



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

S.A. (MD)No.711 of 2020

and

C.M.P. (MD)No.7296 of 2020

...Appellant/1st Respondent/1st Defendant

Vs.

Chellam

Lakshmi (Died)

Veerayee (Died)

1.Karuppayee

2.Valli

3.Sigappi

4.Arumugam

5.Chinnakannu

6.Ravikumar

7.Shanmugavalli

...Respondents/Appellants/Plaintiff

8.Valli

Nachammai (Died)

9.Pooranam

...Respondents/Respondents 2,3,4/
Defendants 2,3,4

10.Selvam @ Veeraiah

...Respondent/5th Respondent/8th plaintiff

11.M.Mariammbalam

12.M.Muthaiah

13.M.Senthilkumar

14.D.Lakshmi

... Respondents/Respondents 6 to 9/
LR's of Deceased 3rd Defendant

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to call for the records in pursuant to the judgment and decree, dated 31.01.2020 passed in A.S.No.115 of 2001 by the learned Principal District Judge, Sivagangai, modified the judgment and decree, dated 30.07.2001 passed in O.S.No.170 of 1998 by the learned Subordinate Judge, Sivagangai and to set aside the same and to allow this appeal.

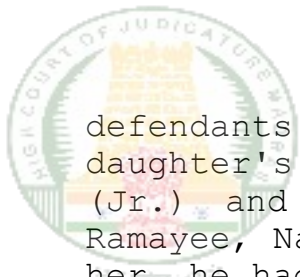
For Appellant

:Mr.M.Karthikeya Venkatachalapathy

JUDGMENT

The first defendant in the suit in O.S.No.170 of 1998 on the file of the Subordinate Court, Sivagangai, having suffered a decree for partition and separate possession of the plaintiffs' 6/10 share in the suit property, has come up with this second appeal.

2.The plaintiffs claim that they are entitled to a 6/10 share in the suit properties contending that the suit properties belonged to one Nachiappan (Jr) S/o.Nachiappan (Sr), as his self acquisition. The said Nachiappan (Jr) had two wives. The said Nachiappan (Jr) married one Ramayee and through her, he had four children, namely,



defendants 1, 3, 4 and late Ramayee. The second defendant is the daughter's daughter of Veerayee, who is the daughter of Nachiappan (Jr.) and Ramayee. After the death of his first wife, namely, Ramayee, Nachiappan (Jr) had married the first plaintiff and through her, he had five children, namely plaintiffs 2 to 6.

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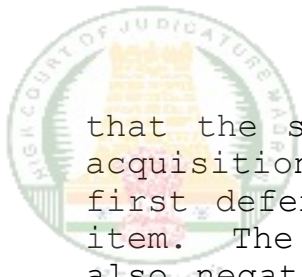
3.The said Nachiappan had executed a Will on 04.03.1988 with reference to a portion of his self acquired properties and he died about eight years prior to the suit. "A" schedule properties set out in the Will were allotted to the first defendant and the "B" schedule properties were allotted to the plaintiffs 2 to 6. The parties had accepted the Will and the properties covered by the Will are in enjoyment of the respective legatees. Contending that Nachiappan (Jr) died intestate with the reference to the suit properties, the plaintiffs claim 6/10 share in the suit properties.

4.The suit was resisted by the defendants contending that the suit properties are the ancestral properties of Nachiappan (Jr). It was also contended that the suit first item, which is a dwelling house, was allotted to the first defendant and enjoyed by him absolutely and therefore, the suit first item is not available for partition. It was the further contention that in view of Section 23 of the Hindu Succession Act, 1956, the plaintiffs, being female heirs, cannot seek partition of suit first item, which is a dwelling house.

5.At trial, the 4th plaintiff was examined as PW-1 and three others were examined as PW-2 to PW-4 and Ex-A1 to Ex-A45 were marked. The first defendant was examined as DW-1 and Ex-B1 to Ex-B20 were marked.

