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A.S.Nos.581 and 582 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.11.2022

Judgment Pronounced on : **20.12.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.Nos.581 and 582 of 2013

& M.P.Nos.1 and 2 of 2013 and M.P.No.1 of 2014 in A.S.No.581 of 2013

& M.P.No.1 of 2013 and M.P.No.2 of 2014 in A.S.No.582 of 2013

In A.S.No.581 of 2013 :

1. Anu Sharma
2. Sureshkumar Sharma
3. Ritu Kumari
4. Reena Kumari .. Appellants

Versus

1. Sujeethkumar Sharma (Deceased)
2. Surajkumar Sharma
3. Lakshmi Sharma
4. Minor Yashika Sharma
- 5.T.Pandian .. Respondents

RR-3 and 4 brought on record as LR's of the deceased R1 vide order of Court, dated 20.09.2019 made in C.M.P.No.2675 of 2016 in A.S.No.581 of 2013

R5 impleaded as party respondent vide Court order, dated 18.11.2022 in C.M.P.No.20268 of 2019 in A.S.No.581 of 2013



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In A.S.No.582 of 2013 :

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1. Anu Sharma
 2. Sureshkumar Sharma
- .. Appellants

Versus

1. Vimalleshkumari (died)
 2. Sujeethkumar Sharma (Deceased)
 3. Lakshmi Sharma
 4. Minor Yashika Sharma
- .. Respondents

Cause title accepted vide order of Court,
dated 06.01.2014 made in M.P.No.1 of 2014
in A.S.No.582 of 2013

RR-3 and 4 brought on record as LR's of the
deceased R2 vide order of Court, dated 20.09.2019
made in C.M.P.No.2677 of 2016 in A.S.No.582 of 2013

Prayer in A.S.No.581 of 2013 : Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree in O.S.No.35 of 2012, dated 21.11.2013 on the file of the learned I Additional District and Sessions Judge, Cuddalore and thereby allow the First Appeal and also direct the respondents herein to pay the costs.

Prayer in A.S.No.582 of 2013 : Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree in O.S.No.239 of 2012, dated 21.11.2013 on the file of the learned I Additional District Judge, Cuddalore and thereby, allow the First Appeal and also direct the respondents herein to pay the costs throughout.



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In A.S.No.581 of 2013

For Appellants : Mr.R.Rajavelavan

For Respondents : R1 - Died
M/s.P.Mani, for R2
Mr.T.Dhanasekaran, for RR-3 and 4

In A.S.No.582 of 2013

For Appellants : Mr.R.Rajavelavan

For Respondents : RR-1 and 2 - Died
Mr.T.Dhanasekaran, for RR-3 and 4

COMMON JUDGMENT

A. The Appeal Suits :

These Appeal Suits arise out of a common judgment and decree, dated 21.11.2013 of the learned I Additional District and Sessions Judge, Cuddalore in O.S.No.35 of 2012 and O.S.No.239 of 2012, in and by which, the suit in O.S.No.239 of 2012, for permanent injunction was dismissed and O.S.No.35 of 2012, for partition of the suit properties was decreed by granting a preliminary decree.

B. Brief Facts :

2. The brief facts that led to the filing of the present appeals are that the suit 'A' schedule property in O.S.No.35 of 2012 originally belonged to



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one *Mahavir Prasath Sharma*, he having purchased the same under three sale deeds, dated 25.10.1990, 03.01.1992 and 03.11.1994. The said *Mahavir Prasath Sharma* first married one *Vimaleshkumari* and thereafter, he again married *Vimaleshkumari's* sister, *Anu Sharma*. Through *Vimaleshkumari*, he had one son namely, *Sujeethkumar Sharma* and through *Anu Sharma*, he had two sons namely, *Sureshkumar Sharma* and *Surajkumar Sharma* and two daughters namely, *Ritukumari* and *Reenakumari*.

3. The said *Mahavir Prasath Sharma* was running a sweet stall and bakery under the name and style "*Delhi Sweets and Reena Bakery*" in the schedule 'A' mentioned property. The elder brother of *Mahavir Prasath Sharma* namely, *Om Prakash Sharma* was also jointly looking after the sweet shop. Suddenly, the said *Mahavir Prasath Sharma* died on 26.02.1999 intestate. After the death of the said *Mahavir Prasath Sharma*, his first wife *Vimaleshkumari* and son *Sujeethkumar Sharma* joined the brother of the said *Mahavir Prasath Sharma* namely, *Om Prakash Sharma* and filed a suit in O.S.No.456 of 2010 for bare injunction against *Anu*



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Sharma, the second wife and her son *Sureshkumar Sharma* from in any manner interfering with the sweet stall business in any manner.

