



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.78 of 2008

1.Pushpavalli Ammal (Died)
2.Namachivayam

...Appellants/2nd Defendant

Vs.

1.Manikandan
2.Muthuraja
3.Govindaraju Pillai (Died)
4.Ramaiya (Died)
5.Balakrishnan
6.Ramalingam
7.Namachivayam
8.Jayalakshmi
9.Minor Gopalakrishnan
10.Minor Ramya

...Respondents

(R7 transposed as 2nd appellant vide order of Court dated 08.07.2019 made in C.M.P.No.14268 of 2018 in S.A.No.78 of 2008)

(2nd Appellant is recorded as LR of the deceased R3 viz., Govindaraju Pillai vide order of Court dated 08.07.2019 made in C.M.P.No.14269 of 2018 in S.A.No.78 of 2008)

(2nd Appellant is recorded as LR of the deceased sole appellant viz., Pushpavalli vide order of Court dated 08.07.2019 made in C.M.P.No.14270 of 2018 in S.A.No.78 of 2008)

(RR1 and 2 declared as majors and next friend Meera is discharged from guardianship vide order of Court dated 08.07.2019 made in C.M.P.Nos.14271 and 14272 in S.A.No.78 of 2008)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of Additional District Court (Fast Tract No.2), Cuddalore, dated 30.08.2007 made in A.S.No.71 of 2003 confirming Judgment and Decree of the Subordinate Court, Chidambaram dated 21.03.2002 made in O.S.No.63 of 1992.



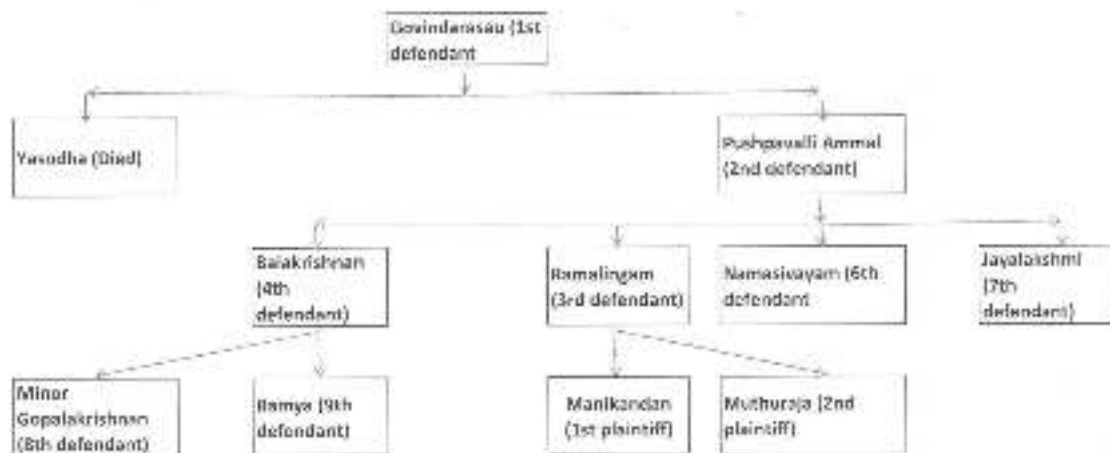
WEB COPY

For Appellants : Mr.S.Sounthar
For Respondents 1 & 2 : Mr.N.Sankaravadivel
For Respondent 3 : Died
For Respondents 5,6 & 10 Exparte
For Respondent 4 : Died
For Respondent 7 : Transposed as 2nd appellant

JUDGMENT

The 2nd defendant is the appellant before this Court. Pending the Second Appeal she had passed away and her son, the 7th respondent was transposed as the 2nd appellant as the deceased appellant had bequeathed her property under registered sale deed dated 20.10.1995. Therefore, under orders dated 08.07.2019 in C.M.P.No.14268 of 2018 the 7th respondent was transposed as the 2nd appellant in the above Second Appeal. The parties are referred to in the same ranking as before the Trial Court. The facts in brief necessary for disposing of the above Second Appeal are as follows.

2. The genealogy of the family of Pushpavalli Ammal is shown herein below:





3. The plaintiffs filed O.S.No.63 of 1992 on the file of the Subordinate Court, Chidambaram for a partition and separate possession of their 2/18th share in suit A and B schedule properties and to declare the partition deed dated 06.11.1989 as invalid and inoperative, to pass preliminary decree for partition and separate possession of 2/18th share in the suit A and B schedule properties and pass final decree by appointing a Commissioner and dividing the suit A & B schedule properties. A - Schedule property consists of 13 items of properties. B-Schedule property consists of the movable properties.

4. It is the case of the plaintiffs that the plaintiffs and the defendants 1, 3 to 9 constituted a Hindu Undivided family. The 1st defendant is the father and defendants 3 to 6 are his sons. The 7th defendant is the unmarried daughter of the 1st defendant. Therefore, each of the defendants were entitled to a share in the joint family properties.

