



A.S.No.507 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2022

PRONOUNCED ON : 18.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTAR

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1.P.Rudhra

2.Major P.Keerthi

3.Major P.Ramya ... Appellants

(Appellants 2 & 3 declared as Major and 1st appellant discharged from the next friend and guardianship of the appellants 2 & 3 viz, (P.Rudra) vide Court order dated 24.02.2022 made in C.M.P.No.1972 of 2022 in A.S.No.507 of 2013 (MKKSJ & VSGJ)

Vs

Malaleena ... Respondent

Prayer: First Appeal filed under Section 96 of Civil Procedure Code and under Order XLI Rule 1, prayed to set aside the impugned order dated 25.11.2011 passed in I.A.No.458 of 2011 in O.S.No.108 of 2011 on the file of



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the Principal District Judge at Namakkal, dismissing the application filed for rejection of the plaint by allowing this appeal.

For Appellants : M/s.K.Bijai Sundar

For Respondent : M/s.K.K.Senthilvelan

J U D G M E N T

(Judgment of the Court was delivered by **S.SOUNTHAR, J.**)

The plaintiffs in a suit for partition, aggrieved by an order rejecting their plaint at the instances of 3 defendant / purchaser of properties, have come up with this appeal.

2. The appellants herein filed a suit for partition against their father Palanivel, the mother Sivakami and respondent herein (purchaser from Palanivel) in O.S.No.108 of 2011 on the file of the Principal District Court, Namakkal. According to the plaint averments the suit properties were ancestral properties of their family. They averred that the same were originally belong to great grand father namely Varadappa Gounder and after his death, it was enjoyed by his only son namely Periya Gounder and after his death, it was enjoyed by their father Palanivel and brother Muthusamy. It was



specifically averred that suit properties were ancestral properties and 1st defendant Palanivel, namely their father had no right to alienate the suit properties including the share of the plaintiffs as they acquired share by birth. It was averred that the 1st defendant in the suit namely their father Palanivel alienated the suit properties clandestinely on 01.12.2004 along with the 2nd defendant, his wife to the respondent herein (D3). It was observed that the said sale was not made by father of the appellants in the interest and welfare of appellants who were minors at that point of time. It was also averred that the sale was not for family necessity. On these pleadings, they prayed for partition of the suit properties into four equal shares and allotment of 3 shares to them.

3. The respondent herein who purchased the suit properties from the father and mother of appellants entered appearance and filed a petition for rejection of the plaint in I.A.No.458 of 2011. In the affidavit filed in support of petition filed for rejection of the plaint, it was averred by the respondent that suit properties were self acquired properties of great grand father of the appellants namely Varadappa Gounder as evidenced by recitals in plaint document No. 1 partition deed. It was further averred that in the said partition



deed it was recited that said Varadappa Gounder and his brother Rangasamy Gounder acquired the suit properties jointly and it was partitioned between them. Hence, it was contended by the respondent that suit properties which were self acquired properties of great grand father of the appellants namely Varadappa Gounder remained as self acquired properties by operation of Section 8 of the Hindu Succession Act and hence suit for partition treating the suit properties as ancestral properties are untenable in the light of the plaint document No.1. It was further averred in the affidavit filed by the respondent that father of the appellants was their natural guardian and there is no need to get prior permission from the Court to sell minors interest in the joint family properties. It was averred that 1st defendant / father of the appellant had sold the suit properties for himself and also as kartha of the Hindu Joint Family and there is no need to get sanction from the Court for selling the suit properties. The respondent claimed that the plaint does not disclose any cause of action giving rise to a triable issue and hence it has to be rejected.

4. The said petition was resisted by appellants by filing counter wherein they reiterated their averments found in the plaint.



5. The Trial Court after considering the averments found in the plaint, affidavit filed in support of the petition to reject the plaint and counter, came to the conclusion that suit properties are the self acquired properties and hence rejected plaint which was laid treating suit properties as ancestral properties. The Court below also observed that when father of the appellants namely 1st defendant in the suit is alive, 1st appellant cannot act as guardian for her minor sisters namely appellants 2 and 3. The Court also observed that there is no allegation against father of the parties and hence the plaint filed by appellants was rejected by allowing the petition to reject the plaint. Aggrieved by the same, plaintiffs have come up with this appeal.

6. The learned counsel for the appellants contended that whether suit properties are the self acquired properties or ancestral properties is the matter for evidence and the same cannot be decided at the time of considering petition to reject the plaint. The learned counsel by taking us to plaint document No.2, partition deed dated 30.07.1993 between father of the appellants namely 1st defendant Palanivel and his brother Muthusamy and mother Lakshmi contended that in the said document Palanivel himself admitted that suit properties were coparcenary properties in joint possession



of the parties. The learned counsel also had taken us to the recitals found in the sale deed in favour of the respondent dated 01.12.2004 wherein suit properties were described as ancestral properties in joint possession of all the parties including the appellants. Therefore, it was the contention of the learned counsel for the appellants that the plaint document Nos. 2 and 3 clearly establish that suit properties are coparcenary properties in joint possession and hence the finding of the Trial Court that suit properties are self acquired properties is untenable in law. Further he submitted that the character of the suit properties should be decided only in the full fledged trial and not in the petition for rejection of the plaint. The learned counsel also relied on the judgments reported in **2009 (4) CTC 773 (C.E.Sathyanarayana Reddi versus C.E.Sulochana and 3 others)** for the proposition that application for rejection of plaint has to be considered only based on the averments found in the plaint and no other external aid can be looked into for the said purpose.

