



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 20.12.2021
CORAM
THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

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SA(MD)Nos.418 of 2016 & 730 of 2015 &
MP(MD)No.1/2015 & CMP(MD)No.4773/2016

SA(MD)No.418 of 2016

B.Sathiyavathi

... Appellant

vs.

1.Tamilselvan
2.Boobalan
3.Ganesan
4.Narayanan

... Respondents

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and decree in AS.No.111/2012 dated 01.11.2014 on the file of the Sub Court, Sivagangai confirming the Judgment and decree in OS.No.215/2010 dated 31.08.2012 on the file of the District Munsif Court, Sivagangai.

For Appellant : Mr.J.Jeyakumaran

For Respondents : Mr.A.Arumugam
for M/s.Ajmal Associates
for R1 and R2

SA(MD)No.730 of 2015

1.Tamilselvan
2.Poobalan

... Appellants

vs.

1.Sathiyavathi
2.Ganesan
3.Narayanan

... Respondents

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and decree in AS.No.105/2012 dated 01.11.2014 on the file of the Sub Court, Sivagangai confirming the Judgment and decree in OS.No.215/2010 dated 31.08.2012 on the file of the District Munsif Court, Sivagangai.



For Appellant : Mr.A.Arumugam
for M/s.Ajmal Associates
For R1 : Mr.J.Jeyakumaran

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COMMON JUDGMENT

The Second Appeal in S.A.(MD)No.418 of 2016 has been filed by the Appellant / Plaintiff against the Judgment and Decree in A.S.No.111/2012, dated 01.11.2014 on the file of the Principal Sub Court, Sivagangai, by confirming the Judgment and decree in O.S.No.215 of 2010, dated 31.08.2012, on the file of the District Munsif Court, Sivagangai.

2. The Second Appeal in S.A.(MD)No.730 of 2015 has been filed by the Appellants / Defendants 1 and 2 against the Judgment and Decree in A.S.No.105 of 2012, dated 01.11.2014 on the file of the Sub Court, Sivagangai, confirming the Judgment and decree in O.S.No.215 of 2010, dated 31.08.2012, on the file of the District Munsif Court, Sivagangai.

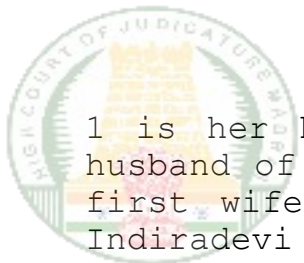
3. The parties are referred to as per their ranking before the Trial Court.

4. The case of the plaintiff, in brief, is as follows.

The suit items 1 to 12 belong to the husband of the plaintiff namely Balasubramanian by way of registered sale deeds. Those properties were his self acquired properties. The suit items 13 to 15 were assigned on the husband of the plaintiff by an order dated 20.02.1987. The plaintiff is the second wife of Balasubramanian. He executed settlement deed with regard to suit properties and some other properties in plaintiff's favour on 17.02.2010. The plaintiff is in possession of the properties for more than the prescriptive period and hence, she has perfected title to the suit properties by way of adverse possession. The defendants 1 and 2 are the sons of Balasubramanian through his first wife. The defendants 3 and 4 are the uncles of defendants 1 and 2. In respect of the ancestral properties, a suit in O.S.No.139 of 2009 is pending between Balasubramanian and defendants 1 and 2. Due to the said enmity, the defendants 1 and 2 are proclaiming that they are going to disturb the peaceful possession and enjoyment of the suit properties by the plaintiff from 12.10.2010 onwards. Hence, the plaintiff filed the suit for declaration and permanent injunction.

