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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

S.A.NO.390 OF 2021

AND

C.M.P.NO.7447 OF 2021

Dhatchayani Ammal (died)
W/o.Sivakozhunthu

1. Latha
W/o.Late Sankar

Sivabalan (died)
S/o.Late Sankar

2. Suganya
D/o.Late Sankar

3. Priya
D/o.Late Sankar

... Appellants/Defendants

.Vs.

1. Amutha
W/o.Venugopal

Sumathi (died)

2. Renganathan
S/o.Sivagangai

3. Vinoth
S/o.Renganathan

4. Parthiban
S/o.Renganathan

5. Surendar
S/o.Renganathan

... Respondents/1st Plaintiff
and the Legal Heirs of
the 2nd Plaintiff

PRAYER:-

Second Appeal under Section 100 of CPC to set aside the judgement and decree dated 22.07.2020 passed in A.S.No.57 of 2017 on the file of the Court of the Principal District Judge, Cuddalore, reversing the judgment and decree dated 07.11.2016



passed in O.S.No.48 of 2008 on the file of Court of Subordinate Judge, Panruti.

For Appellant : Mr.R.Venkatajalapathy

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J U D G M E N T

Litigation which has led to the captioned second appeal commenced nearly 12 years ago, to be precise on 21.04.2008 when two individuals Amutha and Sumathy sisters and daughters of one Sivakozhunthu filed a suit claiming 1/4th share each in their father's property. This suit was laid by saying that plaintiffs' father Sivakozhunthu died intestate in 1994 leaving behind the two plaintiffs (daughters), wife Dhatchayani Ammal (first defendant) and son Sankar (second defendant) as legal heirs. In other words, it is the specific case of plaintiffs that Sivakozhunthu died intestate in 1994 leaving behind four legal heirs, who are class-I legal heirs, they are entitled to 1/4th share each. Pending suit, second defendant died and his legal heirs were brought on record as defendants 3 to 6. This suit was resisted by defendants on the pivotal ground that the suit properties are not self-acquired properties of Sivakozhunthu, but are ancestral properties.

2. It is the specific case of plaintiffs that the suit properties were purchased by their father Sivakozhunthu from one Venkatrama Iyer in and by a registered sale deed dated 06.03.1969 (Ex.A1). In the trial Court, the first plaintiff Amutha examined herself as P.W.1 and four documents i.e., Ex.A1, legal notice, acknowledgment cards and returned envelope (Ex.A2, Ex.A3 & Ex.A4 respectively) were marked. Interestingly and intriguingly, on the side of defendants no oral evidence was let in and no documents were marked. This suit is O.S.No.48 of 2008 on the file of 'Subordinate Judge's Court, Panruti' [hereinafter 'trial Court' for the sake of convenience and clarity]. The trial Court, dismissed the suit in and by judgment and decree dated 07.11.2016 on the teeth of 06.03.1969 (Ex.A1) sale deed under which Sivakozhunthu purchased suit properties from a third party.

3. Plaintiffs carried the matter in appeal by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for brevity] vide A.S.No.57 of 2017 to the 'Principal District Judge's Court, Cuddalore' [hereinafter 'First Appellate Court' for the sake of convenience and clarity]. The First Appellate Court, went into the question as to whether the suit properties are self-acquired properties of Sivakozhunthu or whether it was purchased by Sivakozhunthu's father. The First Appellate Court returned a finding that there is nothing to demonstrate that the suit properties are ancestral properties and allowed the appeal suit partly by decreeing 2/3rd shares in favour of plaintiffs



(1/3rd share each to two plaintiffs). To be noted, this is because mother Dhatchayani Ammal died pending appeal suit and therefore four legal heirs became three legal heirs.

4. Defendants not having let in any oral and documentary evidence in trial Court attempted to set the clock right by moving an application under Order XLI Rule 27 of CPC. This was taken on file as I.A.No.120 of 2019 in A.S.No.57 of 2017.

