



A.S.No.286 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.286 of 2016
and C.M.P.No.5062 of 2016

1. P.Eswaramoorthy
2. E.Palaniammal .. Appellants

Versus

1. Kumudham
2. Minor Deepika
Minor rep. by her next friend mother Kumudham
3. Arjunan
4. Sellammal
5. Malleeswari .. Respondents

Prayer : Appeal Suit filed under Section 96 r/w Order XLI Rule 1 of Civil Procedure Code to set aside the judgment and decree, dated 08.10.2015 passed in O.S.No.18 of 2014 by the learned I Additional District Judge, Erode.

For Appellants : Mr.A.Prabakaran
for Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.Kaithamalai Kumaran, for R1
R2 minor rep. by R1
RR-3 to 5 - Notice served



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JUDGMENT

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A. The Appeal Suit :

This Appeal Suit is filed against the judgment and decree, dated 08.10.2015 passed by the learned I Additional District Judge, Erode, in O.S.No.18 of 2014, in and by which, the suit, filed by the plaintiffs for partition in respect of two items of the suit properties, was allowed and a preliminary decree granting 2/6th share to the second plaintiff in the item No.1 of the suit properties and 1/2 share in the item No.2 of the suit properties, besides, directing the first defendant to pay maintenance of a sum of Rs.5,000/- per month to the first plaintiff and also creating a charge over the share of the first defendant for regular payment of the maintenance to the first plaintiff and granted permanent injunction restraining the defendants, their men and agents from in any manner alienating or encumbering the suit properties till final partition is effected.

2. The defendants 4 and 5, who are the purchasers of the item No.2 of the suit schedule property are on appeal before this Court inasmuch as the impugned judgment and decree grants a preliminary decree of 1/2 share in the item No.2 of the suit properties in favour of the second plaintiff.



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B. The Complaint :

3. The brief facts leading to filing of the Appeal Suit are that the first plaintiff namely, *Kumudham*, is the wife of one *Arjunan*. The second plaintiff namely, minor *Deepika*, represented by her mother, *Kumudham*, is the daughter of *Arjunan*. The said *Arjunan* is the first defendant in the suit. The said *Arjunan* was born to one *Nachimuthu Goundar* and *Sellammal*. *Nachimuthu Goundar* had since passed away and *Sellammal* is the second defendant in the suit. *Arjunan* has got a sister by name *Malleeswari*, who is the third defendant in the suit. The fourth defendant, *P.Eswaramoorthy* and the fifth defendant, *E.Palaniammal*, are the persons who purchased the item No.2 of the suit properties by a registered sale deed, dated 30.10.2013 from the first defendant, *Arjunan*.

4. It is the case of the plaintiffs that item No.1 of the schedule mentioned properties is the ancestral property and the first defendant's father, *Nachimuthu Goundar* was allotted the same under a registered partition deed, dated 09.11.1966. The same was enjoyed jointly by the said *Nachimuthu Goundar* and his son *Arjunan* and as such is an ancestral



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property. While so, on 08.03.2002, a portion of the ancestral property was sold by the first defendant, *Arjunan*, the second defendant, *Sellammal* and the third defendant, *Malleeswari* and out of the said funds, another property was purchased which is described as item No.2 of schedule properties in the plaint. The property was purchased a day prior to the sale i.e., on 07.03.2002. While so, in or about the year 2010, the relationship between the first plaintiff-wife and the first defendant-husband got strained and the plaintiff and her daughter/the second plaintiff were sent out of the house. In order to leave the first plaintiff and the minor daughter in lurch, the first defendant had sold the property to the defendants 4 and 5. Hence the suit.

C. The Written Statement :

5. The suit was not contested by the first defendant, *Arjunan*, the second defendant, *Sellammal* and the third defendant, *Malleeswari*. Only the purchasers of the schedule-II property namely, *P.Eswaramoorthy* and *E.Palaniammal* contested the suit by filing a written statement. Their case is that, even though a dispute is alleged between the husband and wife, no petition before Court is filed and pending. Further, it is their case that when the property is allotted to *Nachimuthu Goundar* by virtue of the registered



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partition deed, it was his self-acquired property and after his life time, *Arjunan* inherited the same along with *Sellammal* and *Malleeswari* under Section 8 of the Hindu Succession Act, 1956. Therefore, item No.1 of the schedule properties cannot be termed as ancestral properties. In any event, the title to the item No.2 of the schedule properties stands in the name of *Arjunan* alone, he having purchased the same by a sale deed, dated 07.03.2002. Thereafter, for a valid and proper consideration, the property was sold to the defendants. They are in possession and enjoyment of the same. They are bonafide purchasers entitled to equity. The suit is filed only to defeat their rights.