5. In the suit, the defendants 1 and 2 filed a written statement and the brief facts are as follows.

(i) The suit item 1 was purchased by one Chinniah Pillai and his brothers jointly. Chinniah Pillai is the father of the plaintiff's husband. The claim of the plaintiff that the suit item



1 is her husband's self acquired property is unsustainable. The husband of the plaintiff namely Balasubramanian had two wives. The first wife was Poomayil. The defendants 1 and 2, Kannathal and Indiradevi are the children of Balasubramanian and Poomayil. Indiradevi died when she was a minor. The plaintiff is the second wife of Balasubramanian and they have four daughters and one son. The last daughter of the plaintiff alone is yet to be married. For all the other daughters marriage was solemnized by the plaintiff's husband and the defendants 1 and 2 from and out of the joint family income. The husband of the plaintiff and the defendants 1 and 2 had been enjoying the ancestral properties jointly till date through Chinniah Pillai. The husband of the plaintiff in his capacity as father and guardian of the defendants 1 and 2 and Kannathal, who were minors, had conducted two suits in OS.No.81/1975 and OS.No.169/1977 in respect of A and C schedule properties consisted in OS.No.136/2009. The husband of the plaintiff derived the income from the said properties. When the defendants 1 and 2 attained majority, the husband of the plaintiff had entrusted the possession of the said properties to them. It is from the income derived from the said properties when the defendants 1 and 2 were minors, the income derived from the ancestral properties and the income contributed by the labour of the defendants 1 and 2, the husband of plaintiff has purchased the suit items 2 to 12. Hence, the suit items 2 to 12 were not the self acquired properties of the husband of the plaintiff. The suit items 13 to 15 belong to one Rajangam, who is the brother of Poomayil. The suit item 14 was purchased by Rajangam from one Muthurakkuthevar vide sale deed dated 04.07.1970 and in the said sale deed, Balasubramanian affixed his signature as attesting witness. Since, Rajangam died during settlement period, he could not obtain patta for suit items 13 to 15. The said suit items 13 to 15 were included in the will executed by Rajangam in favour of the defendants 1 and 2. Since the defendants 1 and 2 were minors, Balasubramanian cultivated the said properties. By suppressing the above facts, Balasubramanian has fraudulently got the assignment in respect of the suit items 13 to 15 in his favour.

(ii) The suit properties and some other properties were purchased by Balasubramanian from and out of the income derived from the ancestral properties, he has no right to execute Inam Settlement Deed in favour of the plaintiff. When a suit for partition was pending between Balasubramanian and the defendants 1 and 2, Inam Settlement Deed was executed in a hurried manner only to cheat the defendants 1 and 2. Based on the Inam Settlement Deed, the plaintiff cannot claim any right over the properties. The defendants 3 and 4 are no way connected to the suit properties and they are residing in some other village, which is 30 Kms away from the suit properties. The suit in OS.No.136/2009 pending on the file of the same Court is not in respect of the ancestral properties and is only in respect of the properties comprised in the Will executed by Rajangam and one Soundaram.



(iii) The first defendant had filed a petition before Revenue Divisional Officer, Sivagangai on 12.07.2010 for cancellation of the above said assignment. The suit items 13 to 15 were continuously in possession and enjoyment of the defendants 1 and 2 alone. The property in S.No.212/4A belongs to Kannathal. The properties in S.No.245/2 and S.No.245/4 belong to Thiruvupillai. The husband of the plaintiff has no right or title to execute Inam Settlement Deed in favour of the plaintiff. Those properties were also not shown as suit properties. Hence, they prayed for dismissal of the suit with costs.

6. The brief averments made in the written statement filed by the defendants 3 and 4 are as follows.

(i) The defendants 3 and 4 have no interests in the suit properties. They are not at all connected to the suit properties and hence, the suit is bad for mis-joinder of unnecessary parties and has to be dismissed on that count alone. The third defendant is the father-in-law of Kannathal and the fourth defendant is the father-in-law of the second defendant. They are residing 30 Kms away from the suit properties and they have no knowledge about the dispute between the plaintiff and the defendants 1 and 2. Hence, they prayed for dismissal of the suit as against them with exemplary costs.

7. Before the Trial Court, on the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A36 were marked. On the side of the defendants, DW1 to DW5 were examined and Exs.B1 to B38 were marked.