4. It is the case of *Sureshkumar Sharma* that from the age of 15 years, he had looked after the business by assisting his paternal uncle *Om Prakash Sharma* and after attaining majority, he took over the business. The first wife/*Vimaleshkumari* or her son never participated in the business and they had moved to Pondicherry from Cuddalore for the purpose of *Sujeethkumar Sharma's* education and it is only the said *Sureshkumar Sharma* who was running the sweet stall business. Under the said circumstances, since difference of opinion arose between both the sides, firstly, a suit was originally filed by the above mentioned second wife, *Anu Sharma* and her son *Sureshkumar Sharma* in O.S.No.135 of 2011 on the file of the learned Principal Subordinate Judge, Cuddalore for permanent injunction restraining the defendants namely, the first wife, *Vimaleshkumari* and her son *Sujeethkumar Sharma* from in any manner interfering with the plaintiffs carrying on business in the suit property.

5. The said *Vimaleshkumari* and her son *Sujeethkumar Sharma* along with *Surajkumar Sharma* who is the other son of the second wife, together



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filed O.S.No.35 of 2012 on the file of the learned Principal District Judge, Cuddalore against the second wife *Anu Sharma*, her son *Sureshkumar Sharma*, her daughters, *Ritukumari* and *Reenakumari*, claiming partition of the schedule 'A' property and to allot 3/6th share to the plaintiffs and to appoint a Commissioner to divide the suit properties in terms of preliminary decree. In view thereof, the earlier suit filed on the file of the learned Principal Subordinate Judge, Cuddalore in O.S.No.135 of 2011 was transferred for trial along with the later partition suit in O.S.No.35 of 2012 on the file of the learned I Additional District and Sessions Judge, Cuddalore and were tried and disposed off jointly by a common judgment.

C. The Issues & The Trial:

6. Upon completion of the pleadings, the following issues were framed by the Trial Court in the respective suits:-

In O.S.No.35 of 2012 :

- 1. Whether the suit for partition is maintainable?*
- 2. Whether the plaintiffs are entitled for 3/6th share in "A" Schedule property?*
- 3. Whether the suit properties are joint family properties of the plaintiffs and defendants 2 to 4?*



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4. *Whether the 1st defendant is entitled for maintenance out of "A" schedule property?*

5. *Whether the plaintiffs are entitled for the reliefs as prayed for?*

6. *To what other reliefs the plaintiffs are entitled?*

In O.S.No.239 of 2012 :

1. *Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?*

2. *To what other reliefs the plaintiffs are entitled?*

7. In the common trial, the son of the first wife namely, *M.Sujeethkumar Sharma* was examined as **P.W.1** and *M.Surajkumar Sharma*/the other son of the second wife, who is actually the third plaintiff in the cross suit was examined as **P.W.2**. On their behalf, **Exs.A-1** to **A-7** were marked. One of the sons of the second wife namely, *Sureshkumar Sharma* was examined as **D.W.1** and one *V.C.Ramana* was examined as **D.W.2**. **Exs.B-1** to **B-58** were marked on their behalf.

D. The Findings of the Trial Court :



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8. The Trial Court, thereafter, proceeded to consider the case of the parties. It held that since the suit property is the self-acquired property of *Mahavir Prasath Sharma*, his five children and the first wife will be entitled to 1/6th share each in the suit schedule property and the second wife/*Anu Sharma*, will be entitled to get a sum of Rs.5,00,000/- as compensation towards maintenance from the other legal heirs and each one of them has to pay a sum of Rs.1,00,000/- towards her maintenance. The Trial Court further held that, as far as the schedule of the debts are concerned, the same should be borne equally by the sharers and the same can be gone into at the time of Final Decree proceedings and only the proved debts alone can be shared by the parties. However, the Trial Court refused the relief of permanent injunction prayed for in respect of the business. Aggrieved by the same, the present appeals are filed by the second wife/*Anu Sharma* and her son *Sureshkumar Sharma*.

