



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 11.01.2021]

[JUDGMENT PRONOUNCED ON : 01.04.2021]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1417 of 1999

Balambal Ammal

...Appellant / Defendant

Vs

1.Samikannu (Died)

...1st respondent / plaintiff

2.Anbalagan

3.Elumalai

4.Kuppu

5.Kamatchi

6.Suresh

7.Manikandan

8.Arumugam

9.Chandran

...Respondents 2 to 9

[Respondents 2 to 9 brought on record as LRs of the deceased sole respondent viz., Samikannu vide order of Court dated 17.07.2019 made in C.M.P.Nos.21958, 21969 & 21964/2018 in S.A.No.1417/1999]

Prayer:- Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.No.172 of 1997, confirming the judgment and decree dated 18.09.1997 passed by the learned First Additional District Munsif, Thiruvannamalai, in O.S.No.846 of 1983.

For Appellant	:	Mr.M.V.Venkateseshan
For R-1	:	Died
For R-2 to R-9	:	Mr.S.Vediappan

JUDGMENT

The defeated defendant namely, Balambal Ammal, has filed the present second appeal challenging the judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.No.172 of 1997, confirming the judgment



and decree dated 18.09.1997 passed by the learned First Additional District Munsif, Thiruvannamalai, in O.S.No.846 of 1983.

2. In this second appeal, notice of motion was ordered on 14.09.1999.

3. When the matter was taken up for hearing, the learned counsel for the appellant stated the substantial question of law arise for consideration as

"A) Whether the Courts below are right in holding that the first respondent/plaintiff is entitled for partition when the subsequent finding was rendered that Ex.A.1 was not valid in law and not binding on the appellant/defendant?"

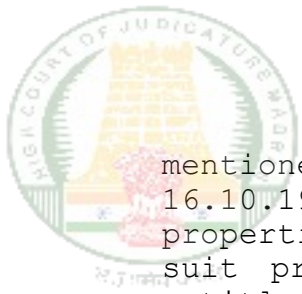
4. Mr.M.V.Venkataseshan, learned counsel for the appellant and Mr.S.Vediappan, learned counsel for respondents 2 to 9 were heard on the point.

5. The first respondent herein/plaintiff Samikannu has filed the suit in O.S.No. 846 of 1983 on the file of the learned First Additional District Munsif, Thiruvannamalai, for the reliefs of partition, separate possession and for mesne profits. The learned First Additional District Munsif, Thiruvannamalai, after considering the relevant points, decreed the suit in respect of 0.60.75 cents in respect of survey number 68/1. As against the said order, the defendant has filed an appeal in A.S.No.172 of 1997 before the learned Additional District Judge, Tiruvannamalai, and the said appeal was dismissed on 11.06.1999 and hence, the above second appeal has been preferred by the defendant in the suit.

6 (a). The first respondent herein/plaintiff seeking the relief of partition to an extent of 0.60.75 cents in survey No.68/1 has come forward with a specific case that the schedule mentioned properties were purchased under Ex.B.2, on 20.11.1975 for Rs.7,000/- by Rajambal Ammal and her son Pachaiyappan.

6 (b). The said Rajambal Ammal died in October 1978 leaving behind her husband Krishna Pillai, two sons namely, Pachaiyappan and Elumalai and two daughters namely, Kuppu Ammal and Kasthuri Ammal. They succeeded the suit property as per the Hindu Succession Act 30/56.

6 (c). The first respondent herein/plaintiff Samikannu has purchased half share in the schedule mentioned property from the heirs of Rajambal Ammal under EX.A.4-registered Sale Deed dated 25.06.1983 for a sum of Rs.6,480/-. The appellant herein/defendant appears to have purchased the schedule



mentioned properties from Pachaiyappan under a Sale Deed dated 16.10.1978 under Ex.B.3. She has purchased the entire properties as if Pachaiyappan alone is the owner of the entire suit properties. In the suit properties, Rajambal Ammal is entitled to half share and Pachaiyappan is entitled to half share. Pachaiyappan has no right to convey the entire suit properties and he is having right to convey only half share. So, the sale in respect of more than half share is not binding, the heirs of Rajambal Ammal and conveyed the sale from the heirs of Rajambal Ammal.

6 (d). The plaintiff has filed the suit for half share in the suit properties and for mense profits.

