



A.S.No.8 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

A.S.No.8 of 2013

and

M.P.No.1 of 2013 & C.M.P.No.1763 of 2019

N.Sundera Rajan @ K.N.Durai

... Appellant

Vs.

1.N.Thangaraj
2.N.Natarajan
3.Madurai's
4.N.Velmani
5.Saraswathi
6.J.Gangadharan
7.J.Loganathan
8.N.Subbalakshmi
9.N.Ruckmani
10.N.Kannammal
11.Smt.Mani
12.Arunbabu
13.Roobini
14.Vijaya
15.Harish Babu
16.Amrish Babu

... Respondents



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Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 17.08.2012 in O.S.No.20 of 2009 on the file of the District Court, Nilgiris at Udhagamandalam.

For Appellant : M/s.R.Meenal

For R1 to R7 : Mr.A.R.Suresh

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The 1st defendant in the suit in O.S.No.20 of 2009 on the file of the District Court, Nilgiris at Udhagamandalam, is the appellant in the above appeal.

2.Notice sent to the 8th respondent has returned with an endorsement “not found”. Notice sent to the 9th respondent has returned with an endorsement “no such person”. Notice sent to the 10th respondent has returned with an endorsement “vacated”. Notices sent to the respondents 11 to 13 have returned with an endorsement “left”. Notices sent to the respondents 14 to 16 have returned with an endorsement “unclaimed”.



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3.The contesting respondents 1 to 7 herein, as plaintiffs, have filed the suit in O.S.No.20 of 2009 for partition of the suit properties and allotment of 5/9 shares and 5/11 shares out of 1/9 share of their father K.Nanja Gowder by metes and bounds by appointing an Commissioner and for other consequential reliefs.

4.The case of the plaintiffs is that the suit property belonged to Sri.K.Nanjan, who is the father of plaintiffs 1 to 4, father-in-law of the 5th plaintiff and grandfather of plaintiffs 6 and 7. The said K.Nanjan died leaving behind plaintiffs 1 to 4, husband of 5th plaintiff, namely N.Joghee (deceased), defendants 1 to 5, and husband of 6th defendant, namely Krishnamurthy (deceased). It is the case of the plaintiffs that they are entitled to their respective shares in the suit properties which belonged to the said K.Nanjan.

5.The suit was contested by the 1st defendant/appellant only on the ground that the plaintiffs and defendants are liable to pay him a sum of



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Rs.4,80,000/- being the total debt payable by the joint family as per the terms of the Family Panchayat held on 23.05.1999. It was stated by the 1st defendant/appellant that the plaintiffs and defendants had agreed to settle the said amount by selling any of the suit properties or by arranging their own funds. The 1st defendant/appellant, in the written statement, has made a statement in unequivocal terms that the 1st defendant/appellant has no objection in allotting the plaintiffs with their respective shares in the suit properties, if the plaintiffs and other defendants arrange for the funds to which the 1st defendant/appellant is entitled to. The appellant relied upon the Family Panchayat, dated 23.05.1999, in which a sum of Rs.4,80,000/- is admitted by the signatories and not as a sum incurred by the 1st defendant/appellant towards family necessities or settled by appellant.

6.The trial Court, after framing issues, examined the evidence of plaintiffs and the defendants and also considered the defence in the light of the pleadings and evidence. The trial Court observed that the 1st defendant did not produce any evidence to prove that the 1st defendant had discharged the family debt of Rs.4,80,000/- and accordingly, partly decreed the suit,



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aggrieved by which, the 1st defendant is before this Court.

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7.Heard the learned counsel on either side and perused the entire materials available on record.

8.The burden of proof lies on the 1st defendant/appellant regarding the amount spent by him towards the education of the 4th plaintiff, as stated by him in the written statement. The written statement of appellant is contrary to the recitals about the existence of family debt in Ex.B1. The appellant, having admitted that he has incurred the family debt of Rs.4,80,000/-, has not produced any account to show the expenditure towards the family debt of Rs.4,80,000/-. It is stated by the appellant/1st defendant during cross-examination that the said amount was spent towards the education of the 4th plaintiff, who is the 4th respondent before this Court. Similarly, it was contended that the appellant had spent further amount towards medical expenses of another brother by name N.Krishnamurthy. Though the document Ex.B1, Family Panchayat or the family arrangement according to the plaintiffs was produced, it is admitted that the 4th plaintiff and another



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brother, by name Krishnamurthy, have not signed the document Ex.B1, acknowledging the debt of Rs.4,80,000/-. The 4th plaintiff as well the said Krishnamurthy are not signatories to the document Ex.B1. It is only on the basis of the recital in the document Ex.B1 to the effect that the members of the family have jointly incurred a debt of Rs.4,80,000/-, the appellant has taken a defence for getting contribution from the other sharers. Nowhere in the document Ex.B1, the details of persons to whom the amount is payable is given. Ex.B1 does not indicate a complete partition of all properties. The present suit is filed 10 years later and hence, there should be independent evidence.

9.The trial Court specifically rendered a finding that the document Ex.B1 was never acted upon and it is not binding on all the legal heirs, particularly the 4th plaintiff and the said Krishnamurthy. When the debt is stated to be not incurred for the joint family but for the education of one of the co-owners, the appellant cannot claim the amount to be disbursed to him out of the family property. In the present case, the document Ex.B1 is not signed by the two brothers. When there is no independent evidence to prove



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existence of family debt as on the date of suit, the findings of trial Court cannot be interfered with.

10.It is true that the law settled by this Court and the Hon'ble Supreme Court gives protection to one of the members of the family to get contribution from other sharers if he had paid on behalf of all other members towards discharge of family debt or had incurred family expenses. It is to be noted that, to get reimbursement of the money which a member of the family had discharged, the person has to prove that he had not paid such amount gratuitously; secondly, the debt which was stated to be discharged by him is acknowledged by other persons as one incurred for family necessities and thirdly, the other members have enjoyed the benefit. The pleadings and evidence do not indicate the existence of debt at the time of filing suit. Without these ingredients, it may not be possible for a person to prevent partition of family property. No charge is created in respect of the properties if money is paid by one of the co-owners without the consent of other co-owners to treat the same as family debt.



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11.In the present case, above all, the appellant/1st defendant himself has admitted in the course of evidence that the educational expenses of the 4th plaintiff were incurred by his father during his lifetime. Merely because some of the plaintiffs and others, who are co-owners, are parties to the document Ex.B1, the recitals of the document cannot be put against the other members of the family who are either plaintiffs or defendants in the suit for partition. As pointed out by the trial Court, except the recital in the document Ex.B1, no independent evidence is let in to prove such discharge of debt by the appellant, so as to get contribution from other members of the family.

12.In view of the position that the 1st defendant/appellant has not proved his case regarding the expenses he had incurred for any family necessity, this Court is unable to sustain any of the grounds raised by the 1st defendant/appellant before this Court.



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WEB COPY 13.The appeal is therefore, dismissed, confirming the judgment and decree of the trial Court. No costs. Consequently, connected miscellaneous petitions are closed.

**(S.S.S.R., J.) (N.M., J.)
31.10.2022**

mkn

Internet : Yes

Index : Yes / No

To

The District Judge,
Nilgiris at Udhagamandalam.



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