8. On the basis of the rival pleadings on either side, the learned District Munsif, Sivagangai had framed necessary issues and after evaluating both oral and documentary evidences, had decreed the suit in part and declared that the suit items 1 to 12 belong to the plaintiff and she is entitled to the relief of permanent injunction as prayed for in respect of the suit items 1 to 12. The suit in respect of items 13 to 15 was dismissed.

9. Aggrieved by the Judgment and decree passed by the Trial Court, the plaintiff filed an appeal in AS.No.111/2012 before the Subordinate Court, Sivagangai to set aside the dismissal of the suit in respect of the suit items 13 to 15 and the first and second defendants filed an appeal in AS.No.105/2012 against the decreed portion of the suit. The Appellate Court after hearing both sides and upon reappraising the evidences available on record, has dismissed the appeals vide Judgment and decree dated 01.11.2014 and confirmed the Judgment and decree passed by the Trial Court.



10. Challenging the Judgment and decree in AS(MD)Nos.111/2012, the plaintiff has filed SA(MD)No.418/2016 and challenging the Judgment and decree in AS(MD)No.105/2012, the first and second defendants have filed SA(MD)No.730/2015.

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11. This Court, while admitting the Appeals, framed the following substantial questions of law, for consideration.

"(i) Whether the Settlement Deed Ex.A11 is valid when there is no evidence and pleading and proof whatsoever that the plaintiff husband independent source of income to purchase the property covered under Settlement Deed?

(ii) Whether the Courts below are legally right in placing the burden of proof on the defendant, especially when the Hindu law specifically states that the initial presumption the property standing in the name of Hindu father is the joint family property consisting of Hindu father and his sons?

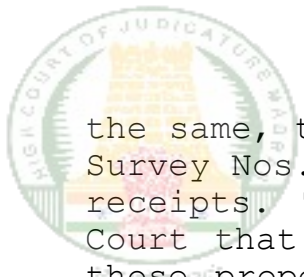
(iii) Whether the Judgment in OS.No.81/1975 and OS.No.169/1977 will statutorily bar the defendant from claiming any interest in the suit property especially when the earlier suit was filed by the father ostensibly for the benefit of the minors and in truth for the benefit of the father?

(iv) Whether the failure of the Courts below to frame property issues under Order 13 Rule 1 of CPC, 1908 has vitiated the Judgment of the trial Court?

(v) Whether the failure of the Courts below in framing proper points for consideration has vitiated the Judgment of the First Appellate Court under Order 41 Rule 31 of CPC, 1908?

(vi) Whether the Courts below are right in holding that suit properties items 1 to 12 are the exclusive, separate properties of father Balasubramanian is as a result of admission of immaterial, irrelevant and inadmissible evidence and rejection of relevant, material and admissible evidence and whether such a legally unacceptable perverse finding is liable to be set aside under Section 100 of CPC, 1908?"

12. The learned counsel appearing for the plaintiff would submit that the Courts below have not properly considered Ex.A6 and thereby, dismissed the Suit in respect of 13, 14 and 15 schedule of property. The Courts below failed to consider that 13, 14 and 15 schedule of properties acquired by the plaintiff's husband by way of settlement issued by the Special Tahsildar and in order to establish



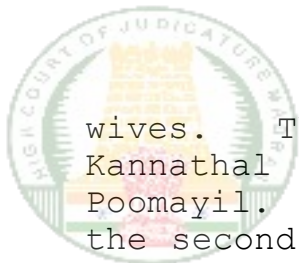
the same, the plaintiff marked Ex.A6, Settlement Order in respect of Survey Nos.215/21, 348/11 and 228/4 and Exs.A7 and A8, which are tax receipts. The plaintiff had established evidence before the trial Court that 13 to 15 schedule of properties are settlement land and those properties are vested with the Government prior to the order of settlement to the plaintiff's husband, but the Courts below have failed to see that how the said lands were sold by Muthurakkuthevar in favour of Rajangam. The trial Court erroneously come to a conclusion that the 14th schedule of property belonged to the 1st and 2nd defendants and the Courts below have not also assigned any valid reason for dismissing the suit and as well the first appellate Court simply re-write the Judgment of the trial Court.