5. The case of the plaintiffs is that the 5th defendant who is the father of the plaintiffs was entitled to a 1/6th share and therefore the plaintiffs as his sons are equally entitled to that 1/6th share i.e., they are each entitled to 1/18th share in the suit properties. The 1st defendant had got many properties, some of which are listed as suit properties in a partition between him and his brother Arumugam Pillai. The 2nd defendant is the wife of the 1st defendant. The 1st defendant had purchased the properties in the name of his wife from out of joint family funds and for the benefit of the joint family. The properties were also purchased in the name of the 6th defendant. However, the purchase is only from out of the joint family funds and therefore all the properties are joint family properties available for partition.

6. The plaintiffs would submit that the defendants are colluding and acting against the interest of the minor plaintiffs. They have colluded together and created a registered partition deed dated 04.11.1989. This deed was only a sham and nominal one as parties had not acted upon the same. That apart, the partition deed is invalid for the following reasons:

(a) All coparceners are not made parties to the deed and all sharers have not been given a share.

(b) There is inequality in the allotment of the shares to the coparceners.

7. The plaintiffs' father was allotted only an extent of 1.46 ½ cents, whereas, defendants 1 and 2 are allotted 8.02 ½ cents with the major share going to the 2nd defendant. The properties are wrongly described in order to give more share to the 6th



defendant. The partition deed restrains alienation which is invalid in law. The partition deed would recite that the movables had been divided. However, movables continued to be undivided.

WEB COPY

8. Some of the properties have been left out in the partition. The Item of property purchased in the name of the 6th defendant from out of the joint family funds has also been left out. Since defendants 4 and 5 have acted to detriment of the plaintiffs and defendants 8 and 9 by executing partition deed the plaintiffs had filed the suit for partition of their 2/18 share. The plaintiffs being minor they are represented by their mother.

9. The 2nd defendant had filed a written statement inter alia contending that the properties standing in her name are her individual properties. It is her case that at the time of her marriage she had been provided with 30 sovereigns of Jewels and silver articles worth Rs.5,000/-. That apart, she was given other house hold articles as well. Her father was supporting her and giving amounts from time to time, which she had saved. The 2nd defendant out of the savings of herself and from the income earned by her by doing agricultural work had purchased properties in her name. She had purchased portions of items 1 to 6, 7, 8 and 10 in her name. These properties are all her separate properties and no other person has right over them. The suit item 13 was purchased by her from out of her funds in the name of the 6th defendant. These properties are also not available for partition.

10. The 2nd defendant had denied the execution of the partition deed dated 06.11.1989 and she would state that she was not appraised of the nature of the document which only later she came to know was a partition. She had blindly followed the instructions of the 1st defendant, her husband and signed the documents without reading it. She would therefore submit that the partition deed dated 06.11.1989 is not a valid and binding document.

11. The 2nd defendant would further state that the family of the plaintiffs did not own 13 acres of lands as contended in the plaint. The family of the 1st defendant was not self sufficient and the properties have not been acquired out of joint family nucleus. The 2nd defendant would further submit that she had already executed a registered will dated 20.10.1995 bequeathing her properties as set out therein. She would therefore pray that the suit be dismissed.

12. The learned Subordinate Judge, Chidambaram had framed eight issues. On the plaintiffs' side only the guardian of the



plaintiffs', namely, their mother had deposed and she had marked 2 documents on their side. On the side of the defendants three witnesses were examined and 30 documents were marked.

13.Ultimately, the learned Trial Court Judge had after detailed analysis decreed the suit as prayed for, against which the 2nd defendant herein had filed A.S.No.71 of 2003 on the file of the Additional District Court (Fast Tract No.2), Cuddalore. The appeal was also dismissed and against this concurrent Judgement and Decree the 2nd defendant / appellant is before this Court.

14.The above Second Appeal has been admitted on the following Substantial Question of Law:

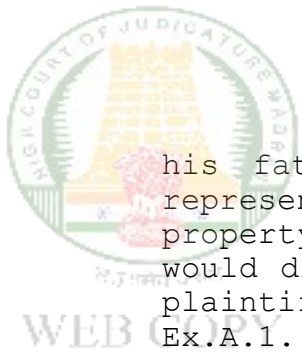
(i)Whether the plaintiffs have discharged their burden of proving that some of the suit properties stood in the name of the 2nd defendant were purchased out of the joint family funds?"

15.Extensive arguments were made by Mr.S.Sounthar, learned counsel appearing on behalf of the appellant / 2nd defendant. Even at the outset Mr. S.Sounthar had submitted that the appeal is restricted to those portions of Item nos. 1 to 6, 7,8 and 10 standing in the name of the 2nd defendant and Item No.13 standing in the name of the 6th defendant. With reference to the other portions, there is no controversy.

16.The contentions of the learned counsel is that the properties have been purchased from out of the income of the 2nd defendant. The 2nd defendant when she had got married was gifted a property measuring 1 acre 33 cents by her father-in-law. The said lands were cultivable lands and was yielding income. From and out of this income the 2nd defendant had purchased the various properties. Once properties stand in the name of the Hindu woman then there is no presumption that the properties standing in her name has been purchased from out of the ancestral nucleus. The person who seeks to establish that the properties purchased in the name of a family member was from out of the income from joint family properties should establish the same by adducing evidence.