7. The learned counsel relied on the unreported judgement of the Delhi High Court dated 05.03.2021 made in **C.R.P.No.21 of 2021 and CM Appeal.No.6834 of 2021, (Archana Mittal and Anr versus Shikha Mittal),**



for the proposition that for the purpose of deciding whether the plaint discloses any cause of action, the plaint averment has to be read in conjunction with the plaint documents.

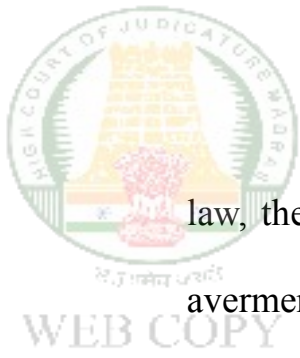
8. The learned counsel for the respondent submitted that as per the plaint document No.1 suit properties was purchased by great grand father of the appellants namely Varadappa Gounder along with his brother and hence it cannot be treated as ancestral properties. The properties in hands of Varadappa Gounder was devolved upon his only son Periya Gounder as per Section 8 of the Hindu Succession Act. Therefore by no stretch of imagination, the suit properties can be treated as ancestral properties. The learned counsel further contended that even assuming suit properties are the ancestral properties, the 1st defendant namely father of appellants in his capacity as kartha of Hindu Joint Family is entitled to alienate the suit properties for family necessity and therefore the said alienation is binding on the appellants who were minors on the date of alienation. On these grounds, the learned counsel for the respondent tried to sustain the order of rejection of the plaint passed by the Trial Court.



9. On consideration of the rival contentions of the parties, the following point is arising for consideration in this appeal:

1) Whether the plaint presented by the appellants is liable to be rejected?

10. We have perused the order passed by the Court below rejecting the plaint presented by the appellants and also considered the rival submissions of the parties. Admittedly, the suit properties originally belong to great grand father of the appellants. After the death of the great grand father namely Varadappa Gounder the suit properties was enjoyed by his only son namely Periya Gounder. Plaint document No.2 dated 30.07.1993 is partition deed effected among Periya Gounder, his wife Lakshmi, sons Palanivel (1st defendant in the present suit and father of the appellants) and Muthusamy. In the said document the suit properties were mentioned as coparcenary properties in joint possession of the parties. In the plaint document No. 3 dated 01.12.2004, the sale deed in favour of respondent executed by father of appellants, it was clearly mentioned that the suit properties were ancestral properties in joint possession of the appellants and their father. It is settled



law, the rejection of the plaint petition has to be decided only based on the averments found in the plaint. The appellants have categorically pleaded that suit properties are ancestral properties which originally belong to their great grand father. The plaintiffs are 4th generation from the original owner Varadappa Gounder. In addition to that recitals found in plaint document No.2 and plaint document No.3 prima facie indicate the character of the suit properties are ancestral properties. Whether suit properties are ancestral properties or self acquired properties is a disputed question of fact which can be settled only in a full fledged trial. The Trial Court is not justified in giving a finding that suit properties are self acquired properties in a petition for rejection of the plaint without recording the evidence. There is clear averment in the plaint that suit properties are ancestral properties and the same is supported by recitals in plaint document Nos. 2 and 3. The character of the properties has to be decided based on the evidence to be let in by both the parties at the time of trial. As we stated earlier, if we read averments found in the plaint along with recitals in plaint documents, we could come to a prima facie conclusion the character of the suit properties are ancestral properties, therefore, the finding recorded by the Trial Court that suit properties are self acquired properties is liable to be set aside. Therefore, the Trial Court ought



not to have decided the character of the properties without waiting for full fledged trial

11. The appellants in their plaint clearly averred that their father namely 1st defendant sold the properties to the respondent without any legal necessity and against the interest of the minors. Whether father of the appellant sold the properties for the interest of the minors or for legal necessity is a question of fact which has to be decided in full fledged trial based on evidence. The same cannot be decided in a petition for rejection of the plaint.

12. While rejecting the plaint, the Trial Court also observed that 1st appellant cannot act as a guardian of the appellants 2 to 3 when natural guardian father is alive. The Trial Court also observed that there is no allegation against 1st defendant namely father of the appellants. This particular observation of the Trial Court is the result of the clear misreading of pleadings. In the plaint appellants have clearly averred that their father namely 1st defendant alienated the suit properties without any legal necessity. It was also averred that the sale of the property was not at all done in the



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interest, welfare and better maintenance of appellants /plaintiffs. Therefore, the Trial Court erred in holding that there is no allegation against 1st defendant natural guardian and hence 1st appellant is not entitled to act as guardian of minor 2 and 3.

13. In view of our discussions above, the order rejecting the plaint is liable to be set aside and the above appeal is allowed as prayed for.

14. In the result:

i) The appeal is allowed by setting aside the order dated 25.11.2011 made in I.A.No.458 of 2011 in O.S.No.108 of 2011 on the file of the Principal District Court, Namakkal.

ii) The suit in O.S.No. 108 of 2011 is restored to the file with a direction to the Trial Court to proceed with the suit in accordance with law.

iii) There shall be no costs.

(V.M.V.J) (S.S.J)
18.10.2022

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V.M.VELUMANI, J.
and
S.SOUNTHAR, J.
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To

1. The Principal District Court,
Namakkal.

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