13. The learned counsel appearing for the defendants 1 and 2 would submit that the suit items 1 to 12 are joint family properties and the husband of the plaintiff had no sufficient independent source of income to purchase the suit items 1 to 12. Since, the suit items 1 to 12 are joint family properties, the husband of the plaintiff cannot execute any Settlement Deed in favour of the plaintiff and hence, Settlement Deed, Ex.A11 dated 17.02.2010 is invalid. The earlier suits filed by the husband of the plaintiff as a guardian of the minors will not bind on the sons. He therefore, prayed for reversing the decreetal order granted by both the Courts below in respect of the suit items 1 to 12 in favour of the plaintiff.

14. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

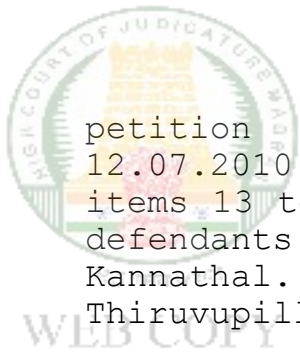
15. The case of the plaintiff is that the suit items 1 to 12 belonged to the husband of the plaintiff namely Balasubramanian. Those properties were his self acquired properties. The suit items 13 to 15 were assigned on the husband of the plaintiff by an order dated 20.02.1987. The plaintiff is the second wife of Balasubramanian. He executed settlement deed with regard to suit properties and some other properties in plaintiff's favour on 17.02.2010. The plaintiff is in possession of the properties for more than the prescriptive period and hence, she has perfected title to the suit properties by way of adverse possession. The defendants 1 and 2 are the sons of Balasubramanian through his first wife. The defendants 3 and 4 are the uncles of defendants 1 and 2. In respect of the ancestral properties, a suit in O.S.No.139 of 2009 is pending between Balasubramanian and defendants 1 and 2.

16. The case of the defendants 1 and 2 is that suit item No.1 was purchased by one Chinniah Pillai and his brothers jointly. Chinniah Pillai is the father of the plaintiff's husband. The claim of the plaintiff that the suit item 1 is her husband's self acquired property is unsustainable. The husband of the plaintiff had two



wives. The first wife was Poomayil. The defendants 1 and 2, Kannathal and Indiradevi were the children of Balasubramanian and Poomayil. Indiradevi died when she was a minor. The plaintiff is the second wife of Balasubramanian and they have four daughters and one son. The last daughter of the plaintiff alone is yet to be married. For all the other daughters marriage was solemnized by the plaintiff's husband and the defendants 1 and 2 from and out of the joint family income. The husband of the plaintiff and the defendants 1 and 2 had been enjoying the ancestral properties jointly till date through Chinniah Pillai. The husband of the plaintiff in his capacity as father and guardian of the defendants 1 and 2 and Kannathal, who were minors, had conducted two suits in OS.No.81/1975 and OS.No.169/1977 in respect of A and C schedule properties consisted in OS.No.136/2009. It is the further case of the defendants 1 and 2 that the husband of the plaintiff derived income from the said properties. When the defendants 1 and 2 attained majority, the husband of the plaintiff had entrusted the possession of the said properties to them. It is from the income derived from the said properties when the defendants 1 and 2 were minors, the income derived from the ancestral properties and the income contributed by the labour of the defendants 1 and 2, the husband of plaintiff has purchased suit items 2 to 12. Hence, the suit items 2 to 12 were not the self acquired properties of the husband of the plaintiff.

