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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.937 of 2020
and C.M.P.No.1817 of 2021

1.Jayaprakash
2.Balu Prakash

...Appellants/Plaintiffs

Vs

1.R.Thimmaiyyan
2.Badrammal
3.R.Kannappan
4.K.Kalyanasundaram
5.T.R.Eswaran
6.Rajendran
7.Kavitha

...Respondents/defendants

PRAYER Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the impugned judgment and decree dated 22.06.2020 passed by the learned V Additional District Judge, Coimbatore in O.S.No.484 of 2010 and allow the above appeal.

For appellants : Mr.S.Udayakumar
For respondents: Served No appearance

JUDGMENT

The above First Appeal has been filed challenging the judgment and decree passed in O.S.No.484 of 2010 by the learned V Additional District Judge, Coimbatore. The appeal has been filed by the plaintiffs who have been unsuccessful, before the trial Court.

2.The brief facts which had preceded the filing of this appeal is herein below narrated and the parties are referred to in the same rank as before the Trail Court. The instant suit has been filed seeking a decree for partition of the plaintiffs 1/3rd share each in the suit schedule property and for a declaration that the settlement deed dated 30.03.2009 executed by T.R.Eswaran and the sale deed dated 17.06.2002 executed by Rajendran are 'null and void'. The relief for declaration had been introduced after an amendment.



3. It is a case of the plaintiffs that they are brothers and sons of defendants 1 and 2. The plaintiffs and the defendants 1 and 2 constituted a Hindu Joint Family, which owned ancestral properties, had also purchased properties by utilizing the sale proceeds got by selling the ancestral properties. It is the case of the plaintiffs that the 1st defendant as their father had succeeded to several ancestral properties and that till the birth of the plaintiffs, he was leading a normal and proper life. However, after the year 2001, the 1st defendant started leading a wayward life. He would not take care of the agricultural operations as also his family. Though there was no necessity to borrow money, the 1st defendant insisted on borrowing money and the defendants 4 to 7 are some of the persons from whom the 1st defendant had borrowed huge sums of money and thereby became indebted.

4. He had sold the ancestral properties and purchased the properties which are described as item nos. 1 to 3 in the suit schedule in the name of the 2nd defendant, his wife. The 2nd defendant was a home maker who had no independent income and therefore, the entire sale consideration came from the sale of the ancestral properties. The sale took place between the years 1987 to 1989. The plaintiffs would therefore contend that these properties are joint family properties to which the plaintiffs and defendants were equally entitled to.

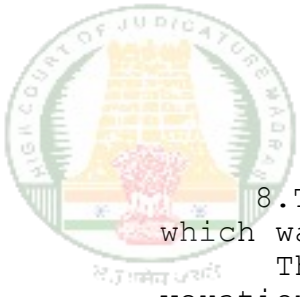
5. Between the years 1998 and 2000, two other items of the suit properties were purchased by the 1st defendant in his name, under a registered sale deed dated 16.09.1998. This property is described as the 4th item in the suit schedule. Likewise on 12.6.2000, the 5th item was purchased once again in the name of the 1st defendant. For the purchase of all these properties, it was only the Joint family funds that had been utilized.

6. It was in and around the year 2001 that the 1st defendant had developed friendship with defendants 4 to 7, as a result of which his entire behaviour had undergone a change. From a rustic villager, the 1st defendant had moved on to living a high-flying life. It appears that the signature of the 1st defendant had been obtained in several documents in the pretext of advancing loan. When questioned by the plaintiffs, the 1st defendant would physically abuse them and ask them to leave the house. Therefore, the plaintiffs had been residing away from the 1st defendant in the very same village. The plaintiffs had been cultivating the lands although the 1st defendant had stopped attending to the agricultural operations. Infact the situation had worsened where the plaintiffs were not in talking terms, with their father and it was their mother / 2nd defendant, who was their mediator. Being helpless, she was unable to stop the



activities of the 1st defendant. It appears that the 6th defendant had manipulated the 1st defendant in executing a power deed in favour of the 6th defendant authorizing him to execute a sale deed in his favour. Using this power, the 6th defendant had executed a sale deed in favour of the 5th defendant who was none other than the father in law of the 4th defendant. He in turn had executed a settlement deed in favour of the 7th defendant who is the wife of the 4th defendant. The plaintiffs would contend that the 1st defendant had no right to encumber their share in the suit schedule properties. Therefore, on coming to know about these dealings, the plaintiffs had come forward with the above suit.

