once to avoid any possible dispute. The factum of properties purchased, after the first family arrangement of the year 1959 blended with the hotchpot of the family property and this necessitated the members of the family to go for division in the year 1975, well proved through evidence. The plaintiffs through documents had established that the suit properties and other properties were acquired subsequent to the first family arrangement Ex.A-32 dated 23/11/1959. After the second family arrangement of the year 1975, the parties have taken possession of their respective shares and acted upon the family arrangement.

14.The contention of the defendants that the suit property was given to the plaintiffs' father only for administration purpose, since the 3rd defendant husband died and it was difficult to administer the property through her sons, who were young at the time, is disproved by establishing that the husband of the 3rd defendant died in the year 1979 and soon after his demise, the 3rd defendant had purchased a property in the name of her minor son (2nd defendant) under Ex.B-7 dated 03/06/1980 from out of the Retirement-cum-Death Benefits of her husband. This property is held and administered by the defendants themselves.

15.The trial Court, after due consideration of evidence and the conduct of the parties, had allowed the suit in entirety whereas, the first appellate Court erred in not appreciating the evidence as a whole. the 3rd defendant brought the property into hotchpot and as per the allotment made under the family arrangement enjoying a part of the property stood in her name and other properties not in her name and also alienated a portion of the property allotted to her under the family arrangement. Having acted upon the family arrangement, she is stopped by conduct to question the family arrangement.

16.In support of his arguments, the learned counsel for the

appellants rely upon the following judgments as binding precedent to decide the point in dispute.

- 1.Kale -vs- Deputy Director of Consolidation and others: 1976 (3) SCC 119.
- 2.Digambar Adhar Patil -vs- Devram Girdhar Patil (died) and another : 1995 Supp (2) SCC 428.
- 3.Athmaram -vs- Baliram : 2009 SCC online Bom 2035.

17.Respondents submission:

The learned counsel for the respondents in counter to the appellants submission states that, the plaintiffs have failed to substantiate their plea that the property under the sale deed dated 21/04/1973 marked as Ex.A-1 was purchased from the joint exertion of 5 brothers in the name of their sister the 3rd defendant. They failed to establish that there was any joint family property, after the family arrangement held on 23/11/1959 under Ex.A-32 and the 3rd defendant blended her property purchased in the year 1973 with the other property held by the family jointly. The patta Ex.A-7, Ex.A-10 and Ex.A-11 are not title documents. No adverse inference could be drawn from not raising objection for the mutation of revenue records, when such mutation effected behind the back of the true owner. The 3rd defendant sold the properties under Ex.A-30 and Ex.A-31, which got through inheritance and not from the alleged family arrangement.

18.On hearing the rival submissions and after perusing the evidence, this Court finds that the cardinal knot in this case is, whether the suit property was blend into the hotchpot of the joint family property, if any. Joint family property is purely a creation of Hindu Law, and those, who own it, are called co-parceners. The term joint family property is synonymous with 'co-parcenary property'. Generally, the existence of joint family is decided by the test of common mess, living under one roof and worship. Yet if it is not joint in food, worship and in estate, or in any one or all of them, it does not necessarily imply that it has ceased to be a joint family. In case, where the property jointly held by the members of a family, in order to prove separation, it is not sufficient to show that there is separation in mess only, there must be proof of separation in estate as well (20 IC 28). Joint family property mean, the property of joint family, and not the joint property of the family. There is no presumption that the properties held by a member of joint family are joint family properties. A Hindu, even if he be joint, may possess separate property. Such property belongs exclusive to him. No other member of the family acquire right in it. The rule is that the one who alleges that a particular item of property held by a member of the joint family is joint family property has to prove that it is so.

19.In the instant case, it is the admitted case of the

plaintiffs that, the properties held by the Kartha Rasaiya Pillai was divided among his 5 sons in the year 1959 through the family arrangement Ex.A-32. In the said family arrangement, Narayanan Pillai the father of the plaintiffs and one of the 5 sons of Rasaiya Pillai had been allotted the 'C' schedule property shown in the deed. On 14/05/1970, Narayanan Pillai, his wife Mahalakshmi ammal and his three sons (plaintiffs) have entered into partition deed (Ex.A-48) in respect of the properties allotted to Narayanan under the family arrangement and the property purchased by Narayanan under Ex.A-35 dated 17/01/1967. The original nucleus for the joint family Rasaiya Pillai as kartha broke, when the first partition by family arrangement held under Ex.A-32. Thereafter, Narayanan as kartha in respect of the ancestral property inherited by him as nucleus and the properties purchased by him from the said nucleus formed joint family property had been partitioned among Narayanan and his 3 sons under Ex.A-48 on 14/05/1970. The suit properties were purchased subsequent to the partition among the plaintiffs and their father Narayanan. The third defendant Jayalakshmi had purchased these properties under the sale deed dated 21/04/1973, when she was neither the member of the joint family nor when the so called joint family Rasaiya Pillai as kartha in existence. Jayalakshmi got married in the year 1953 and living with her husband and children, when this property was purchased. After partition of the properties under Ex.A-32 on 23/11/1959, why all the five sons of Rasaiya jointly contribute and buy property in the name of Jayalakshmi in the year 1973 long after the demise of the father and division of property not explained by the plaintiffs. Why should she blend it with the joint family property which apparently not in existence and also not properly pleaded or proved by the plaintiffs.