D. The Issues :

6. On the above pleadings, the Trial Court framed the following issues:-

1. Whether the 'D' schedule properties has been already allotted to the share of one Nachimuthu who is the father of D1, 3 and husband of D2 through registered partition which is effected on 9.11.1966 among with his brothers as alleged?

2. Whether the suit is bad for non joinder of necessary parties?



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3. *Whether the D4 and D5 are the bonafide purchasers for a valuable consideration in respect of the Item No.2 of the schedule property as alleged?*

4. *Whether the 2nd plaintiff is entitled for partition of respective shares in the plaint 1, 2 items of schedule properties by metes and bounds as prayed for?*

5. *Whether the 1st plaintiff is entitled for the life time maintenance amount of Rs.5000/-p.m. from the 1st defendant as prayed for?*

6. *Whether the 2nd plaintiff is entitled for the injunction relief against D1 to D5 as prayed for?*

7. *What other reliefs the plaintiffs are entitled for?*

8. *What order as to costs?*

Additional Issues :

1. *Whether the suit properties are the ancestral properties or the individual properties of D1?*

2. *Whether the sale deed dated 3.10.2013 in favour of D4 and D5 is binding in nature to P2 as alleged?*

3. *Whether the suit is collusive one? or not?*

E. The Evidence :



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7. On the said issues, parties let in evidence. The first plaintiff examined herself as P.W.1 and **Exs.A-1** to **A-12** were marked. On behalf of the defendants, the fifth defendant examined herself as D.W.1 and **Exs.B-1** to **B-3** were marked.

F. The Findings of the Trial Court :

8. The Trial Court, thereafter, proceeded to consider the case of the parties and by a judgment, dated 08.10.2015, held that once the properties are allotted to *Nachimuthu Goundar* by a deed of partition, it cannot be termed as his separate properties in the hands of *Nachimuthu Goundar* and it continued to be coparcenary property and subsequently, when the other coparceners are born and the shares were vested in them also and held that the plaintiffs' suit is bound to succeed in respect of item No.1 of the suit properties. As far as the item No.2 of the suit properties is concerned, the Trial Court, considering the recital in the sale deed, dated 08.03.2002, which specifically stated that a portion of the ancestral property is sold only to purchase the other property and considering that the purchase of the other property also happened just a day prior to the sale i.e., on 08.03.2002, held that the item No.2 of the suit properties was purchased out of joint family



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nucleus and as such, held that the item No.2 of the suit properties is also coparcenary property and held that the minor *Deepika* is also entitled to a share in the said property. The Trial Court further held that the purchase of the defendants 4 and 5 is not bonafide and that they are not entitled to any equity. Aggrieved by the same, the present Appeal Suit is laid by the defendants 4 and 5.

G. The Submissions :

9. Heard *Mr.A.Prabakaran*, the learned Counsel appearing on behalf of the appellants and *Mr.Kaithamalai Kumaran*, the learned Counsel appearing on behalf of the first respondent.

10. *Mr.A.Prabakaran*, the learned Counsel appearing on behalf of the appellants, would contend that firstly, in this case, the property which came to *Nachimuthu Goundar* cannot itself be termed as an ancestral property. Be that as it may, as far as the item No.2 of the suit properties is concerned, it is purchased by the first defendant, *Arjunan*. In the sale deed, dated 30.10.2013, by which, the property was sold to her, it is absolutely described as "சுயர்ஜித" property. Therefore, when the item No.2 of the suit



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properties was independently purchased by *Arjunan*, it cannot be said to be an ancestral property. Further, it can be seen that under the sale deed, dated 08.03.2002, the total sale consideration received was only Rs.3,14,000/- and even in the sale deed itself, multiple purposes are mentioned like family expenses etc., and purchase of another property is also mentioned as one of the purposes. On the other hand, a perusal of the deed of purchase by *Arjunan*, dated 07.03.2002, would reveal that the total sale consideration is Rs.4,27,000/- and therefore, by a mere recital contained in **Ex.A-5** alone, it cannot be held that that the properties will be ancestral in nature. The finding of the Trial Court that the appellants' purchase is not bonafide is without any material and therefore, they will be entitled to equity.