7. The appellant/defendant has resisted the claim for partition interalia contending that the suit properties were purchased jointly in the name of Pachaiyappan and Rajambal Ammal by selling ancestral properties in Nochimalai village. The said Rajambal Ammal was only a name lender. Therefore, even though the Sale Deed, in respect of the suit property, was jointly purchased in the name of Rajambal Ammal and her son Pachaiyappan, it was purchased only out of joint family funds. So, the Rajambal Ammal has no sembalance of right, title or interest over the same. In fact, the suit property was already mortgaged by Pachaiyappan in his capacity as managing member of the joint family of the defendant under two registered Sale Deeds dated 01.04.1977 and 16.03.1978 and the sale in favour of the appellant/defendant/Balambal Ammal was made by Pachaiyappan for himself and as guardian of his brother Elumalai mainly to discharge the antecedent debts. In the circumstances, Elumalai has no right whatsoever to question the alienation made by Pachaiyappan in favour of the appellant/defendant and he has no right whatsoever to alienate the property to the present plaintiff/first respondent herein.

8. Even during the life time of Rajambal Ammal, she did not question the alienation effected by Pachaiyappan which will clearly prove the fact that the Rajambal Ammal had no right over the suit properties and she never claimed any rights in the suit property and as such, the vendors of the plaintiff cannot claim any right as legal heirs of Rajambal Ammal.

9. In the additional written statement, the appellant herein/defendant has stated about the proceedings relating to O.S.No.1 of 1976 and court auction in E.P.No.492 of 1977 at the instance of Basavanna Chowdhri and another suits in O.S.Nos.503 and 385 of 1983 and as against the order passed in the said suits, appeals in A.S.Nos.17 and 18 of 1997 respectively were filed and the said appeals were dismissed. As against the dismissal order passed in the said appeals, S.A.Nos.960 and 961



of 2000 were filed and the same are disposed of today along with this Second Appeal.

10. Before the trial Court, on the side of the plaintiff, P.W.s 1 and 2 were examined and Exs.A.1 to A.3 were marked and on behalf of the defendant, D.Ws.1 and 2 were examined and documents Exs.B.1 to B.13 were marked. The suit was decreed stating that the plaintiff is entitled to 60.75 cents and a direction was issued to pass a decree in favour of the plaintiff in respect of survey Number 68/1 for 60.75 cents. Against that decree, the defendant had come forward with this second appeal.

11. On a perusal of the schedule of the property, the description of the property is as under:-

The suit property in Savalpoondi Village in Dry Survey Number 68/1, 1.62 cents originally belonged to one T.K.K.Palanisamy Chettiar. He sold the properties to one Venu Pillai under Ex.B1 on 13.04.1970. From Venu Pillai, Rajambal Ammal and Pachaiyappan had purchased the suit properties in Dry S.No.68/1, 1.62 cents and another property situated in S.No.69/3, two acres and 73 cents under Ex.B2 on 20.11.1975.

12. It remains to be stated that the lands in Survey No.68/1 to an extent of 1.62 cents covered under Ex.B.1 is the subject matter of the present second appeal while the another property viz., lands in Survey No.69/3 measuring to an extent of two acres and 73 cents covered under Ex.B.2 is the subject matter in S.A.Nos.960 and 961 of 2000 and this factum is recorded for cross reference only. Since the rights of the vendor of the first respondent herein/plaintiff/Samikannu and the nature and character of the property covered under Exs.B.1 and B.2 are decided, independently in the above second appeal. But, the appellant/defendant is not a party in the connected suit and the connected appeal, as mentioned supra.

13. The relationship between the parties is Rajambal's husband is Krishna Pillai. They had two sons by name Pachaiyappan and Elumalai and two daughters namely, Kuppu Ammal and Kasthuri. Rajambal Ammal died intestate in October, 1978, leaving behind her husband Krishna Pillai and her two sons and two daughters.

14. The first respondent herein/plaintiff traces his title that the first respondent/plaintiff had purchased the suit property under Ex.A1 on 25.06.1983 for Rs.6,480/-. He has purchased 0.81 cents out of 1.62 cents in dry S.No.68/1 and also two cents out of four cents in dry survey number 69/3 and half share in the well.



15. Per contra, learned counsel for the appellant/defendant traces her title stating that the appellant herein had purchased the entire suit properties under Ex.B3 on 16.10.1978 from Pachaiyappan and minor son Elumalai.

WEB COPY

16. As stated supra, the connected proceedings and the documents were marked as exhibits viz., decree in O.S.No.385/83 was marked as Ex.A2, it is in respect of the suit survey number 69/3; Appeal Memorandum in A.S.No.17/97 was marked as Ex.A3; Decreetal order in R.E.A.No.30/79 was marked as Ex.B4; Patta was marked as Ex.B5 and kist receipts were marked as Ex.B6 to B8.

17. Learned counsel for the appellant/defendant raised two contentions viz., (i) the subject matter of the suit property was purchased under Ex.B.1 from and out of the sale proceeds of ancestral property belonging to Pachaiyappan and hence, the suit property is ancestral property in nature and the said Pachaiyappan, vendor of the appellant/defendant as a Kartha of the family has sold the property in favour of the appellant/defendant.