20.The mutation of patta in the names of plaintiffs and the alienation of certain properties by the 3rd defendant, which stood in the name of the Sundarakannu ammal the mother of the 3rd defendant and paternal grand mother of the plaintiffs is taken as a conduct and circumstance to infer family arrangement. In this regard, it is pertinent to extract the law summarised by the Hon'ble Supreme Court in K.V.Narayanan -vs- K.V. Ranganathan : 1976 SC 1715.

"It is true that property separate or self- acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with intention of abandoning his separate claim therein but the question whether a coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to

waive his separate rights such an intention cannot be inferred merely from the physical mixing of the property with his joint family or from the fact that other members of the family are allowed to use the property jointly with himself or that the income of the separate property is utilised out of generosity or kindness to support persons whom the holder is not bound to support or from the failure to maintain separate accounts for an act of generosity or kindness cannot ordinarily be regarded as an admission of a legal obligation."

21. In the light of the above facts and law governing the principle of joint family and the blending property into the hotchpot, the 3rd defendant the married daughter of Rasiya Pillai Smt. Jayalakshmi can never be construed as member of the joint family of Rasaiya Pillai, after his male heirs effected partition of Rasaiya Pillai property among themselves excluding the female heir under the family arrangement Ex.A-32 dated 23/11/1959. The property purchased under Ex.A-1 in her name on 21/04/1973 does not have the trappings of joint family property, even if the possession was with the plaintiffs and their father.

22. Regarding the citations relied by the learned counsel for the appellants, it is suffice to say, unless the title holder admits or the adversary proves, the suit property form part of joint family property, the need for testing the validity of the alleged family arrangement does not arise. Even if one ventures to test the alleged family arrangement of the year 1975, the proposition laid by the Hon'ble Supreme Court in Kale case cited supra and relied by the learned counsel appearing for the appellants is of no support to their case.

23. The Hon'ble Supreme Court in the said judgment has capsulized the binding effect and essentials of a family settlement as under:-

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the

family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore, does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

24. Relying upon the observation made by the Hon'ble Supreme Court in Digambar Adhar Patil -vs- Devram Girdhar Patil cited supra , the learned counsel appearing for the appellants urge to hold that the entries in the record of rights regarding the fact of partition is a relevant piece of documentary evidence in support of the oral evidence given by the parties. In the said case arising from the land ceiling act, the partition between the brothers canvassed by the owners was upheld by the Hon'ble Apex Court taking note of the revenue records entry as piece of corroboration and not as substantial evidence. In the instant case under consideration, the title holder claim the suit property is her self-acquired property and the alleged family arrangement in respect her property is not valid.

25. Likewise, the judgment the Bombay High Court reported in 2009 SCC Online Bom 2035 (Atmaram v. Baliram) also a dispute between brothers in respect of family arrangement regarding the joint family property. After separation of joint family property in the year 1966 and mutation of revenue records immediately, the suit for possession or in alternate partition instituted by one of the brother in the year 1981. The trial Court decreed the suit. The first appellate Court reversed it holding that in view of long standing entries in the revenue records, the factum of partition proved. On further appeal to the High Court, the Bombay High Court confirmed the first appellate Court view. It held that the acquiescence as to partition is evidenced by the entries in revenue records. Since the plaintiff and defendant were already in possession of their respective shares, there is

no need for further partition.

26.As observed by this Court earlier, in this case partition through family arrangement is pleaded in respect of property held by a person, who is not within the family and not purchased from out of the family property. The mutation of record in favour of the plaintiffs will not confer title. The first appellate Court has rightly held that the documents relied by the plaintiffs only proves their possession and not title. For recovery of possession, the defendants have to work out their remedy as per law, till then the plaintiffs are entitled for Permanent Injunction.

27.The first appellate Court based on proper appreciation of law and facts, had rightly held against the plaintiffs in respect of Declaration relief and granted Permanent Injunction protecting their possession. This Court finds no error in appreciation of facts or law to formulate Substantial Question of Law.

28.As a result, this Second Appeal is dismissed. The judgment and decree of the first appellate Court is confirmed. No order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Ari

To:-

1.The Sub Judge, Mannargudi.

2.The District Munsif,
Thiruthuraipoondi.

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

+1cc to Mr.M/s G.M.Mani Associates, Advocate SR.No.37503

S.A.No.861 of 2009

CNR (CO)
GMY (04/05/2021)