



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AS.No.334/2018

1.M.Sundarajan  
2.Tmt.A.Selvakumari

..Appellants/Defendants 3 & 5

Versus

1.Tmt.Vasantha

..1<sup>st</sup> Respondent/Plaintiff

2.Tmt.Periyanayagam  
3.Kalairani  
4.M.Chandrasekaran  
5.Kannan  
6.Mohan  
7.Prema  
8.Padmanaban  
9.Anand  
10.The Sub Registrar,  
O/o.The Sub Registrar Office  
Tharamangalam  
Salem District.

..RR2 to 10 /Defendants 1,2,4,6 to 11

Prayer:-Appeal Suit filed under Section 96 and Order XLI Rule 1 CPC against the judgment and decree dated 04.11.2017 passed in OS.No.108/2014 on the file of the learned II Additional District Judge, Salem and dismiss the same.

For Appellants:Mr.B.Manivannan

For R1 :Mr.T.Murugamanickam  
Senior Counsel for  
M/s.Zeenath Begum

For RR2 to 4 : Mr.Balan Rangasamy

For RR5 to 10: No appearance



## JUDGMENT

- (1) Defendants 3 and 5 in the suit in OS.No.108/2014 on the file of the learned II Additional District Judge, Salem, are the appellants herein.

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- (2) The 1<sup>st</sup> respondent in this Appeal, as plaintiff filed the suit in OS.No.108/2014 for partition of 1/6<sup>th</sup> share in the suit properties and for other consequential reliefs. The suit is also for permanent injunction restraining defendants 3 and 5 from in any manner alienating or encumbering the properties and for mandatory injunction directing defendants 8 and 11 to deposit the monthly rent payable by them to the credit of the suit.
- (3) The plaintiff and defendants 1 to 4 and the husband of the 5<sup>th</sup> defendant by name Thiru.Venkatesan are the daughters and sons of late Thiru.Marimuthu Mudhaliyar and Saradhambal. Defendants 6 and 7 are the sons of the deceased brother of plaintiff and defendants 8 to 11 are the tenants in the suit properties.
- (4) Suit properties consist of two items. While first item is the land with building in Sannathi Street, Tharamangalam Village, the second item is also another building in Periyamariyamman Street.
- (5) The case of the plaintiff is that the suit properties belonged to late Thiru.Marimuthu Mudhaliyar who died intestate on 17.05.2011, leaving behind the plaintiff and other legal heirs. It is admitted that the plaintiff's mother Tmt.Saradhambal also died on 26.04.2012. It is stated by the plaintiff that she demanded the 3<sup>rd</sup> defendant who is the eldest son of late Thiru.Marimuthu Mudhaliyar orally and that the 3<sup>rd</sup> defendant though received rents from all the tenants after the demise of late Thiru.Marimuthu Mudhaliyar, did not agree either to divide the property into six equal shares or to share the income with the plaintiff and other legal heirs. It is stated that a legal notice was issued by the plaintiff and the 3<sup>rd</sup> defendant sent a reply. It is contended by the plaintiff that the contentions of the 3<sup>rd</sup> defendant in the reply are false. Even in the plaint, it is stated that the 3<sup>rd</sup> defendant is receiving a sum not less than Rs.25,000/- per month as on the date of filing the suit by way of rent from the tenants.



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(6) The suit was contested by the 3<sup>rd</sup> defendant by filing a written statement which was adopted defendants 5, 6 and 7. In the written statement, the defendants disputed the plaintiff's case that the properties belonged to late Thiru.Marimuthu Mudhaliyar, It is contended that late Thiru.Marimuthu Mudhaliyar was declared as an insolvent in an Insolvency proceedings in the year 1967 and died without acquiring any property. Though it is admitted that the suit first item of property was purchased in the name of the deceased brother Thiru.M.Venkatesan by virtue of the Sale Deed dated 16.02.1990, it is contended that the property was purchased out of the funds provided by the 3<sup>rd</sup> defendant. Even in the written statement, it is admitted that the legal heirs of the plaintiff's deceased brother Thiru M.Venkatesan, executed a Sale Deed on 10.10.2008 in favour of his father late Thiru.Marimuthu Mudhaliyar. As regards second item of suit property, it is the case of the 3<sup>rd</sup> defendant that the 3<sup>rd</sup> defendant spent huge amount of Rs.6,00,000/- for carrying out several repairs and additional constructions and for painting house. It is also stated by the contesting defendant in the written statement that the building in the first item was constructed by the 3<sup>rd</sup> defendant out of his own money. In sum and substance, it is the case of the defendants that the first item of the suit property is the self acquired property of the 3<sup>rd</sup> defendant and that the 3<sup>rd</sup> defendant is entitled to the expenditure that he has incurred for the additional works and repairs carried out in the suit second item.

