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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1246 of 2008

Mani @ Siddhavinayakam,
S/o, Vadivel Gounder,
Pillaiyar Koil Street,
Mathangal Village,
Walaja Circle,
Vellore District.

... Appellant/Appellant/2nd Defendant

Vs.

1. R.Ananthi,
W/o, Rajendran

2. J.Chandra @ Malar,
W/o, Kumar
Both residing at
Pillaiyar Koil Street,
Mathangal Village,
Walaja Circle,
Vellore District.

3. Muthu @ Muniyan
S/o, Vadivel Gounder

4. Salammal,
W/o, Jayaraman,
Both residing at
Pillaiyar Koil Street,
Mathangal Village,
Walaja Circle,
Vellore District.

[3rd and 4th respondents are given up]

... Respondents/Respondents/Plaintiffs/
1 and 3rd Defendants

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.84 of 2005 dated 12.10.2006 on the file of the Subordinate Judge, Ranipet, confirming the judgment and decree passed in O.S.No.80 of 2004



dated 14.12.2004 on the file of the District Munsif, Ranipet.

For Appellant : Mr.R.Shivakumar

For Respondents : No appearance

: R1 & R2 Set exparte

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J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 12.10.2006 passed in A.S.No.84 of 2005 on the file of the Subordinate Court, Ranipet, confirming the judgment and decree dated 14.12.2004 passed in O.S.No.80 of 2004 on the file of the District Munsif Court, Ranipet.

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

3. Suit for partition.

4. When the matter is taken up for hearing, the respondents 1 and 2, despite service of notice, having failed to appear either in person or through counsel and on being called and remaining absent, they had been set exparte.

5. Briefly stated, the case of the plaintiffs is that they are the daughters of Vadivelu Gounder and born through his second wife Chinnaponnu. The defendants land 2 are the sons and the third defendant is the daughter of Vadivelu Gounder born through his first wife. The suit properties belonged to Vadivelu Gounder and he died in the year 1990. After his demise, the plaintiffs and the defendants have the right of inheritance over the suit properties as the legal heirs of the deceased Vadivelu Gounder. Thus, the plaintiffs are entitled to secure 2/5 th share in the suit properties and as the defendants are indulging in the alienation of the suit properties to deprive the share of the plaintiffs, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

6. The second defendant contended that the relationship of the plaintiffs and the Vadivelu Gounder has to be established by the plaintiffs. The plaintiffs' father never married Chinnaponnu and Chinnaponnu was already married to one third party and she is a widow and further the plaintiffs also do not belong to Hindu community and the plaintiffs failed to implead the other Lrs of Vadivelu Gounder and the suit properties are not the self acquired properties of Vadivelu Gounder and as they are the ancestral properties even assuming that the suit properties had been purchased in the name of Vadivelu Gounder, it is only from the income derived from the joint family properties, the suit properties had been acquired and therefore



they partake the character of ancestral properties. The plaintiffs have never enjoyed the suit properties at any point of time. The patta for the suit properties stand in the name of the defendants. Even if the plaintiffs have claimed their right to share/partition, the same is lost by ouster and the plaintiffs have approached the legal aid forum and enquiry was conducted therein and the plaintiffs had agreed to withdraw the claim after receiving the amount from the defendants and suppressing the same, the suit has been laid by the plaintiffs to make unlawful gain. Therefore the suit is liable to be dismissed.

7. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. No document has been marked. On the side of the defendants, no oral and documentary evidence has been adduced.

8. On an appreciation of the available materials placed on record, the Courts below were pleased to accept the plaintiffs' case and held that they are entitled to get 2/5th share in the suit properties and accordingly granted the preliminary decree in favour of the plaintiffs. Impugning the judgment and decree of the Courts below, the second defendant has preferred the second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

a) Whether the Appellate Court and the Lower Court is right in deciding the issue after coming into conclusion that the relationship was not proved?

b) Whether the Appellate Court and the Lower Court is right in deciding the issue based on the conversation at mediations?

10. The plaintiffs have levied the suit for partition on the footing that they are the daughters of Vadivelu Gounder through his second wife Chinnaponu. The defendants are the children of Vadivelu Gounder born through his first wife and on that footing, contending that the suit properties are the self acquired properties of Vadivelu Gounder, the plaintiffs have laid the suit claiming the 2/5th share in the same. The second defendant contended that the suit properties are the ancestral properties and not the self acquired properties of Vadivelu Gounder, and Vadivelu Gounder had not married Chinnaponnu and Chinnaponnu was married to a third party and the plaintiffs have never enjoyed the suit properties jointly at any point of time and the plaintiffs had also agreed to receive the sum of Rs.50,000/- in lieu of claiming any share in the suit properties and suppressing the same, the suit has been laid.



