



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.488 of 2019

1.G.Jayakumar

2.G.Savitha

.. Appellants/Appellants/Plaintiffs

Versus

1.A.Gunasekaran

2.S.Santhamani

3.S.Chandrasekaran

4.V.Sarathamani

.. Respondents/Respondents/Defendants

(Respondents 1 and 2 are given up, as they remained
exparte before the Courts below)

Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree, dated 07.12.2018 made in A.S.No.3 of 2017 on the file of the Additional District Judge-cum-(Full Additional incharge) Additional Sessions Judge, Mahila Court, Erode confirming the judgment and decree, dated 15.12.2016 made in O.S.No.260 of 2009 on the file of the II Additional Sub-Ordinate Court, Erode.

For Appellants : Mr.V.P.Sengottuvel

For R3 and R4 : Mr.N.Manokaran

JUDGMENT

This Second Appeal is filed against the judgment of the learned Additional District Judge-cum-Additional Sessions Judge, Mahila Court, Erode in A.S.No.3 of 2017 confirming the judgment of learned II Additional Sub-Ordinate Judge, Erode in O.S.No.260 of 2019.



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2. The appellants as plaintiffs filed the suit for partition claiming suit properties to be divided into four equal shares and two shares to be allotted to the plaintiffs and relief of permanent injunction against the defendants not to alienate or encumber the suit property and for costs.

3. The case of the appellants, in brief, is as follows:-

The suit properties are the ancestral joint family properties of the plaintiffs and defendants 1 and 2 and they are being enjoyed jointly by them. The father of defendants 1 and 2, Arumuga gounder, with income from his ancestral properties, purchased the suit properties on 29.11.1927. He enjoyed the suit properties and other properties along with his children, defendants 1 and 2. Plaintiffs are the children of the 1st defendant and as per the Hindu Succession Act, they have right by birth in the suit properties. The first defendant, after the death of his father Arumuga Gounder, started living wayward life. He has various bad habits and he used to pick up fight with his wife and the children, the plaintiffs. He spent lavishly by using the income from the lands for immoral activities. He took the jewels and cash available in the home and wasted it on immoral and illegal activities. The defendants 1 and 2, suppressing that plaintiffs are also entitled to the share in the suit properties, attempted to alienate the suit properties. Therefore, plaintiffs have made a demand to the defendants 1 and 2 to effect partition of the suit properties. Initially, the defendants 1 and 2 promised to effect partition of the suit properties, but, did not honour their words. Only on verification of records, it came to light that the defendants 1 and 2 sold a portion of the suit properties to the defendants 3 and 4. Under these circumstances, a suit for partition was filed.

4. The third defendant filed written statement and that was adopted by the fourth defendant, followed by additional written statement, filed by the fourth defendant, adopted by third defendant and another additional written statement filed by the third defendant and adopted by fourth defendant.

5. The case of the defendants 3 and 4, as seen from their written statement and additional written statements, in brief, is as follows:-



The defendants denied that the suit properties are ancestral properties of the plaintiffs and defendants 1 and 2. It is admitted that the defendants 1 and 2 are the children of Arumuga Gounder. The purchase of the suit properties of Arumuga Gounder on 29.11.1927 is admitted. It is stated that out of the income of Arumuga Gounder, the defendants 1 and 2 lived as joint family but denied that the defendants 1 and 2 and the plaintiffs enjoyed the suit properties as ancestral properties. Allegations against the first defendant about his immoral and illegal conduct and indulging in unwanted activities are totally denied.

6. It is the specific case of defendants 3 and 4 that suit properties are the self-acquired properties of Arumuga Gounder. After his death, the defendants are equally entitled to the suit properties. The plaintiffs have no right, title and possession in these suit properties. The first defendant is a Police man. The alleged dispute between the first defendant, his wife and the children are denied and allegations are vexatious.

7. It is admitted that Arumuga Gounder ancestrally owned 25 cents of land, which yielded 20 bags of paddy alone per year. That was the only source for their feeding. Arumuga Gounder did agricultural coolie work and out of that income, he purchased suit properties. There is no ancestral nucleus to purchase suit property by Arumuga Gounder. The defendants 3 and 4 purchased the suit property for valuable consideration and they are bonafide purchasers. The plaintiffs are minors and therefore, the suit properties were purchased by the defendants 3 and 4 from the defendants 1 and 2. The plaintiffs are not entitled for 2/4th share in these properties.