6.The learned trial Judge, upon consideration of the evidence on record, concluded that the suit properties are self acquired properties of Nachiappan (Jr). The learned trial Judge, however, rejected the claim of the plaintiffs to a share in the suit first item, in view of the Section 23 of the Hindu Succession Act. Aggrieved, the plaintiffs preferred an appeal in A.S.No.115 of 2001 before the Principal District Court, Sivagangai. The appeal was originally dismissed by the appellate Court. Aggrieved by the said dismissal, the plaintiffs preferred second appeal in S.A.(MD)No.21 of 2013. This Court, by its judgment, dated 05.12.2018 allowed the appeal by setting aside the judgment and decree of the appellate Court and remitted the matter back to the appellate Court with a specific direction to render a finding on the nature of properties, as to whether it is ancestral or self acquired. Upon remand, the learned appellate Judge concluded that the suit properties are self acquisitions of Nachiappan (Jr).

7.As regards the claim of the first defendant to the suit first item, the learned appellate Judge concluded that once it is held



that the suit properties belonged to Nachiappan (Jr.) as his self acquisition, without there being a recognised mode of transfer, the first defendant cannot claim absolute interest over the suit first item. The claim based on Section 23 of the Hindu Succession Act was also negatived in view of the deletion of the said provision from the Statute. On the said findings, the learned appellate Judge allowed the appeal and decreed the suit in respect of the suit properties. The attempt made by the appellant to introduce certain documents, as additional evidence in the appeal, was also rejected by the appellate Judge on the ground that the documents, that are sought to be filed, are not relevant in deciding the issue, that was raised in the appeal. Aggrieved by the judgment and decree of the first appellate Court, the first defendant has come up with the second appeal.

8.I have heard Mr.M.Karthikeya Venkatachalapathy, learned Counsel for the appellant.

9.The learned Counsel for the appellant would vehemently contend that the lower appellate Court was not right in concluding that the allotment of suit first item to him exclusively is not valid. He would also contend that the fact that he accepted the Will executed by the father in the year 1986 would not estop him from claiming exclusive title of suit first item. He would also challenge the finding that the suit properties are self acquisitions of Nachiappan (Jr).

10.The appellate Court, after remand, has reconsidered the entire evidence on record and has come to the conclusion that the first defendant has miserably failed to prove the character of the suit property as ancestral property. The first appellate Court has discussed the law as well as the evidence and has concluded that in the absence of any evidence to show that the suit property was inherited by Nachiappan (Jr) from his father's father, the same cannot be treated as ancestral property. The learned appellate Judge has also taken note of the absence of evidence, as to the date of death of Nachiappan (Jr) to conclude that the properties are ancestral or not. The date of death of Nachiappan (Jr), assumes significance in the light of Hindu Succession Act, that was introduced in 1956. Any property inherited through a male ancestor prior to 1956, can be termed as ancestral property. After 1956, it should be shown as the property inherited by the paternal ancestor or from a male ancestor, so as to characterise the same as ancestral property.

11.Despite his best effort, the learned Counsel for the appellant is unable to point out a legal or factual error in the conclusion of the appellate Court on the character of the suit property. Once it is found that the character of the suit property is self acquired, the oral transfer pleaded by the appellant cannot



be sustained. There cannot be an oral allotment or oral transfer of the property, which is valued more than Rs.100/- to a person, who had no pre-existing interest. Therefore, the appellate Court was right in negating the claim relating to the ownership over the suit first item. The defence raised by the appellant under Section 23 of the Hindu Succession Act is also unavailable, because of the change in law.

12.I, therefore, do not find any question of law, much less a substantial question of law in this appeal. Accordingly, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Principal District Judge, Sivagangai.

2.The Subordinate Judge, Sivagangai.

3.The Section Officer,VR.Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.M.KARTHIKEYA VENKATACHALAPATHY, Advocate (SR-198[F]
dated 06/01/2021)

S.A. (MD)No.711 of 2020

05.01.2021

SV2 (CO)

KB(27.01.2021) 4P 7C