11. Per contra, *Mr.Kaithamalai Kumaran*, the learned Counsel appearing on behalf of the first respondent, would submit that in this case, the concerned persons who can contest about the share of the second plaintiff are the defendants 1 to 3. They have remained exparte. The first defendant, *Arjunan*, had not chosen to come before the Court and contest that he had independent income to purchase the item No.2 of the suit properties. It is not even the case of the defendants 4 and 5 that the first



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defendant had any independent income. Therefore, once the item No.1 of the suit properties and the larger extent which was also sold are proved to be ancestral property, then the item No.2 of the suit properties, which is purchased out of the said nucleus, has rightly been held to be of joint family property and a share has been allotted to the second plaintiff, minor *Deepika*. He would further submit that even in the plaint, it is pleaded that the sale is collusive and only to defeat the rights of the minor after the relationship got estranged in the year 2010. The sale was effected on 30.10.2013 and immediately upon coming to know of the same, the suit was filed in the year 2014 itself. Therefore, he would submit that the Trial Court has rightly decreed the suit and he has no objection whatsoever in granting the defendants 4 and 5, the protection as to the 1/2 share which belongs to the first defendant.

H. Points for consideration :

12. Upon considering the rival submissions made on either side and perusing the material records of the case, the following questions arise for consideration:-



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(i) Whether the item No.2 of the suit schedule property is the separate/self-acquired property of the first defendant, *Arjunan* and whether the second plaintiff is entitled to claim a share in the said property even during the life time of the first defendant, *Arjunan*?

(ii) If the second plaintiff is entitled to a share in the item No.2 of the suit properties, whether or not the purchasers namely, the defendants 4 and 5 are entitled to protection being bonafide purchasers and if so, to what extent?

I. Question No.1 :

13. It is the admitted case of the parties that the item No.1 of the schedule properties along with the larger extent, which is sold by a sale deed, dated 08.03.2022 was the subject matter of the partition deed, dated 09.11.1966 marked as **Ex.A-3**. Upon a perusal of the said deed, it is clear that those properties are ancestral in nature. Therefore, upon allotment to *Nachimuthu Goundar*, it remained so and initially, the said *Nachimuthu Goundar* along with his son, *Arjunan*, continued to be the coparceners. Therefore, once the part of the said property is sold on 08.03.2002 and the item No.2 of the suit properties is purchased, then, the same being



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purchased out of the joint family nucleus, has the character of joint family property. Even if the entire sale consideration cannot be said to be from and out of the sale deed, dated 08.03.2002, still, even if a portion of the sale consideration is proved to be from and out of the joint family nucleus and when the parties have thrown their independent income or property along with joint family property, the character of the property will only be the joint family property and therefore, to that extent, the findings of the Trial Court that the item No.2 of the suit properties is the joint family property, purchased from and out of the joint family nucleus, cannot be found fault with and I also hold accordingly. In view thereof, the second plaintiff, being the daughter, is entitled to a share in the item No.2 of the suit properties by her birth. Therefore, in the absence of claim from the sister of *Arjunan* namely, the third defendant and since it is represented that she has no claim against her brother by the learned counsel appearing on behalf of the first defendant, the second plaintiff will be entitled to 1/2 share and the first defendant will be entitled to 1/2 share. I answer the question accordingly.

J. Question No.2 :



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14. Even though the Trial Court has held that the purchase of the defendants 4 and 5 is not bonafide, even the allegation in the plaint is that the first defendant had willfully alienated the property, no allegation, as against the defendants 4 and 5, has been proved that they had willfully entered into the transaction. In that view of the matter, they are entitled to protection to the extent of the share by their vendor namely, *Arjunan*. Since it is held that the first defendant, *Arjunan*, is entitled to 1/2 share in item No.2 of the suit properties, to that extent, the sale deed dated 30.10.2013 shall be valid and the defendants 4 and 5 will be entitled to the said 1/2 share of the said *Arjunan*. Accordingly, I answer the question.

K. The Result :

15. In the result,

(a) This Appeal Suit in A.S.No.286 of 2016 is partly allowed;

(b) The judgment and decree, dated 08.10.2015, in O.S.No.18 of 2014 on the file of the learned I Additional District and Sessions Judge, Erode shall stand modified inasmuch as the clause (ii) & (iv) relating to the second item of the suit property is concerned as follows:-



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- (i) That the second plaintiff is entitled to 1/2 share in the item No.2 of the suit properties by metes and bounds. The purchase of the defendants 4 and 5 by a sale deed, dated 30.10.2013 shall be valid in respect of the remaining 1/2 share; and similarly;
- (ii) If any amount of maintenance remains unpaid the same shall be a charge over the first defendant's share in item No.1 of the suit schedule properties;
- (c) The decree is confirmed in all the other aspects;
- (d) However, there shall be no order as to costs.
- (e) Consequently, connected miscellaneous petition is closed.

01.12.2022

Index : yes
Speaking order
grs

To

1. The I Additional District Judge,
Erode.
2. The Section Officer,
VR Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

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