8. The survey number of the item No.2 of the suit property is wrong. Arumugam Gounder is entitled to 0.64 ½ cents in R.S.No.207/2 and not in R.S.No.207/3 as claimed in the plaint. The defendants 1 and 2 and their family are not entitled any land in R.S.No.205/1-B. In R.S.No.205/9, they are entitled to only Ac.0.22 cents. In R.S.No.164, they are entitled to Ac.0.25 cents and 0.2 ½ cents in R.S.No.201/4 and Ac.0.7 cents in R.S.No.201/5. Some other properties are left out and therefore, the suit is bad for partial partition. The suit is not properly valued and no proper Court fee has been paid. Therefore, the defendants 3 and 4 prayed for the



dismissal of the suit.

9. On the basis of aforesaid pleadings, the Trial Court framed the following issues and additional issues:-

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"(i) Whether the plaintiffs are entitled for 2/6th share in the suit properties?

(ii) Whether the property sold by the defendants 1 and 2 was the self-acquired property of Arumugam Gounder?

(iii) Whether the defendants 3 and 4 are bonafide purchaser of item 1 of the suit property?

(iv) Whether the plaintiffs are entitled for decree for partition, possession and permanent injunction as prayed for?

(v) To what other relief the plaintiffs are entitled to?

Additional Issues:-

(vi) Whether the suit is bad for partial partition?

(vii) Whether the plaintiffs are entitled to claim share in the self-acquired property of their grand father Arumugam Gounder?

(viii) Whether the extent claimed by the plaintiff correct?"

10. During the trial, P.W.1 was examined and Exs.A1 to A4 were marked on the side of the plaintiffs. D.Ws.1 to 3 were examined and Ex.B1 was marked. Exs.X1 and X2 were the documents summoned by the Court. On considering the oral and documentary evidence, the learned Trial Judge found that the suit property was purchased by Arumugam Gounder out of his own income and he treated the suit property as his self-acquired property. When the suit property is self-acquired property, only defendants 1 and 2, as legal heirs of deceased Arumugam Gounder, are entitled to share in the suit property as per Section 8 of The Hindu Succession Act. When defendants 1 and 2 are alive, the plaintiffs cannot seek any share in the suit property. In this view of the matter, the learned Trial Judge dismissed the suit.



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11. The appellants/plaintiffs filed an appeal in A.S.No.3 of 2017. The learned Appellant Judge also, on going through oral and documentary evidence, the submissions made on behalf of the learned Counsel appearing for the parties, the judgment of the trial Court found that the appellants have failed to establish that the suit properties were purchased by Arumugam Gounder from nucleus from ancestral properties and holding that the suit properties were his self-acquired properties, finally concluded that the appellants are not entitled for share in the suit properties, when the defendants 1 and 2 are alive. Thus confirming the judgment of the trial Court, dismissed the appeal. Therefore, the appellants are before this Court, by way of this second appeal.

12. The learned Counsel for the appellants submitted that even in the written statement of the third defendant, it is openly admitted that Arumugam Gounder ancestrally owned Ac.0.25 cents of land. He has also given evidence during the course of cross-examination admitting that Arumugam Gounder had Ac.0.25 cents of land and this was informed to him by the defendants 1 and 2. The admission made in the written statement and the evidence of D.W.1 clearly and categorically proved that Arumugam Gounder owned Ac.0.25 cents of land and from the income out of the Ac.0.25 cents of land, Arumugam Gounder purchased the suit property.

13. The learned Counsel for the appellants also brought to the notice of this Court that Ex.B1 Sale agreement dated 03.05.1995 executed among the defendants 1, 3 and 4, to support his case that the suit properties are ancestral properties. He heavily relied on the recital made in Ex.B1, wherein it is claimed that the suit properties are ancestral properties and they are in possession of the suit properties as ancestral properties. This particular recital is sought to be taken advantage by the learned Counsel for the appellant coupled with the averments made in the written statement and the evidence of D.W.1, wherein it is claimed that Arumugam Gounder owned Ac.0.25 cents of land, to prove the point that, the only way the suit properties could have been purchased by Arumugam Gounder was from the income derived from the Ac.0.25 cents owned by him as ancestral property. Thus, the learned Counsel for the appellants submitted that the findings recorded by the Courts below that the appellants failed to prove that there was ancestral property and from the nucleus from the ancestral property, the suit properties were purchased by Arumugam Gounder are contrary to the evidence available. Therefore, the learned Counsel for the appellants prayed for setting aside the judgment



of both the Courts below and for allowing this appeal.