17.In respect of this contention the learned counsel would rely on the Judgement of the Division Bench of this Court reported in AIR 1969 MAD 329 - Nagayasami Naidu and others Vs. Kochadai Naidu and others, with specific reference to paragraph No.18. It is his contention that such proof has not been forthcoming from the plaintiffs.

18.As regards Item no.13, it is the contention of the learned counsel that if the property was purchased from out of the joint family funds, the minor would have been represented by



his father and the fact that the minor is shown has being represented by his mother would only go to show that the property has been purchased by the mother. The learned counsel would draw attention of this Court to the fact that even the 2nd plaintiff was not even conceived on the date of the partition Ex.A.1.

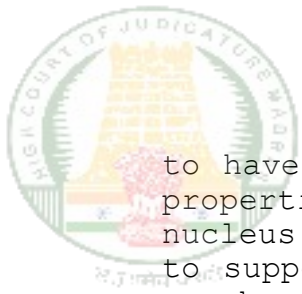
19.He would argue that the evidence of P.W.1 lacks competence as she is not directly in the know about the purchase of the property and funds employed for such purpose. P.W.1 is not competent to speak on the income from the ancestral properties. He would further argue that the plaintiffs are only shadow fighting the case of their father, the 5th defendant. He would therefore submit that the appellate Court has clearly erred in decreeing the suit as prayed for. He would also submit that the partition was invalid and inoperative.

20.Mr.N.Sankaravadivel, learned counsel appearing on behalf of the plaintiffs / respondents 1 and 2 would submit that the 2nd defendant has not proved her independent source of income. In fact even as per her own evidence she has received property from her father in law under Ex.B.28. It is her husband who has been taking care of the properties and it is only from out of the income from the ancestral nucleus that all the properties have been purchased. He would further submit that the 2nd defendant would state one case in her written statement with reference to her wherewithal but during evidence she had changed the same.

21.He would further submit that P.W.1 has come to the family later and being an uneducated lady she has not been able to comply with the legal requirements regarding the proof of the existence of ancestral nucleus. He would further submit that the Trial Court has extensively examined the fact as to whether the properties in the name of the 2nd defendant was her self acquired properties or not and after considering the entire evidence, ultimately rendered a finding that the properties standing in the name of the 2nd defendant and the 6th defendant are not their self acquired properties. He would therefore submit that the decree of the Courts below should not be disturbed and the Second Appeal should be dismissed.

22. Heard the learned counsels and perused the papers.

23. Admittedly, the portions of Item Nos.1 to 6, 7, 8 and 10 stand in the name of the 2nd defendant under Ex.B.2, Ex.B.8, Ex.B.9 and Ex.B.10. Admittedly, the 2nd defendant's father-in-law had gifted her with property as evidenced by Ex.B.8 when she had entered her matrimonial home. Apart from that, the 2nd defendant / appellant has been able to let in evidence to show that she had the necessary wherewithal. The plaintiffs who seek



to have partition of the property would simply contend that the properties have been purchased from out of the ancestral nucleus. Except for this statement there has been no evidence to support their case that the ancestral nucleus had surplus to purchase extensive properties. In the Judgement and Decree relied upon by the learned counsel for the appellant, the Division Bench of this Court in paragraph No.18 A has held as follows:

"There is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such presumption in the case of properties standing in the name of female members, In the latter case, it is for the party who claims properties as joint family properties to specifically plead the, particulars and details, in the pleadings and establish the same by adducing necessary evidence. If there is no pleading and if on the side of the plaintiffs there is no evidence, there is no need for detailed scrutiny of the case of the female members or persons claiming through them, as to the resources of the female members and as to how they acquired the properties in question. If the plaintiff on whom the burden lies adduces no evidence, no further question arises and the female member in whose name the property stands, must be held to be the beneficial owner of the property in question."

This preposition of law if applied to the instant case would clearly demonstrate that the plaintiffs on whom the burden lies has failed to discharge the same. Therefore, it has to be held that the portions of the properties in Item nos.1 to 6, 7,8 and 10 covered under Ex.B.2, Ex.B.8, Ex.B.9 and Ex.B.10 are the exclusive properties of the 2nd defendant and not amenable for partition.

24. However with reference to the properties standing in the name of the 6th defendant, the 2nd defendant has not been able to establish that she has funded the purchase of the said property. Therefore, in the light of the above the Second Appeal is partly allowed and the Judgement and Decree of the Trial Court is modified by dismissing the suit in respect of



those portions which stand in the name of the 2nd defendant and are covered under Ex.B.2, Ex.B.8, Ex.B.9 and Ex.B.10. In all other respect the Judgement and Decree of the Courts below stands confirmed. However, there shall be no order as to costs.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kan

To

1. The Additional District Judge,
(Fast Tract No.2), Cuddalore.
2. The Subordinate Judge,
Chidambaram.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.34663

+1cc to Mr.N.Sankaravadivel, Advocate, S.R.No.34430

S.A.No.78 of 2008

NMI (CO)
SU(10/12/2021)