17. The suit items 13 to 15 belonged to one Rajangam, who is the brother of Poomayil. The suit item 14 was purchased by Rajangam from one Muthurakkuthevar, vide sale deed dated 04.07.1970 and in the said sale deed, Balasubramanian affixed his signature as attesting witness. Since, Rajangam died during settlement period, he could not obtain patta for suit items 13 to 15. The said suit items 13 to 15 were included in the Will executed by Rajangam in favour of the defendants 1 and 2. Since the defendants 1 and 2 were minors, Balasubramanian cultivated the said properties. By suppressing the above facts, Balasubramanian has fraudulently got the assignment in respect of the suit items 13 to 15 in his favour. Since the suit properties and some other properties were purchased by Balasubramanian from and out of the income derived from the ancestral properties, he has no right to execute Inam Settlement Deed in favour of the plaintiff. When a suit for partition was pending between Balasubramanian and the defendants 1 and 2, Inam Settlement Deed was executed in a hurried manner only to cheat the defendants 1 and 2. Based on the Inam Settlement Deed, the plaintiff cannot claim any right over the properties. The defendants 3 and 4 are no way connected to the suit properties and they are residing in some other village, which is 30 Kms away from the suit properties. The suit in OS.No.136/2009 pending on the file of the same Court is not in respect of the ancestral properties and is only in respect of the properties comprised in the Will executed by Rajangam and one Soundaram. The first defendant had filed a



petition before Revenue Divisional Officer, Sivagangai, on 12.07.2010 for cancellation of the above said assignment. The suit items 13 to 15 were continuously in possession and enjoyment of the defendants 1 and 2 alone. The property in S.No.212/4A belongs to Kannathal. The properties in S.No.245/2 and S.No.245/4 belong to Thiruvupillai.

18. According to the defendants 3 and 4, they have no interest in the suit properties. They are not at all connected to the suit properties and hence, the suit is bad for mis-joinder of unnecessary parties and has to be dismissed on that count alone. The third defendant is the father-in-law of Kannathal and the fourth defendant is the father-in-law of the second defendant. They are residing 30 Kms away from the suit properties and they have no knowledge about the dispute between the plaintiff and the defendants 1 and 2.

19. The undisputed facts are that the husband of the plaintiff had two wives. The first wife was Poomayil. The defendants 1 and 2, Kannathal and Indiradevi were the children of Balasubramanian, through his first wife. Indiradevi died when she was minor. The plaintiff is the second wife of Balasubramanian and they have four daughters and one son. The defendants 3 and 4 are the uncles of defendants 1 and 2. Chinniah Pillai is the father of the plaintiff's husband.

20. Ex.A11 is the settlement deed, dated 17.02.2010. A perusal of Ex.A11 would show that it was executed by one Balasubramanian in favour of the plaintiff. It was contested by the defendants 1 and 2, who are sons of Balasubramanian stating that those properties were purchased from and out of the income derived from the joint family nucleus. Further, the Suit Item 13 to 15 were the properties inherited by them through one Rajangam, who is their maternal uncle by way of Registered Will. Therefore, the husband of the plaintiff has no right at all to convey those properties to the plaintiff by executing Inam Settlement Deed. In a catena of decisions this Court as well as the Hon'ble Apex Court have held that under the Hindu Law mere living together of the members of the family will not make them joint owners of properties acquired by each individual member. There must have been a nucleus of ancestral property, which was utilised for the purpose of making the subsequent acquisitions or the members must have thrown their joint earnings into hotchpot with the intention of giving up their individual rights in them.

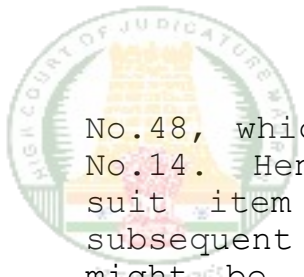
21. The properties have been purchased from the income of the plaintiff and it cannot be treated as joint family properties, unless and until it is established that income of the joint family properties was utilised for acquiring the property. The presumption of law is that mere living together as members of a family will not make them joint owners of properties acquired by



each individual member. There must have been a nucleus of ancestral property which was utilised for the purpose of making the subsequent acquisitions. A perusal of the documents would show that the said properties were purchased in the individual capacity of the husband of the plaintiff. Hence, there is no presumption that the suit properties were purchased from the income derived from the joint family properties. The defendants 1 and 2 failed to discharge the burden of joint family nucleus through which, their father purchased the property. The defendants 1 and 2 had not proved their case by letting in evidence to establish that the properties are joint family properties. The defendants 1 and 2 were not in a position to file any document to prove that it is a joint family property, except the oral evidence and the income from the joint family properties were surplus and the father was able to purchase the properties. The properties were purchased in the name of the father and at that point of time, the defendants 1 and 2 were minors and they were not in a position to prove that their father utilized their labour to purchase the suit properties.