(7) The Trial Court after framing necessary issues found that both items of suit properties belonged to the father late Thiru.Marimuthu Mudhaliyar and that the plaintiff is entitled to 1/6<sup>th</sup> share. As regards the case of the 3<sup>rd</sup> defendant that he had put up the entire construction in the suit first item and carried out repairs in the building in the suit second item, the Trial Court found that the 3<sup>rd</sup> defendant failed to prove his case. Hence, suit was decreed as prayed for by granting 1/6<sup>th</sup> share in all the suit properties to the plaintiff. The other reliefs regarding permanent injunction and mandatory injunction were also granted by directing the tenants to deposit the monthly rent till a final decree is passed. Aggrieved by the judgment and decree, defendants 3 and 5 have preferred the above Appeal Suit.



(8) The learned counsel for the appellants/defendants 3 and 5 referring to the grounds, made the following submissions:-

(a) The suit first item was purchased under the document Ex.B4 dated 10.10.2008 in the name of father. However, late Thiru.Marimuthu Mudhaliyar was declared as an insolvent in the year 1967 and the plaintiff has miserably failed to prove the source of income of their father to purchase the property.

(b) The Lower Court failed to consider the fact that the building in the suit first item was constructed by the 3<sup>rd</sup> defendant at a huge cost of nearly Rs.25 lakhs in the year 2009 and the evidence adduced by the 3<sup>rd</sup> defendant was not considered by the Trial Court.

(c) The plaintiff in the course of evidence admitted that she did not contribute any money towards construction of the building in the suit first item and that the plaintiff has not let in any evidence to show that consideration for the property purchased under Ex.B4 was from their father late Thiru.Marimuthu Mudhaliyar.

(d) The appellants examined DW2, the Contractor and marked vouchers to prove that money was spent by the 3<sup>rd</sup> defendant to construct the building in the suit first item. Similarly, the Contractor has given oral evidence to the effect that he constructed the building with the money paid to him by the 3<sup>rd</sup> defendant. However, the Trial Court ignored the evidence of DW2 on the ground that the Contractor has failed to give evidence as to the commencement and conclusion of construction in suit first item.

(9) Per contra, the learned counsel appearing for the respondent contended that the burden lies heavily on the 3<sup>rd</sup> defendant to prove his contentions and that the evidence adduced by the 3<sup>rd</sup> defendant alone is not sufficient to come to the conclusion that the first item of the suit properties was purchased out of the money provided by the 3<sup>rd</sup> defendant. Learned counsel also referred to the statements found in the written statement and the nature of evidence let in by the defendants and submitted that the findings of the Trial Court are well founded and there is no irregularity or perversity in the findings of the Lower Court.



(10) This Court has considered the rival submissions and also perused the materials placed.

(11) Having regard to the nature of the pleadings and the arguments, the following points arise for consideration in this Appeal Suit:

- i. Whether the suit first item was purchased out of the funds provided by the 3<sup>rd</sup> defendant?
- ii. Whether the building in the suit first item was constructed by the 3<sup>rd</sup> defendant out of his own funds without any contribution from any of the sharers and whether the 3<sup>rd</sup> defendant can recover the amount stated to have been spent by him for the construction of the building in the suit first item in the present suit for partition?
- iii. Whether the 3<sup>rd</sup> defendant proved his claim that he had spent Rs.6 lakhs for the suit second item and what relief the 3<sup>rd</sup> defendant can be given if the expenses incurred by him is proved?

(12) From the facts admitted, it is seen that the suit first item originally belonged to the family of late Thiru.Marimuthu Mudhaliyar. However, it was attached and sold in execution of a decree obtained by a third party. Subsequently, the first item of property was purchased in the name of Thiru M.Venkatesan under Ex.B3 dated 16.02.1990. The same property was later sold to the father late Thiru.Marimuthu Mudhaliyar, under Ex.B4 dated 10.10.2008, by the legal heirs of Thiru.M.Venkatesan, who pre-deceased late Thiru.Marimuthu Mudhaliyar. When the property stands in the name of late Thiru.Marimuthu Mudhaliyar, there is a presumption that the property was purchased out of the funds provided by father, Marimuthu Mudhaliyar. This Court is unable to find a reason as to why the property was not purchased in the name of the 3<sup>rd</sup> defendant if really the funds were provided only by the 3<sup>rd</sup> defendant. Absolutely there is no explanation from the 3<sup>rd</sup> defendant in the course of evidence, why the property was purchased in the name of deceased brother and subsequently sold in favour of father.

(13) The 3<sup>rd</sup> defendant has not produced any evidence to show his independent income at the time of acquiring the property originally under Ex.B3 in the year 1990. As a matter of



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fact, there is no pleading with regard to the business conducted or the income of the 3<sup>rd</sup> defendant. Even in the written statement, it is admitted that the parents of the plaintiff and defendants 1 to 5 were receiving rents from the tenants to maintain themselves. This admission is crucial and very much relevant in the context of further pleadings raised by the 3<sup>rd</sup> defendant in the written statement.