7. The defendants 1 and 2 conveniently remained ex-parte and the suit was contested only by the defendants 4 to 7. The 3rd defendant was exonerated from the proceedings, after he had filed a written statement. The contents of the written statement of the 3rd defendant was that the suit was nothing but an abuse of process of the Court. The plaintiffs are guilty of suppressing the true facts. Further, the suit is barred by limitation. The 3rd defendant would emphatically state that the suit is nothing but a creation of the 1st defendant who is orchestrating the entire proceedings. The 3rd defendant had denied the existence of the ancestral properties and the fact that these properties have been sold to purchase the suit schedule property. The defendant would contend that the plaintiffs and the defendants 1 and 2 did not possess any ancestral properties and that the properties are all self-acquired properties of the defendants 1 and 2. The 1st defendant, according to the 3rd defendant, had borrowed money from the wife of the 3rd defendant on 10.02.2002 and has executed a promissory note as security. Since, the 1st defendant had failed to repay the said amount, the 3rd defendant's wife Padma was constrained to file a suit O.S.No.768 of 2003 before the learned Principal Subordinate Court, Coimbatore which was decreed on 05.08.2005. Thereafter, Padma had filed an execution proceedings in E.P.No.195 of 2006, against the 1st defendant. On the filing of the execution petition, the 1st defendant had settled the amount due to the said Padma. The amount was settled by the 1st defendant by borrowing a sum of Rs.2,00,000/- from the 3rd defendant and as a security for the borrowal, the 1st defendant had created an equitable mortgage by depositing the original sale deed dated 16.09.1998, this borrowal also ended in the 3rd defendant filing a suit in O.S.No.16 of 2004 for recovery of the above amount. This suit was decreed and the 1st defendant had challenged the same on the file the District Court, Coimbatore in A.S.No.58 of 2007 which is pending. It is only to avoid repaying the money borrowed by the 1st defendant that this suit has been instituted at the behest of the 1st defendant. The 3rd defendant would submit that there is no cause of action as alleged by the plaintiffs and he was an unnecessary party to the proceedings.



8.The defendants 4 to 6 have also filed a written statement which was as follows:

The suit in question is an abuse of process of Court and a vexatious one. The plaintiffs are mere name lenders and the persons who are the real litigants were their parents, defendants 1 and 2. The defendants had denied the existence of the ancestral properties and the ancestral nucleus for the purchase of the suit schedule properties. The defendants would therefore submit that the plaintiffs did not have the local standi or the cause of action to file a suit for partition, since they had no right title or interest in the suit properties which belong to the defendants 1 and 2.

9.The suit schedule items 1 to 3 which were the separate properties of the 2nd defendant had been sold in favour of the 5th defendant on 17.06.2002 for a proper and valuable consideration. The Property was sold through power agent of the 2nd defendant and on the date of the sale, the 5th defendant had entered possession of the properties. He had got the Revenue Records mutated in his name and has since then been enjoying the properties as his absolute properties. Exercising this exclusive right to the said properties, the 5th defendant had also executed a gift settlement deed in favour of his daughter on 03.04.2009 and it is his daughter, the 7th defendant who is now in exclusive possession and enjoyment of the said property. The defendants would further submit that the 1st defendant had borrowed a sum of Rs.5,00,000/- on three different dates from SMT Chits and Finance Corporation, which is the proprietary concern of the fourth defendant and to secure the said loan, the 4th item of the suit schedule property had been mortgaged with the fourth defendant. Since the loan was not deposited, the suit on mortgage came to be filed by the 4th defendant against the 1st defendant in O.S.No.907 of 2004. After contest, the suit was decreed in favour of the Finance Company and the Finance Company has also filed an application for passing of final decree and the same is pending. The instant suit is only an attempt to prevent these defendants from exercising their rights over the suit schedule property. Therefore, they sought to have the suit dismissed with exemplary costs.

