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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2021

PRONOUNCED ON:15.04.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.795 of 2009

and

M.P.No.1 of 2009

A.Kumarasamy,  
S/o, Avinashi Gounder,  
Velayuthampalayam,  
Velayuthampalayam Village & Post,  
Avinashi Taluk,  
Tirupur District.

... Appellant/1<sup>st</sup> Defendant

Vs.

1. Suresh,  
S/o, A.Kumarasamy
2. Selvi,  
D/o, A.Kumarasamy
3. Angammal,  
W/o, A.Kumarasamy

1 to 3 are residing at  
Puthu Unjampalayam,  
H/o, Kuppandampalayam Village,  
Avinashi Taluk,  
Tirupur District.

... Respondents/Plaintiffs

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 04.12.2008 made in A.S.No.8 of 2008 on the file of the Subordinate Court, Tirupur confirming the judgment and decree dated 31.10.2007 made in O.S.No.137 of 1996 on the file of the District Munsif Court, Avinashi.

For Appellant : Mr.M.Ravindran

For Respondents: Mr.K.Govi Ganesan

#### J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 04.12.2008 passed in A.S.No.8 of 2008 on the file of the Subordinate Court, Tirupur confirming the judgment and decree dated 31.10.2007 passed in O.S.No.137 of 1996 on the file of the District Munsif Court, Avinashi.



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

3. The first defendant in O.S.No.137 of 1996 is the appellant in this second appeal.

4. The second appeal has been admitted on the following substantial questions of law:

i. Whether the suit property is a joint family property of the appellant and the respondents 1 and 2 as held by the courts below?

ii. Whether the respondents 1 and 2 are entitled for partition of the suit property, while the suit properties are said to be absolute properties of the appellant under the Hindu Succession Act?

iii. Whether the judgment and decree passed by the trial court confirmed by the first appellate court is legally sustainable based on the evidence available on record?

5. The suit has been laid by the plaintiffs 1 and 2 for partition and separate possession of the 2/3 shares of the plaintiffs 1 and 2 in the suit properties and furthermore, the third plaintiff has also prayed for past maintenance and future maintenance from the first defendant and to create a charge over the first defendant's share in the suit properties for the due payment of the maintenance amount. The abovesaid suit has been contested by the defendants 1 and 2 by filing the written statements.

6. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. Exs.A1 to A6 were marked. On the side of the first defendant, D.Ws.1 and 2 were examined. Exs.B1 and B2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial court was pleased to declare that the plaintiffs 1 and 2 are each entitled to 1/3 share in the suit properties and also held that the third plaintiff is entitled to maintenance in a sum of Rs.5,000/- per month from the date of the plaint and dismissed her claim of past maintenance and also directed the creation of charge over the share of the first defendant in the suit properties for the due payment of the maintenance amount and accordingly granted the preliminary decree in favour of the plaintiffs. Impugning the same, the first defendant alone preferred the first appeal. The first appellate court on an appreciation of the materials available on record, both oral and documentary and the submissions placed by



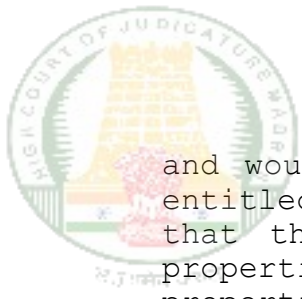
the respective parties, was pleased to confirm the judgment and decree of the trial court. Impugning the same, the present second appeal has been laid by the first defendant.

8. In the second appeal, the substantial questions of law formulated are only pertaining to the relief of partition prayed for by the plaintiffs 1 and 2 qua the suit properties. Even the first defendant's counsel placed submissions in the second appeal only qua the relief of partition granted in favour of the plaintiffs 1 and 2 in the second appeal and not canvassed anything about the maintenance ordered in favour of the third plaintiff.

9. In the light of the abovesaid facts, the case projected by the parties are confined only with reference to the claim of partition sought for by the plaintiffs 1 and 2 qua the suit properties in the matter.

10. The case of the plaintiffs is that the plaintiffs 1 and 2 are the children of the third plaintiff and the first defendant and according to them, the first defendant had deserted the plaintiffs as putforth in the plaint and accordingly it is stated that the plaintiffs are residing in the third plaintiff's parents house and it is further stated that the suit properties are the joint family and ancestral properties. The first defendant became entitled to the properties pursuant to the partition deed dated 15.11.1984 between the first defendant and his father and sold certain extent of the properties and having the cash of Rs.10,000/- in his hands and thereby putforth the case that the plaintiffs 1 and 2 are each entitled to 1/3 share in the cash as well as the family properties and accordingly prayed for the allotment of their respective shares.