11. The plaintiffs have examined themselves as P.Ws.1 and 2 in the suit. The defendants have not adduced any contra evidence challenging the case projected by the plaintiffs as well as the contentions raised by them in the written statement. Though the defendants would claim that the suit properties had been acquired by Vadivelu Gounder by way of a partition deed dated 11.06.1953, the same has not been substantiated by them either by producing the abovesaid partition deed or by letting in any oral evidence pointing to the execution of the partition deed and also not examined any person associated with the abovesaid partition. The defendants have also failed to establish that the plaintiffs had agreed to receive the sum of Rs.50,000/- in the legal aid forum in lieu of the share and thereby entered into a compromise and even to substantiate the same, not a scrap of paper has been projected by the defendants.

12. In the light of the abovesaid factors, when according to the defendants, the suit properties are the joint family properties and on the other hand, according to the plaintiffs, the suit properties are the self acquired properties of Vadivelu Gounder, when the defendants have failed to establish that the suit properties are ancestral in nature, as rightly concluded by the Courts below, the suit properties are only the self acquired properties of Vadivelu Gounder.

13. Considering the evidence adduced by P.Ws.1 and 2, as rightly concluded by the Courts below, when the evidence of P.Ws.1 and 2 remained unchallenged in any manner and if really the plaintiffs have no relationship with Vadivelu Gounder, it has not been explained by the defendants as to why they had endeavored to pay the sum of Rs.50,000/- to the plaintiffs to withdraw their claim of seeking the share in the suit properties. On the other hand, as could be seen from the evidence of P.W.1, the defendants appeared to have threatened the plaintiffs to obtain their signatures and more so, failed to pay any amount to them and from the abovesaid evidence of P.W.1 and the defence version, inasmuch as, the plaintiffs are also the legal heirs of Vadivelu Gounder, it is found that the defendants had endeavored to effect the compromise with the plaintiffs by offering certain amount to them so as to prevail upon them not to claim any share in the suit properties. If really, as above pointed out, the plaintiffs are not the legal heirs of Vadivelu Gounder, it has not been explained as to why the defendants should endeavor to approach the plaintiffs and offer the amount to them in lieu of their shares. By way of the abovesaid defence version, as concluded by the Courts below, impliedly thereby the defendants have admitted that the plaintiffs are also the legal heirs of Vadivelu Gounder. In addition to that, from the evidence of P.Ws.1 and 2, it is found that they are born to Vadivelu Gounder and Chinnaponnu and when it is further noted that Vadivelu Gounder and Chinnaponnu had



been living together as husband and wife and recognized as husband and wife by the society at large and when the abovesaid case of the plaintiffs tendered through the evidence of P.Ws.1 and 2 having not been challenged by the defendants and also the defendants having failed to establish their version by placing any material whatsoever, the Courts below are found to be justified in upholding the plaintiffs case based on the available materials on record.

14. The reasonings and conclusions of the Courts below, for upholding the plaintiffs case are found to be based on the proper appreciation of the materials placed on record in the right perspective both on the factual matrix as well as on the points of law. I do not find any valid reason warranting interference in the matter. In such view of the matter, the contentions of the defendants' counsel that the Courts below had proceeded to decide the grant of reliefs in favour of the plaintiffs purely based on the conversation at mediation and the plaintiffs had failed to establish their relationship with Vadivelu Gounder as such cannot be countenanced. When as above pointed out, the Courts below have only based on the available materials has held that the plaintiffs are also the legal heirs of the deceased Vadivelu Gounder and they are entitled to secure their lawful shares, particularly, the suit properties being held to be the separate properties of Vadivelu Gounder, in all, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

15. In the light of the abovesaid discussions, the judgment and decree dated 12.10.2006 passed in A.S.No.84 of 2005 on the file of the Subordinate Court, Ranipet, confirming the judgment and decree dated 14.12.2004 passed in O.S.No.80 of 2004 on the file of the District Munsif Court, Ranipet are confirmed. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Ranipet.

2. The District Munsif,
District Munsif Court,
Ranipet.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

S.A.No.1246 of 2008

AK I (CO)
GMV (08/09/2021)