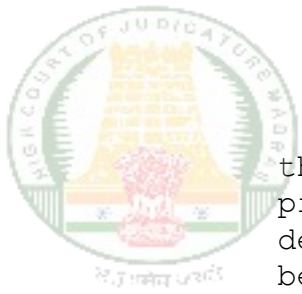
- (14) The 11<sup>th</sup> defendant also filed a written statement. He is a tenant in respect of the suit property. The 11<sup>th</sup> defendant is the Sub Registrar of Tharamangalam. Therefore, it is seen that a portion of the suit property was leased/rented out to the Sub Registrar's office for a sum of Rs.4700/- per month. It is stated that the tenancy was between the 11<sup>th</sup> defendant and late Thiru.Marimuthu Mudhaliyar. It is also stated that none of the heirs of late Thiru.Marimuthu Mudhaliyar claimed rent amount from the 11<sup>th</sup> defendant and therefore, the 11<sup>th</sup> defendant expressed his willingness to pay the monthly rent at the rate of Rs.4700/- from March 2011. The statement of tenant that the property was let out by father disproves the case of the appellants.
- (15) Having regard to the facts admitted as borne out from records, this Court is unable to find any reason to hold that the suit property is the self acquired property of the 3<sup>rd</sup> defendant. Assuming that the 3<sup>rd</sup> defendant has contributed for the purchase of the property, this Court cannot consider him as the owner of the property.
- (16) As regards the contention of the 3<sup>rd</sup> defendant that he has put up the entire construction in the suit first item out of his own funds, the 3<sup>rd</sup> defendant cannot claim proprietary right over the property. At best, he is entitled to claim contribution from the other sharers. When admittedly, the father has collected rents from the suit properties till his death and that the mother was receiving rent till her death, this Court is of the view that the contentions of the 3<sup>rd</sup> defendant is not probable.
- (17) As regards the suit first item of property, it is held that the property is the property of father late Thiru.Marimuthu Mudhaliyar. However, the 3<sup>rd</sup> defendant who claimed to have spent a sum of Rs.25 lakhs, has to prove his case. Though a contractor by name Thiru.Ramasamy, was examined as DW2, his evidence can be believed to the



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extent that the money was paid to DW2 by the 3<sup>rd</sup> defendant. As the elder son of the family, the 3<sup>rd</sup> defendant might have arranged for the construction. It is also in evidence that the property was originally purchased in the name of Thiru.M.Venkatesan, son of late Thiru.Marimuthu Mudhaliyar, and that the said Venkatesan, had executed a Power of Attorney in favour of his father late Thiru.Marimuthu Mudhaliyar. It was after the death of Venkatesan, his legal heirs had executed a Sale Deed in favour of late Thiru.Marimuthu Mudhaliyar. It is in this factual background, this Court is unable to accept the contention of the 3<sup>rd</sup> defendant regarding his contribution or ownership over the suit first item.

- (18) The 3<sup>rd</sup> defendant cannot claim ownership if he has just contributed the money for the purchase. It is not the case of the parties that their father late Thiru.Marimuthu Mudhaliyar and his sons constituted a Hindu Undivided Joint Family. In such circumstances, the acquisition of properties in the name of Thiru.M.Venkatesan cannot be treated as a property of the 3<sup>rd</sup> defendant in view of the Benami Prohibition Act. Further, the property was subsequently sold in favour of father making him in law, the absolute owner of the property. For the contention that the 3<sup>rd</sup> defendant spent for the whole construction, absolutely there is no evidence as to the amount spent by the 3<sup>rd</sup> defendant and the value of construction at the time when the construction was completed. The construction was during the life time of father. As stated by the Trial Court, the evidence of DW2 is not specific with regard to several factors regarding purchase of materials, commencement and completion of building. There is no authenticated record or municipal approval for the plan etc., to show that the construction from the beginning till the completion was in the name of the 3<sup>rd</sup> defendant. The records produced to show the expenditure incurred towards construction, are all self serving which cannot be believed. The constructions according to the 3<sup>rd</sup> defendant, was during the life time of his father late Thiru.Marimuthu Mudhaliyar. Therefore, the 3<sup>rd</sup> defendant, at best can demand the value of construction from his father during his life time if he proves his case. It is not his plea that the father treated the property as the property of the 3<sup>rd</sup> defendant. Unless he establish the fact that he did the construction with the consent of his father with an acknowledgment from him that money will be paid back to



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the 3<sup>rd</sup> defendant or on the understanding that the entire property was treated by father as the property of the 3<sup>rd</sup> defendant, the defence raised by the 3<sup>rd</sup> defendant cannot be sustained. The Trial Court also found that the case of appellants that the 3<sup>rd</sup> defendant spent a sum of Rs.6 lakhs for repairing or improving the building in suit second item is not established after proper appreciation of evidence. The findings of the Trial Court are well founded and based on proper appreciation of evidence. There is no irregularity or perversity or illegality in the decision of the Lower Court.

- (19) In the result, the Appeal Suit fails and the same is dismissed confirming the judgment and decree dated 04.11.2017 passed in OS.No.108/2014 by the learned II Additional District Judge, Salem. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

AP

To

1.The II Additional District Judge  
Salem.

2.The Section Officer  
VR Section, High Court  
Chennai.

+1 CC to M/s. Babu Rangasamy, Advocate sr 65419

+1 CC to M/s. Zeenath Begum, Advocate sr 64975.

AS.No.334/2018

SPD (CO)

SP(02/03/2022)