10.The learned V Additional District Judge, Coimbatore on considering the pleadings had framed the following issues:

- (1) வழக்கு சொத்துக்கள் பூர்வீக சொத்து வருமானத்திலிருந்து வாங்கப்பட்ட பூர்வீக சொத்துக்களா?
- (2) வாதிகள் தாங்கள் கேட்கும் பாகம் பெற அருகதா?
- (3) வாதிகள் தாங்கள் கேட்கும் பரிகாரம் பெற அருகதா?
- (4) வாதி அடையும் வேறு பரிகாரம் யாது?



11. Thereafter on 15.04.2016, the learned Judge had framed additional issues as detailed below:

(1) Whether the plaintiffs are entitled for the relief of declaration that the settlement deed dated 30.03.2009 as null and void?

(2) Whether the plaintiffs are entitled for the relief of declaration that the sale deed dated 17.06.2002 as null and void?

(3) Whether the relief of declaration sought is barred by limitation?

(4) Whether the suit had been properly valued?

The parties had gone to trial on the aforesaid issues. The first plaintiff had examined himself as PW.1 and one Rangarajan as P.W.2. Exs.A1 to A27 were filed by the plaintiffs in support of their contention. The 4th defendant had entered into the witness box as D.W.1 and Exs.B1 to B12 were marked on his side.

12. The learned District Judge on considering the evidence on record held that the plaintiffs have not proved the very basis of their case i.e., the suit properties have been purchased from out of the sale of the ancestral properties. The learned Judge dismissed the suit and it is challenging the same that the plaintiffs are before this Court.

13. The plaintiffs as appellants, have taken out an application in C.M.P.No.1817 of 2021 for receiving the following additional documents:

a. Doc.No.697 of 1929 dated 10.06.1929 sale deed executed by the Nasumappa Gounden and minor rangaiyan in favour of the Thundappa Gounden. It is submitted that the minor Thimmaiyyan.

b. Doc.No.1620 of 1929 dated 17.11.1929 sale deed executed by the one Chellappa Gounden's sons 1) Nanjappa Gounden, 2) Venitarama Gounden, 3) Renge Gounden, 4) Subbayya Gounden son of Samana Gounden in favour of Smt.Karakkal wife of Nasumappa Gounden. It is submitted that the Smt.Karakkal was the grand mother of the 1st respondent Thimmaiyyan.

c. Doc.No.1603 of 1961 dated 11.09.1961 Settlement Deed in favour of Rangiya Gounden, son of Nasumppa Gounden, executed by Madakal, Daughter of Nasumappa Gounden. It is submitted that the Rangaiyan is the father of the 1st respondent Thimmaiyyan, Nasumappa Gounden was grand father of the 1st respondent Thimmaiyan. Thimmaiyyan is the father of the plaintiffs.



d. Document No.1744 of 1994 dated 03.06.1994 Sale Deed executed by Rangaiya Gounder in favour of R.Rajendran. It is submitted that the Rangaiyan was the father of the 1st respondent Thimmaiyyan.

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14. In the affidavit filed in support of the said petition, they would contend that these documents are required for disproving the finding of the trial Court that the plaintiffs had not proved the ancestral nucleus. In the affidavit, the petitioners would submit that the certified copies of the documents has been obtained now and therefore, they have come forward with the said application. The petitioners would submit that the documents have been obtained only after due diligence and was not available at the time of filing of the case or during the course of the trial and the same was not within the knowledge of the plaintiffs. Therefore, they prayed that these documents be accepted as additional evidences.

15. Mr. Udayakumar, learned counsel appearing on behalf of the plaintiffs would draw the attention of this Court, two portion of the plaint in which the plaintiffs have pleaded that the ancestral properties of the plaintiffs and defendants 1 and 2 had been sold and the proceeds there from have been utilized to purchase the suit properties. These averments have been set out in paragraph Nos. VI and VII of the plaint.

16. The learned Counsel would further submit that it is out of the sale of the ancestral properties that suit items 1 to 3 had been purchased in the name of the mother and therefore, there is a presumption that these properties are the joint family properties. He would rely on the judgment reported in 2002(3) MLJ 187 (M. Rangammal and others vs. B. Balavenkatesan) wherein it has been held that once the existence of an ancestral nucleus is admitted or proved, any acquisition made by a member of the joint family is presumed to be from out of this nuclear and the owner shift on the person to disagree with these presumption. Therefore, the plaintiffs having proved the ancestral nucleus, the burden had shifted on the defendants to disprove the same and in this regard, there has been no evidence forthcoming from the defendants to prove otherwise. He would further submit that the additional documents which are sought to be filed are sale deeds of the year 1929 which relate to their paternal grandfather, the settlement deed was in favour of their paternal grandfather. It is the contention that all these documents would go to show that the plaintiffs family was possessed of an ancestral nucleus and therefore, the findings of the trial Court was absolutely erroneous and the same has to be set aside and the matter has to be remitted back to the trial Court for marking these documents.



