



AS.No.223 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2022

PRONOUNCED ON : 29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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Siva Rathinacoumary

Appellant

Vs

1. Siva Nilavady @ Siva Niladevy @ Nilamballe
2. Siva Datchanamourty
3. Siva Djemourty @ Jayamurthy
4. Siva Kichenamourty @ Krishnamurthy
5. Chenemougame

Respondents

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 02.12.2010, made in OS.No.72 of 2002, by the III Additional District Judge, Puducherry.

For Appellant : Mr.Sai

For Respondents : Mr.V.Kamala Kumar

JUDGEMENT

1. This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated, 02.12.2010, made in OS.No.72 of 2002, by the III Additional District Judge, Puducherry.
2. The case of the Plaintiff, as set out, in the plaint is that the Plaintiff is the only daughter of the 1st Defendant and the Defendants 2 to 5 are her brothers. The suit properties belonged to the father of the Plaintiff, namely, Sivasubramanian,



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who was a Government Servant and out of his savings, he purchased the suit properties in his name and in the name of the Plaintiff and the Defendants. The Plaintiff and the Defendants are in joint possession of the same. The husband of the Plaintiff, who was a Government Servant, invested his money, through his father in law, for purchasing the suit properties in the name of the 1st Defendant, particularly, in the items (6) to (13) of the suit properties. The 1st Defendant is a benami and hence, she has no right or title over the suit properties. The suit properties were purchased between the years 1968 and 1991, when the Plaintiff's father and her husband were in Government service. After the demise of Sivasubramanian on 11.02.1997, OS.No.897 of 2007 was filed and the same was decreed on 05.09.2007. The Defendants are earning more than Rs.6 lakhs as income from the suit properties. The Plaintiff had issued a legal notice, dated 04.10.2009, seeking for partition, but till date they neither replied nor come forward for amicable partition. Since the Defendants are trying to alienate the suit properties, the suit was filed, for partition of the suit properties into 6 equal shares and for allotment of 1/6th share to the Plaintiff and for separate possession of the same and also for permanent injunction.

3. The case of the Defendants, as set out in the written statement filed by the 1st Defendant and adopted by the other Defendants, is that the Items (1) to (3) of the suit properties were purchased by late M.Sivasubramanian and the item (4) of suit properties stands in the name of Plaintiff and the Defendants 2 to 5. The



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items (5) to (10), (12) and (13) are her absolute properties as envisaged under Section 14 of the Hindu Succession Act. The properties acquired, standing in the name of a female member of a Hindu joint family cannot be treated as the joint family properties. The Defendant denied the allegation that Sivasubramanian and the Plaintiff's husband had contributed for purchase of the suit properties. The allegations that the 2nd Defendant is just a name lender and benami of her husband are false, in view of the prohibition as contemplated under Section 3(2) of the Benami Transactions (Prohibition) Act, 1988. The parties to the suit are governed by the Hindu Customary Law as applicable to Pondicherry. Hence, the present suit for partition of items (5) to (10), (12) and (13), during the life time of the mother, is not maintainable. The Defendants are willing and ready for partition of the items (1) to (4) of the suit properties. As regards the other items of suit properties, the 1st Defendant is the absolute owner of the same and neither the Plaintiff nor the Defendants 2 to 5 has any right or title over the same. In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the suit is maintainable?
2. Whether the suit is prohibited as contemplated under Section 3(2) of the Benami Transactions (Prohibition) Act, 1988?
3. Whether the parties to the suit were governed by The Hindu



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Customary Law as applicable to Pondicherry?

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4. Whether the plaintiff is entitled for partition?
 5. Whether the plaintiff is entitled for judgement and Decree?
 6. To what other relief the parties are entitled?
5. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A26 were marked and PW.1 was examined. On the side of the Defendants, Ex.A27 to Ex.A30 were marked and DW.1 was examined. The Trial Court had partly decreed the suit, granting the Plaintiff and the Defendants 1 to 5, the relief of partition of 1/6th share in the items (1) to (3) and granting partition of 1/5th share in the item (4) in favour of the Plaintiff and the Defendants 2 to 5 and dismissing the suit for partition in respect of items (5) to (13). Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant has submitted that the 1st Respondent has no separate income for herself to purchase the properties and they are joint family properties. The husband of the Appellant had also contributed towards the sale consideration. The Trial Court erred in not considering all these aspects. Hence, the learned counsel would pray for allowing this appeal.
8. The learned counsel for the Respondents has submitted that the items 5 to 10 and 12 and 13 are the absolute properties of the 1st Respondent, as envisaged under Section 14 of the Hindu Succession Act. The court below properly considered all the aspects and decreed the suit. Hence, he would



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pray for dismissal of this appeal. He would rely upon the decisions reported in 2009 (4) CTC 440 (K.V.Ramasamy Vs K.V.Sridharan) and (2011) 9 SCC 451 (Marabasappa Vs Ningappa).

9. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

10. The contention of the Plaintiff is that the schedule mentioned properties absolutely belonged to her father Sivasubramanian. The suit Schedule properties are in joint possession and enjoyment of the Plaintiff and the Defendants. Sivasubramanian purchased the suit Schedule properties in the name of the Plaintiff and the Defendants. Her husband Kuppuswamy also invested his money to purchase the properties especially items (6) to (13) in the name of the 1st Defendant. The 1st Defendant do not have any independent right or title over the Schedule mentioned properties. Items (6) to (13) are under the joint possession and enjoyment of the Plaintiff and the Defendants and it is dragged into the common hotchpotch and the Plaintiff is having right to claim partition. After the death of Sivasubramanian, the Plaintiff and the Defendants are in joint possession and enjoyment of the Schedule mentioned property. The Defendants 1 to 5 are greedy to take over the entire suit property. The Defendants are trying to alienate the suit property to third parties. Despite her demand, the Defendants are not ready for partition.

11. The contention of the Defendants is that items (5) to 10, 12, 13 are the



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absolute properties of the 1st Defendant. The properties standing in the name of the Plaintiff are her absolute properties. It is not the joint family property.

12.The question is as to whether the Appellant is entitled to get share in the items 5 to 10, 12 and 13 of the suit properties.

13.A perusal of Ex.A11 to Ex.A14 and Ex.A7 to Ex.A30 reveals that they were

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purchased in her mother's name and the sale consideration was paid by her only and nothing is whispered about the father's name and her husband's name. It is the duty of the Appellant to prove the contentions by oral and documentary evidence. But, the Appellant has failed to prove it. Unless it is proved by the Plaintiff that the said items of the properties were purchased from and out of the joint family fund, the above said items of properties are the absolute properties of her mother, as stated in Section 14 of the Hindu Succession Act. The court below has come to the proper conclusion and hence, there is no necessity for this Court to interfere with the impugned judgement of the court below and accordingly, this appeal is liable to be dismissed.

14.In fine, this Appeal Suit is dismissed. No costs.

29.04.2022



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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The III Additional District Judge, Puducherry
2. The Record Keeper, VR Section, Madras High Court

Pre-Delivery Judgement in
AS.No.223 of 2011