E. The Submissions :

9. Heard *Mr.R.Rajavelavan*, the learned Counsel for the appellants in both the appeals and *M/s.P.Mani*, for the second respondent in A.S.No.581 of 2013 and *Mr.T.Dhanasekaran*, for the respondents 3 and 4 in both the appeals.



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10. *Mr.R.Rajavelavan*, the learned Counsel appearing on behalf of the appellants in both the appeals would submit that, pending the suit, the first wife/*Vimaleshkumari* died on 30.08.2012. On 08.04.2013, the said *Sujeethkumar Sharma*, son of *Vimaleshkumari*, claiming 2/6th share along with *Surajkumar Sharma*, having 1/6th share, jointly sold their 3/6th share in the suit 'A' schedule property in favour of one *T.Pandian* who is now impleaded as the fifth respondent in the Appeal Suits. Pending the appeals, even the said *Sujeethkumar Sharma* died and his legal heirs were brought on record as respondents 3 and 4 in the Appeal Suits. Thus, it may be seen that even while pleading before the Trial Court that the schedule 'A' property should be partitioned and the schedule 'B' debts should be discharged, without even discharging any debt, without even bringing to the notice of the Trial Court, pending the trial, the first wife and her son and the other son of the second wife have clandestinely alienated their shares in the suit property. It is in this context, the learned Counsel for the appellants would contend that since the other legal heirs namely the first wife and her son are no more in the picture, since the business namely "*Delhi Sweets and Reena Bakery*" is till date run by *Sureshkumar Sharma*, the permanent injunction as prayed for by him ought to have been granted. The third party



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purchaser/*Pandian* can only ask for a share in the property, that too with the 3/6th share in the liability, that is, the schedule mentioned debts.

11. The learned Counsel would submit that it is only the said *Sureshkumar Sharma* who is running the business and as such, is facing the debtors everyday as all of them are coming straightaway to the place of business demanding that the debts be paid. The learned Counsel would submit that, in any event, the business is not a capital intensive business and ingredients such as Sugar, Maida etc., have to be purchased on a day to day basis and with those ingredients, sweets are prepared and sold on a daily basis. Thus is the case of in respect of bakery items also. Therefore, except for the utensils, there is no capital investment whatsoever in the business. Except for the intellectual property in the brand name "*Delhi Sweets and Reena Bakery*", including the goodwill of the business, there is nothing to be divided as far as the business is concerned. Since the business is run only by the said son, others should not interfere, especially the third party purchaser/*Pandian*.

12. *Per contra*, *Mr.T.Dhanasekaran*, the learned Counsel appearing on behalf of the legal heirs of the first wife, her son and also the third party



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purchaser, *Pandian* and *Sureshkumar Sharma*, would submit that the third party purchaser is only interested in the 3/6th share in the suit schedule immovable property and is not even claiming any interest in the business. *Sureshkumar Sharma* is neither coming forward to divide their suit property into two equal parts as per metes and bounds nor is paying any rent for the use of the entire property. The learned Counsel would submit that even on the part of the vendors, the original sharers, no right is now claimed in the business and would submit that they will not interfere in the business, provided that the suit property is duly shared. As far as the debts are concerned, the learned Counsel would submit that no prudent person would wait for such a long time and the majority of the debts mentioned in the schedule, do not appear to be correct and therefore, the Trial Court has rightly decided that during the Final Decree proceedings, the said matter can also be gone into and any debtor claiming any debt can file a Claim Petition, thereafter if the debt is found to be true, the sharers can discharge the same equally. Even the third party purchaser/*Pandian*, is willing to share any such proven debts equally.

F. Points for consideration :



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13. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration in this appeal:-

- (i) What shares do the parties have in the suit schedule property?
- (ii) What rights are the parties entitled to, in respect of the business run in the name and style of "*Delhi Sweets and Reena Bakery*"?
- (iii) To what other reliefs, the parties are entitled?