22. It is seen that, from the year 2003, there was dispute between the father and the defendants 1 and 2. Only oral evidence was let in to prove the same. In such circumstances, the defendants 1 and 2 failed to prove that they have contributed physical labour and out of which, the suit properties were purchased and a mere submission is unacceptable. The plaintiff was able to prove that her husband was doing various business in the form of Paddy Commission Mandi, Fire Wood business and contract business through Exs.A17 Ex.A21. A perusal of those documents would show that the plaintiff had surplus income to purchase the suit items 1 to 12. The Trial Court as well as Appellate Court had also gone into this aspect in detail and held that the suit items 1 to 12 are properties purchased from the individual income of the husband of the plaintiff. Further, there is no evidence adduced that the husband of the plaintiff had voluntarily blended those properties with the joint family properties with a view to mix those properties as common stock. The defendants 1 and 2 ought to prove their claim that they had contributed physical labour and out of that income, the suit properties were purchased, however, it is not clear what sort of labour the defendants 1 and 2 engaged and thereby, how much income they contributed to the joint family. In the light of the above facts, this Court has no hesitation to come to a conclusion that the Suit Item Nos.1 to 12 are the individual and separate properties of the husband of the plaintiff.

23. Ex.B13, is the Sale Deed. A perusal of Ex.B13 would show that it was in the name of maternal uncle of the defendants 1 and 2 viz., Rajangam. It is the case of the defendants 1 and 2 that by way of Ex.B13, Rajangam had purchased the Suit Item No.14 from one Muthurakku Thevar S/o.Kalimuthu Thevar. In Ex.B1 entry is in the name of Muthurakku Thevar S/o.Kalimuthu Thevar, in respect of Pimass



No.48, which was correlated to S.No.348/11, which is the suit Item No.14. Hence, perusal of Ex.B1 and Ex.B13 would go to show that the suit item No.14 is the property purchased by Rajangam. The subsequent classification of the said land as Government vacant site might be due to the reason that the title holder due to his indisposed state of health could not appear and claim patta in respect of the said land. One Balasubramanian S/o.Chinniah of Siruvelangudi Village with the very same name and address of the plaintiff's husband attested the sale deed in favour of the said Rajangam. By suppressing those facts, the husband of the plaintiff obtained assignment order in his favour. The property in Item No.14, being the property of Rajangam and subsequently, bequeathed by way of Will to benefit of the minor children of the husband of the plaintiff viz., defendants 1 and 2, the assignment order in respect of the said property in the name of the husband of the plaintiff cannot be sustained. Hence, the settlement deed in favour of the plaintiff in respect of Suit Item Nos.13 to 15 cannot be sustained.

24.As far as the contention of the defendants 1 and 2 that the husband of the plaintiff in his capacity as father and guardian of the defendants 1 and 2 and Kannathal, who were minors, had conducted two suits in OS.No.81/1975 and OS.No.169/1977 and from the income derived from the ancestral properties, the husband of plaintiff had purchased suit items 1 to 12 and hence, the property acquired by the husband of the plaintiff is not the self acquired properties is concerned, from the entire documents adduced on the side of the defendants 1 and 2, this Court unable to accept such contentions, as there is no reliable materials adduced by them in respect of their contentions. Accordingly, the substantial questions of law are answered.

25. For the reasons aforesaid, this Court is of the considered view that no interference is called for in the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeals fail and the same stand dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mbi

<https://hcservices.ecourts.gov.in/hcservices/>



Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Subordinate Court,
Sivagangai
2. The District Munsif Court,
Sivagangai.
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

SA(MD)Nos.418 of 2016 & 730 of 2015
20.12.2021

SK(CO)
TR(18.02.2022) 11P 5C