



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.760 of 2013

and

M.P. (MD)No.1 of 2013

WEB COPY

1.Vellaisamy (Died)

2.Pappathy

3.Malaisamy

4.Pandi Selvi

5.Arjunan

... Appellants / Appellants /
Plaintiffs

6.Kannan

7.Malayammal

... Appellants 6 & 7

(appellants 6 & 7 were brought on record as

Lrs of the deceased 1st Appellant

vide order dated 08.10.2021)

-Vs-

1.Pandithurai (Died)

2.Chellamal

3.S.Pitchai (Died)

... Respondents 1 to 3/
Respondents 1 to 3/Defendants

4.Rasamma Mary

5.Sammanasu

... Respondents

(R4 & R5 are brought on record as legal heirs of the deceased third respondent vide order dated 31.08.2021 in C.M.P.(MD)No.6751 of 2021)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 02.08.2013 made in A.S.No.45 of 2011 on the file of the Principal District Judge, Dindigul by confirming the decree and judgment dated 07.07.2011 made in O.S.No.1 of 2006 on the file of the Principal Sub-Judge, Dindigul.

For Appellants

: Mr.A.R.Sethupathy

For R1 & R2

: No appearance

For R4 & R5

: Mr.H.Lakshmi Shankar

JUDGMENT

This second appeal arises out of a partition suit. The plaintiffs are the appellants. The plaintiffs filed O.S.No.1 of 2006 on the file of the Principal Sub Court, Dindigul, seeking partition and separate possession of 9/10th share in the suit "A" schedule and "B" schedule properties.



2. The case of the plaintiffs is that the suit "A" schedule is an ancestral property that was purchased vide Ex.A1 dated 11.12.1969 by late Periyakaruppan / father of the first plaintiff Vellaisamy. From out of the earnings of the suit "A" schedule item, "B" schedule item was purchased in the name of the first defendant Pandithurai and the second defendant Chellamal. Vellaisamy and Pandithurai are brothers. Chellamal is the wife of Pandithurai. Though the suit "B" schedule item was standing in the name of D1 and D2, it is very much a joint family property. D1 and D2 without any family necessity alienated the same in favour of the third defendant Pitchai vide Ex.B5 dated 22.06.1998. This alienation will not bind the plaintiffs. Therefore, seeking partition of their 9/10th share, the suit came to be laid. The contesting defendant Pitchai filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

3. The second appellant examined herself as P.W.1. Three other witnesses were examined on their side. Ex.A1 to Ex.A5 were marked. Pitchai was examined as D.W.1 and one Murugesan was examined as D.W.2. Ex.B1 to Ex.B16 were marked. Three official documents were marked as witness documents. After considering the evidence on either side, the trial Court by judgment and decree dated 07.07.2011 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.45 of 2011 before the Principal District Judge, Dindigul. The first appellate Court vide Judgment and decree dated 02.08.2013 dismissed the appeal and confirmed the decision of the trial Court. Challenging the same, the second appeal came to be filed. The second appeal was admitted on the following substantial question of law:-

"Whether the "B" schedule property was purchased out of the joint family nucleus, as pleaded by the appellant / plaintiff or it was a self-acquired property, as pleaded by the respondents/defendants"

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellants and decree the suit as prayed for.

5. Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgment and decree do not call for interference.

6. I carefully considered the rival contentions and went through the evidence on record. The only question that calls for determination is whether "B" schedule property was purchased out of the joint family nucleus or it was a self acquired property of D1 and D2.



7. The case of the plaintiffs is that "B" schedule property was purchased out of the earnings generated from "A" schedule property. There is no dispute that "A" schedule property is an ancestral property. While "A" schedule property was purchased way back in December 1969, "B" schedule property was purchased on 27.02.1991. Interestingly, "B" schedule property stands in the name of first and second defendants who are husband and wife. If really "B" schedule property was purchased out of the earnings of the ancestral property, certainly, it could have stood only in the name of the first plaintiff and first defendant. That apart, when "B" schedule property was mortgaged with Indian Overseas Bank by D1 and D2, the first plaintiff had signed the said document as attester.

8. From the evidence on record, the following facts emerge:-

(a) There is no evidence to show that "A" schedule property generated a surplus income, out of which, "B" schedule property was purchased.

(b) The first plaintiff did not enter the witness box and therefore, the Courts below were justified in drawing adverse inference against the plaintiffs. It is only the first plaintiff who could have adduced evidence to show as to how "B" schedule property was purchased out of the income generated from "A" schedule property and as to why, "B" schedule property was purchased in the names of the first and second defendants.

(c) D1 and D2 who have purchased the "B" schedule property under Ex.B1 had independently dealt with the property as evidenced by the deed of mortgage under Ex.B4.

9. In view of these undisputed facts, the Courts below rightly held that "B" schedule property which was purchased by the contesting third defendant from the other defendants is not amenable for partition and that it was the self acquired property of D1 and D2. No substantial question of law arises for consideration. The judgment and decree passed by the Courts below do not call for any interference. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Judge, Dindigul.
- 2.The Principal Sub-Judge, Dindigul.

Copy To:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-27700[F]
dated 31/08/2021)

Judgment made in
S.A. (MD) No.760 of 2013
and
M.P. (MD) No.1 of 2013
31.08.2021

SE (CO)
GC (21.12.2021) 4P 6C