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17. Points for consideration:

- (a) Whether the plaintiff has proved the existence of a joint family nucleus on the sale of ancestral properties.
- (b) Whether the additional document should be received as additional evidence.

18. Heard the learned Counsels and perused the original documents as well as the additional documents. Before proceeding to discuss the merits of the appeal, I would consider to dispose of the petition filed for receiving of the additional documents.

19. A reading of the affidavit filed in support of the petition would show that the petitioner has not set out the true reasons as to why these documents have not been produced at an earlier point of time, at trial particularly when their entire case rests on the premise that the ancestral properties had been sold to purchase the suit schedule properties. The affidavit merely sets out the reasons as set out in Order 41 rule 27(1) AA of the Code of Civil Procedure. This is nothing but lip service.

20. Be that as it may, a perusal of the documents would indicate that the first document is a sale deed dated 10.06.1929 in the name of the plaintiff's paternal grand father. Likewise, the second document is a sale deed dated 17.11.1929 in the name of one Karakkal who was the paternal grandmother of the 1st defendant. Likewise, the third document is a settlement deed dated 11.09.1961 in the name of the 1st defendant's father and document No.4 dated 03.06.1994 is also in the name of the plaintiff's paternal grand father. These documents do not in any manner advance the case of the plaintiffs. Documents No.1 to 3 are much before the date of the purchase of the suit schedule properties. Likewise, the 4th item purchased in the name of the paternal grand father is of the year 1994 and there is nothing to show that the same has been sold and the proceeds were given to the 1st defendant. The documents are irrelevant and has no bearing on the case on hand. That apart, the plaintiffs have not made out any grounds for receiving the said documents and therefore, the Civil Miscellaneous Petition stands dismissed.

21. The entire case of the plaintiffs rests on the basis that the suit properties have been purchased from the sale of the ancestral properties. The plaintiffs have not given any details of the properties that were ancestral and the dates on which they had been sold and the amount for which the same has been sold. Without providing these details, the plaintiffs cannot claim that the suit properties are Joint Family ancestral properties, having been purchased out of an ancestral nucleus.

22. Not a piece of evidence has been let in, in this regard. Therefore, since the documents in respect of the suit properties



stand in the name of defendants 1 and 2, it has to be held that these properties belong to the defendants 1 and 2 who have themselves created the necessary encumbrance/transfers.

23.The defendants 1 and 2 have not entered appearance and have not filed their written statements. Therefore, this Court has only to draw adverse inference from their non appearance or non participation in the proceedings. This Court is constrained to accept the contention of the defendants 4 to 7 that the plaintiffs have been set up by the defendants 1 and 2 to file the above suit.

24.The learned District Judge has very clearly brought out the contentions of the plaintiffs and the fact that the same has not been proved by them in paragraph 19 of the judgment. The cross examination of PW1 which has been extracted by the trial Court would clearly prove that the plaintiffs are totally unaware about the ancestral properties that were available and PW1 has admitted that they have not filed any documents to prove their contentions.

25.The learned District Judge had framed a issue as to whether the suit properties had been purchased from out of the ancestral properties. The issue has been considered and answered against the plaintiffs. Once the plaintiffs had failed to prove that the properties are the Joint Family properties, it naturally follows that the properties are the self acquired properties of the defendants 1 and 2 and they have been dealt with likewise. The plaintiffs cannot recall the said transactions in question. Though the plaintiffs have pleaded undue influence, coercion, fraud etc., in the execution of the documents in favour of the defendants 4, 6 and 7, they have not proved the same.

26.The judgment of the trial Court therefore does not require any reconsideration and consequently, the first appeal stands dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

gd/vkr



To

The V Additional District Judge,
Coimbatore.

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The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Udayakumar, Advocate sr 47714

A.S.No.937 of 2020
and C.M.P.No.1817 of 2021

GJ(CO)
SP(16/11/2021)