11. The first defendant resisted the claim of partition putforth by the plaintiffs and contended that some of the properties are the self acquired properties of the first defendant and some of the properties earlier belonged to Ponne Gounder, the great grandfather of the first defendant and as per his Will, the grandfather Chinni Gounder has got 3 acres of land and as per the oral partition effected, they enjoyed the properties separately and Nanjappa Gounder and Avinashi Gounder are the sons of Chinni Gounder and they had purchased two acres of land as per the sale deed of the year 1936 in their favour and subsequent thereto, Avinashi Gounder and Nanjappa Gounder entered into oral partition and as per the oral partition the defendants' father Avinashi Gounder was allotted to 1.82 acres of land and as per the oral partition effected between his father, 1.82 acres was allotted to the plaintiff which was subsequently reduced in writing as per the deed of the year 1984



and would also putforth the case that the other co-sharers are entitled to use the suit properties and thus putforth the case that the first defendant is the exclusive owner of the suit properties and they are not the ancestral or the joint family properties as pleaded by the plaintiffs and accordingly contended that the claim of partition putforth by the plaintiffs is not sustainable and prayed for the dismissal of the plaintiffs' suit.

12. The second defendant would putforth the case that he is entitled to 3/8 share in the well located in the suit properties and that he had alienated 1/8 share of the well to one Prakash and thereby contended that he is entitled to 2/8 share in the well.

13. As above pointed out, the Courts below had granted the relief of partition in favour of the plaintiffs 1 and 2 as prayed for.

14. The main contention putforth by the first defendant's counsel is that inasmuch as, the suit properties had been derived by the first defendant by way of the partition effected in the year 1984 ie., under Ex.A1 partition deed, the suit properties are his separate properties and therefore during his lifetime, the plaintiffs 1 and 2 are not entitled to claim any share in the suit properties and contended that the determination of the Courts below that the suit properties are the ancestral properties belonging to the plaintiffs 1 and 2 and the first defendant is incorrect and accordingly sought for the reversal of the judgment and decree of the Courts below.

15. Per contra, according to the plaintiffs, as above pointed out, the suit properties are the ancestral properties of the plaintiffs 1 and 2 and the first defendant and accordingly the plaintiffs are entitled to obtain 2/3 share in the suit properties and hence the claim of partition prayed for by them is correct and the declaration of the Courts below that they are entitled to 2/3 share in the suit properties do not warrant any interference.

16. Considering the pleas putforth by the first defendant in the written statement as rightly concluded by the Courts below, the first defendant would also plead that he had incurred the debts for carrying out the agricultural operations in the suit properties amounting to Rs.50,000/- and thereby putforth the case that the abovesaid debts would also bind the plaintiffs as the debts had been incurred for the family expenses. By way of the abovesaid pleadings, as rightly held by the Courts below, the first defendant thereby would admit that the suit properties are the ancestral/joint family properties and accordingly sought for the liability of the plaintiffs also to discharge the debts



incurred by him while cultivating the suit properties. Furthermore, as rightly concluded by the Courts below, considering the sale deed dated 15.12.1989 marked as Ex.A6, it is found that the same had been executed by the first defendant for himself and on behalf of the first plaintiff and furthermore, considering the sale deed dated 04.08.1997 marked as Ex.A5, when it is found that the same has been executed by the first defendant for himself and on behalf of the plaintiffs 1 and 2 and when the abovesaid sale deed had been effected by the first defendant only with reference to the properties derived by him under Ex.A1 partition deed, if really the properties derived by the first defendant under Ex.A1 partition deed had been treated by him as the separate properties, there would have been no necessity on the part of the first defendant to effect the alienations under Exs.A5 and A6 on behalf of the plaintiffs also. Therefore, as rightly contended by the plaintiffs' counsel, inasmuch as, though the suit properties are claimed to be obtained by the first defendant under Ex.A1 partition deed, on that basis, though it could be held that the suit properties are the separate properties of the first defendant, however when considering the treatment and enjoyment of the suit properties by the first defendant, accordingly it is noted that the first defendant had been enjoying the same only as the joint family/ancestral properties of himself and the plaintiffs 1 and 2 and resultantly while effecting the alienation of the properties derived by him under Ex.A1 partition deed by way of Exs.A5 and A6, he had executed the abovesaid sale transactions on behalf of the plaintiffs also as the suit properties had been treated as the joint family/ancestral properties and enjoyed as such and accordingly the plaintiffs 1 and 2 had also been joined as the parties in the abovesaid sale transactions. The abovesaid factors would only go to disclose that the properties derived by the first defendant under Ex.A1 partition deed had been treated and enjoyed by himself and the plaintiffs 1 and 2 as the joint family/ancestral properties and in such view of the matter, the Courts below are found to be justified in holding that the suit properties are the joint family/ancestral properties of the plaintiffs 1 and 2 and the first defendant.