5. The prayer in the above said IA was negatived in the judgment and decree along with main appeal suit.

6. A perusal of IA petition reveals that four documents were sought to be marked as additional evidence, one document is already there before the trial Court namely, registered sale deed dated 06.03.1969 (Ex.A1) under which Sivakozhunthu purchased the suit properties from one Venkatrama Iyer and thereafter, there are two documents, both of which were post 06.03.1969 and description itself demonstrates that they are documents executed by Sivakozhunthu and not in favour of Sivakozhunthu, only one of the four documents is prior to 06.03.1969 and that also is a settlement deed in favour of Datchayani Ammal by one Manonmani. Therefore, in the considered opinion of this Court, First Appellate Court was right in invoking the principles governing Order XLI Rule 27 CPC i.e., the three determinants necessary for entertaining a plea under Order XLI Rule 27. To be noted the three determinants are (a) It should be established that inspite of best efforts additional evidence could not be adduced in the Court of first instance (b) A party to be affected by the admission of additional evidence should have the opportunity to rebut such additional evidence and more importantly and (c) Additional evidence should be relevant for the determination of the issue and law in this regard has been laid down in Shivajirao Nilangekar case [Shivajirao Nilangekar Patil Vs. Mahesh Madhav Gosavi reported in AIR 1987 SC 294]. In this case, the four documents that were sought to be marked as additional evidence and adumbration of the same has already been considered supra. Only one document is prior to 06.03.1969 i.e., settlement deed dated 11.08.1956 and that is also in favour of Datchayani Ammal and not in favour of Sivakozhunthu. Therefore, it is obvious that these additional four documents even if brought on record and proved in a manner known to law, cannot in any manner go to establish that the suit properties are ancestral properties of Sivakozhunthu and not self-acquired properties. To be noted, it is the case of plaintiffs that Sivakozhunthu purchased the suit properties under Ex.A1 dated 06.03.1969. Therefore, this Court finds no error on the part of the First Appellate Court in negating the plea under Order XLI Rule 27. This plea having been negatived, give rise to the question as to whether the properties are ancestral properties or self-acquired properties of Sivakozhunthu as there is nothing demonstrable on the part of defendants to show that it is the ancestral



properties. The First Appellate Court has rightly allowed the appeal in respect of properties holding that the suit properties are self-acquired properties and distributed the same in the ratio of 1/3rd share each as by the time of disposal there were only three class I legal heirs, one class I legal heir on the date of succession in 2019 also died pending suit. In the light of the narrative thus far, the two points for determination that arise in the captioned Second Appeal are:

(a) Whether the First Appellate Court erred in returning the factual finding that the suit properties are self acquired properties of Sivakozhunthu?

(b) Whether any substantial question of law arises in the captioned Second Appeal?

7. To be noted, this Court, on a conjoint and combined reading of Kanailal and Kirpa Ram principles, considers it appropriate to set out the aforementioned two points for determination. It is further to be noted that Kanailal principle is to the effect that the principles underlying Order XLI Rule 31 CPC have to be telescoped into a Section 100 CPC legal drill and Kirpa Ram principle is to the effect that Court exercising jurisdiction under Section 100 CPC can dismiss a Second Appeal at the admission stage without formulating any substantial question of law, if no substantial question of law arises.

8. This Court having set out two points for determination that arise in captioned Second Appeal reminds itself about what the expression 'substantial question of law' occurring in Section 100 CPC means. This expression is not defined in CPC but has been elucidatively explained in a long line of authorities commencing from Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju and others reported in AIR 1951 Mad 969 (FB)] to Santosh Hazari's case [Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179]. To be noted, the Rimmalapudi principle has been subsequently approved by a Constitution Bench of Hon'ble Supreme Court in Sir Chunilal V.Mehta Vs. Century Spinning and Manufacturing Co. Ltd. reported in AIR 1962 SC 1314. Thereafter, in Santosh Hazari case being Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179, the view taken in Chunilal Mehta's case, affirming the view taken by Full Bench of this Court, was reiterated. Relevant paragraphs of Chunilal Mehta's case and Santosh Hazari's case are paragraph Nos.6 & 12 respectively, which read as follows:

Paragraph No.6 of Chunilal Mehta's case:

<https://hcservices.ecourts.gov.in/hcservices> 16. We are in general agreement with the



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view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

Paragraph No.12 of Santosh Hazari's case:

'12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the



Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

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"[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

9. This Court, has already discussed the reasoning as to how the First Appellate Court is correct under Order XLI Rule 27 and as to how there is no error on the part of the First Appellate Court in returning the factual finding that suit properties are self-acquired properties of Sivakozhunthu. This answers the first point for determination. With regard to second point for determination the narrative and reasoning



thus far, makes it clear that there is no substantial question of law much less 'substantial question of law' as elucidated by long line of authorities arises, in the captioned Second Appeal.

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10. Therefore captioned Second Appeal is dismissed at the admission stage holding that no substantial question/s of law arise/s. Consequently, CMP is also dismissed. Considering the blood relationship between the parties and the nature of submissions made before this Court, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Subordinate Judge,
Panruti.
2. The Principal District Judge,
District Court,
Cuddalore.

+1cc to Mr.R.Venkatajalapathy, Advocate, S.R.No.25274

S.A.NO.390 OF 2021

SR(CO)
PBS/08/10/2021