(ii). Since the entire property was sold under Ex.B.3, neither the plaintiff nor his vendors as legal heirs of Rajambal Ammal are entitled to claim any right, since Rajambal Ammal and plaintiff's vendor are estopped from questioning the validity of the sale in favour of the appellant/defendant.

18. This Court has given its anxious consideration to the said contentions raised by the learned counsel for the appellant/defendant.

19. According to the learned counsel for the appellant/defendant, Ex.A.1 is not valid, since the vendor of the first respondent/plaintiff has no title to convey as Pachaiyappan one of the son of Rajambal Ammal has sold the entire properties for and on behalf of the minor brother and hence, the first respondent/plaintiff has no title seeking for partition of the suit property.

20. It is seen from the evidence of P.W.1 and D.W.1 that on the date of the sale in favour of the appellant/defendant, the father of Pachaiyappan viz., Krishna Pillai is very much alive. Thus, during the life time of Krishna Pillai, his elder son Pachaiyappan cannot be treated as the Manager of the joint family. Furthermore, in the absence of any positive evidence, much less any evidence, before the trial Court to show and demonstrate that Krishna Pillai and his two sons Pachaiyappan and Elumalai had joint family ancestral property and in the absence of any ioto of evidence to show that there was a sale of ancestral property and such sale proceeds were utilized for the



purchase of the property under Ex.B.2 and hence, both the Courts below have rightly come to the conclusion that the appellant/defendant has failed to prove that the Pachaiyappan's family had any ancestral property and they have sold the alleged property and purchased the suit property and hence, both the Courts below have rightly come to the conclusion that the property purchased under Ex.B.2 (parent document for the appellant/defendant) is a self acquired property of Rajambal Ammal and Pachaiyappan only and it does not belonged to the family.

21. Furthermore, during the life time of Rajambal Ammal only, Pachaiyappan had executed a Sale Deed in favour of the appellant/defendant and on behalf of his minor brother on 16.10.1978. It remains to be stated that at the time of execution of Ex.B.3, both Krishna Pillai and Rajambal Ammal, father and mother of Pachaiyappan were alive and therefore, in respect of minor's property (Elumalai) elder brother of Pachaiyappan cannot act as a guardian of the minor and hence, in respect of the Sale Deed under Ex.B.3 executed on behalf of the minor is not valid and void abinitio and hence, it need not be set aside.

22. On a perusal of Ex.B.3, it is also seen that Rajambal Ammal is not added as a vendor nor even attestor of the property and there is no recital in Ex.B.3 to indicate that the property was purchased from and out of the ancestral means and hence, both the Courts below appears to have correctly come to the conclusion that both Rajambal Ammal and Pachaiyappan are joint owners of the suit property. It is the self acquired property of them. It is not the ancestral property. The consequential purchaser elder son of Pachaiyappan has no locus standi to sell the entire properties if at all he can convey the property under Ex.B.3 by the appellant/defendant and it can only bind upon his share viz., half share in the suit property and hence, the similar finding arrived at by the Trial Court on a similar line of analysis of evidence does not suffer from any irregularity or illegality warranting interference and hence, after the death of the Rajambal Ammal, all the legal heirs are entitled to equal shares as per the Hindu Succession Act. So the Sale Deed executed in favour of the first respondent/plaintiff under Ex.A.1 is valid to the limited extent of 50%. So also the Sale Deed in favour of the appellant/defendant under Ex.B.3 is only valid for 50%, for the reasons stated supra, and hence, both the trial Court as well as the Lower Appellate Court have rightly held that the sale in favour of the first respondent/plaintiff under Ex.A.1 on the above factual situation is valid and the sale in favour of the appellant/defendant under Ex.B.3 is valid only to an extent of half share as that of Pachaiyappan viz., 60.75 cents and accordingly, decreed the suit for partition to



that extent and hence, the substantial question of law projected by the appellant's counsel that A.1 is not valid in law on factual circumstances as discussed supra is factually incorrect and hence, the said substantial question of law does not arise for consideration, since Ex.A.1 is true and legally valid and binding upon the parties and accordingly, the judgments of the Courts below are hereby confirmed. The Second Appeal is devoid of merits and the same is liable to be dismissed.

23. In the result,

[i] The Second Appeal is dismissed and the judgment and decree dated 11.06.1999, passed by the learned Additional District Judge, Thiruvannamalai, in A.S.No.172 of 1997, confirming the judgment and decree dated 18.09.1997 passed by the learned First Additional District Munsif, Thiruvannamalai, in O.S.No.846 of 1983, is confirmed.

[ii] However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1.The Additional District Judge,
Thiruvannamalai.

2.The First Additional District Munsif,
Thiruvannamalai.

Copy To

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

+1cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.21406

+1cc to M/s.R.Karthikeyan, Advocate, S.R.No.22220

S.A.No.1417 of 1999

AJS(CO)

RVM(22/11/2021)