G. Question No.1 :

14. It is seen that the suit 'A' schedule property is the self-acquired property of *Mahavir Prasath Sharma*. He had first married *Vimaleshkumari* and subsequent to the first marriage while still in existence, he has then married *Anu Sharma*. At this distant point of time, the insistence by the Trial Court that *Anu Sharma* should produce proof for the marriage, may not be correct and it is not even the case of the parties that she was in a relationship without marriage. Therefore, to that extent, the findings of the Trial Court stands set aside. Otherwise, all the other relationships are admitted between the parties that *Mahavir Prasath Sharma* had one son through the first wife and two sons and two daughters through the second wife. Therefore, upon his death, as rightly concluded by the Trial Court, the



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property would devolve upon his first wife, *Vimaleshkumari* and five children each having 1/6th share. The Trial Court also found that after living for such a long time and giving birth to four children, the second wife, *Anu Sharma* cannot be left in the lurch and has ordered compensation to a tune of Rs.5,00,000/-, to be shared equally by the five children as Rs.1,00,000/- each. Three persons namely, the first wife, *Vimaleshkumari*, her son, *Sujeethkumar Sharma* and *Surajkumar Sharma* sold their shares to *Pandian* and accordingly, he is entitled to 3/6th share in the suit property and the three children through the second wife namely, *Sureshkumar Sharma*, *Ritukumari* and *Reenakumari* are entitled to 1/3rd share each in the suit schedule property and accordingly, I answer this question.

H. Question No.2 :

15. Admittedly, the said *Mahavir Prasath Sharma* started the business and ran it in the name and style of "*Delhi Sweets and Reena Bakery*". Obviously, upon his death, all the rights, including the right to continue the business, would fall upon all the legal heirs. However, it can be seen that after the death of the said *Mahavir Prasath Sharma*, it is only the son of the second wife namely, *Sureshkumar Sharma*, who alone has been carrying on the business. There is no capital investment in the business and the utensils



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and the other movables are of negligible value. The trademark, "*Delhi Sweets and Reena Bakery*", and the goodwill attached to the business, carries a value and all the legal heirs will be entitled for a share thereof or if they want, the rights as to who will be entitled to run the business in the said name and style, can be decided. But, however, except *Sureshkumar Sharma*, as on date, nobody else is claiming the right to continue the business and therefore, the right to continue the business in the name and style, "*Delhi Sweets and Reena Bakery*", shall belong to *Sureshkumar Sharma*. It is also undertaken on behalf of the opposing side that they will not claim any right as far as the business is concerned and therefore, the said *Sureshkumar Sharma* will be entitled for the relief of permanent injunction in the suit filed by him and accordingly, I answer the same.

I. Question No.3 :

16. Apart from the share in the suit property, which is answered in question No.1 above and apart from the right to run the business, which is answered in question No.2 above, the Trial Court has rightly granted a sum of Rs.5,00,000/- to the second wife, *Anu Sharma* and also held that in the Final Decree proceedings, any debtor can file Claim Petition and only such proven debts can be discharged by the sharers equally in accordance with all



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the shares. Therefore, no exception can be granted for the said decision of the Trial Court and accordingly, the parties will be entitled for the reliefs. In view thereof, the findings of the Trial Court to the above extent in respect of the issues in O.S.Nos.35 of 2012 and 239 of 2012 are confirmed and are reversed in as much as the non-grant of permanent injunction in respect of the business.

J. The Result:

17. In the result,

(i) The Appeal Suit in A.S.No.581 of 2013 is dismissed. The judgment and decree, dated 21.11.2013 in O.S.No.35 of 2012 on the file of the learned I Additional District and Sessions Judge, Cuddalore is confirmed;

(ii) The Appeal Suit in A.S.No.582 of 2013 is allowed. The judgment and decree, dated 21.11.2013 in O.S.No.239 of 2012 on the file of the learned I Additional District and Sessions Judge, Cuddalore is set aside and consequently, the following decree is passed in O.S.No.239 of 2012:-

(a) The plaintiffs will be entitled for a permanent injunction restraining the defendants or any person from in any manner interfering with



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the conduct of the business of the plaintiffs in the
name and style *Delhi Sweets and Reena Bakery*;

(b) However, there shall be no order as to
costs;

(iii) There will be no orders as to costs in these Appeal Suits;

(iv) Consequently, connected miscellaneous petitions are closed.

20.12.2022

Index : yes
Speaking order
grs



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D.BHARATHA CHAKRAVARTHY, J.,

grs

To

1. The I Additional District and Sessions Judge,
Cuddalore.
2. The Section Officer,
V.R.Section, High Court of Madras.

Pre-Delivery Judgment in

A.S.Nos.581 and 582 of 2013
& M.P.Nos.1 and 2 of 2013 and M.P.No.1 of 2014
in A.S.No.581 of 2013
& M.P.No.1 of 2013 and M.P.No.2 of 2014
in A.S.No.582 of 2013

20.12.2022