14. In response, the learned Counsel for the respondents 3 and 4 submitted that the suit properties were purchased by Arumugam Gounder in the year 1927 even before the birth of the defendants 1 and 2. Merely because the third defendant has stated in his written statement that Arumugam Gounder owned Ac.0.25 cents of ancestral land, it cannot be concluded that it is yielded income sufficient enough to purchase the suit properties in his name. Similarly, mere recitals made in Ex.B1, Sale agreement that the suit properties are ancestral properties does not confer the status of the ancestral properties, in the absence of any evidence to show that the suit properties were purchased from the nucleus from ancestral properties. Especially, when there is clear evidence available in the form of Ex.A1 Sale deed to show that the suit properties were purchased by Arumugam Gounder.

15. The learned Counsel for respondents 3 and 4 relied on a judgment of this Court reported in R.Deivanai Ammal (Died) and another Vs. G.Meenakshi Ammal and others, reported in 2004 (4) CTC 208, for the proposition that it is for the person, who alleged that property is a joint family property collected from the nucleus from a joint family property to prove. Only if the initial burden is proved, the other party will have to repel that initial burden. In the case before hand, there is absolutely no tangible and acceptable material in the form of documents to show that Arumugam Gounder owned Ac.0.25 cents of land or another land and this land yielded income sufficient to purchase the suit property in his name.

16. The reading of this judgment shows that —
"Under Hindu Law, it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words, the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family



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property. When the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases."

17. Thus, it is clear from this judgment that it is, primarily, the duty of the appellants to prove that there was joint family property and the property yielded income sufficient enough to purchase the suit property by Arumugam Gounder. Absolutely, that part of evidence is missing. If really, Arumugam Gounder owned Ac.0.25 cents of land or another land, certainly there would have been documentary evidence like document of title or documents of possession like patta, adangal, chita, kist receipts or other records would have been available. When those documents are not available, we have to conclude that Arumugam Gounder has no such property as ancestral property, before purchasing the suit properties under Ex.A1. Thus, this Court concludes from the evidence available that the



appellants had miserably failed to establish that there were ancestral properties available. If at all available, those properties yielded income sufficient enough to purchase the suit properties in the name of Arumugam Gounder. Therefore, the properties purchased through Ex.A1 can only be considered as self-acquired properties of Arumugam Gounder.

18. The next question arises for consideration is whether the appellants are entitled to claim share in the suit properties. It was found that the suit properties are self-acquired properties of Arumugam Gounder. The defendants 1 and 2 are his legal heirs. They are live. When they are alive, the appellants, who are the children of the first defendant cannot make any claim of share in the suit properties. Therefore, this Court finds that the plaintiffs/appellants are not entitled to claim any share in the suit properties. Both the Courts below have concurrently found on the right appreciation of evidence that suit properties are self-acquired properties of Arumugam Gounder and therefore, the appellants are not entitled to claim any share when the defendants 1 and 2 are alive.

19. The judgments of the learned Additional District Judge-cum-(Full Additional incharge) Additional Sessions Judge, Mahila Court, Erode in A.S.No.3 of 2017, confirming the judgment of the learned II Additional Sub-Ordinate Judge, Erode in O.S.No.260 of 2009 is confirmed. There is no substantial question(s) of law arise for consideration and the Second Appeal is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

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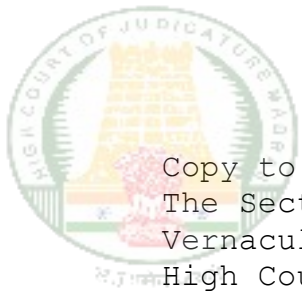
Sub Assistant Registrar

grs

To

1.The Additional District Judge-cum-(Full Additional incharge)
Additional Sessions Judge,
Mahila Court, Erode.

2.The II Additional Sub-Ordinate Judge,
Erode.



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+1cc to Mr.N.Manokaran, Advocate SR.No.63166
+1cc to M/s.V.P.Sengottuvel, Advocate SR.No.63391

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BP(CO)
CB(01/03/2022)