17. Not stopping there, the first defendant examined as D.W.1, during the course of cross examination has clearly admitted that at the time of effecting the partition, they had remained as the joint family and the properties are the joint family properties and further would depose that all the properties except one acre purchased are the ancestral properties. Accordingly, it is found that the first defendant having clearly admitted that the properties derived by him under Ex.A1 partition deed had been treated and enjoyed as the ancestral properties and the properties which are subjected to



partition under Ex.A1 partition deed are also the ancestral/joint family properties, in all, as above pointed out, the family having remained joint throughout, in such view of the matter, the Courts below are found to be justified in holding that the suit properties are the joint family/ancestral properties of the plaintiffs 1 and 2 and the first defendant and thereby rightly held that the plaintiffs 1 and 2 are each entitled to 1/3 share in the suit properties.

18. In the light of the abovesaid position, the contention putforth by the first defendant's counsel that the Courts below had erred in holding that the properties derived by the first defendant under Ex.A1 partition deed are the ancestral properties and on the other hand, should have held that they are the separate properties, as such, cannot be countenanced. As above pointed out, when even pursuant to Ex.A1 partition deed, the properties derived by the first defendant under the same had been only treated and enjoyed as the joint family/ancestral properties and accordingly the plaintiffs 1 and 2 had also been joined as the parties while effecting the alienation of the properties by the first defendant under Exs.A5 and A6 and furthermore, when the first defendant has also pleaded that the debts incurred by him for the maintenance of the suit properties also would be binding upon by the plaintiffs 1 and 2 and in such view of the matter and as above pointed out, when the first defendant has clearly deposed that the suit properties are only the ancestral properties and treated as the ancestral properties right through from the days of his ancestors and in such view of the matter, the Courts below are found to be justified in holding that the suit properties are the joint family/ancestral properties belonging to the plaintiffs 1 and 2 and the first defendant and rightly held that the plaintiffs 1 and 2 are entitled for partition and separate possession of 2/3 share in the suit properties as determined by it.

19. As regards the maintenance decree granted in favour of the third plaintiff, as above pointed out, no substantial question of law has been raised in the matter. Furthermore, the first defendant's counsel has also not putforth any arguments pointing to the same. In any event, considering the reasonings and conclusions of the Courts below, when it is found that the Courts below had rightly assessed that the third plaintiff is entitled to maintenance in a sum of Rs.5,000/- per month from the date of the plaint and when the abovesaid determination of the Courts below are not shown to be erroneous or unsustainable on any account and accordingly the maintenance decree granted in favour of the third plaintiff also in my considered opinion do not warrant any interference.

20. In view of the abovesaid discussions, it has to be held



that the reasonings and conclusions of the Courts below for upholding the plaintiffs' case being founded on the proper appreciation of the materials placed on record, both oral and documentary, on factual matrix as well as on the point of law and when they are not shown to be in any manner, perverse, illogical or irrational, in my considered opinion, no reason is warranted to interfere with the same. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the first defendant.

21. In conclusion, the judgment and decree dated 04.12.2008 passed in A.S.No.8 of 2008 on the file of the Subordinate Court, Tirupur confirming the judgment and decree dated 31.10.2007 passed in O.S.No.137 of 1996 on the file of the District Munsif Court, Avinashi are confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,  
Subordinate Court,  
Tirupur.

2.The District Munsif,  
District Munsif Court,  
Avinashi.

Copy to  
The Section Officer,  
VR Section, High Court,  
Chennai.

+2cc to Mr.R.Ravindran, Advocate, S.R.No.22699  
+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.22889

S.A.No.795 of 2009  
and M.P.No.1 of 2009

SR(CO)  
GN(29/10/2021)