



AS.No.747 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

AS.No.747 of 2015

Palaniswamy

Appellant

Vs

1. Govindaraj (died)
2. Muruganandham
3. Malaikolunthu
4. Muthuvalavan
5. G.Arulmozhi
6. G.Arivozahi

Respondents

Prayer:- This Appeal Suit has been filed, under Order 41 Rule read with Section 96 of CPC, against the judgement and decree, dated, 07.11.2014, made in OS.No.4 of 2013, by the Principal District and Sessions Court, Ariyalur.

For Appellant : Mr.V.G.Suresh Kumar

For Respondents : Mr.P.Valliappan-RR3 to 6
R2-No Appearance

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The unsuccessful Plaintiff in OS.No.4 of 2013 on the file of the Principal District and Sessions Court, Ariyalur, is the Appellant in this appeal. The Appellant filed the suit for partition and separate possession of his 1/4th share



AS.No.747 of 2015

in all the suit properties and for other consequential reliefs. The suit properties have been described under three items. All the three items of the suit properties are punja lands and buildings, comprised in different survey numbers in three different Villages.

2. The case of the Plaintiff is that the Plaintiff and the Defendants 1 and 3 are the sons of late Nallamuthu Moopanar and that the 2nd Defendant is the son of one Alagappan, who is also the brother of the Plaintiff. The 4th Defendant is the son of the 1st Defendant. It is the specific case of the Plaintiff that the suit properties are the undivided joint family properties of the Plaintiff and the Defendants, who are all entitled to 1/4th share each in all the suit properties. The Plaintiff has admitted in the plaint that a registered partition deed took place on 22.06.1998 among the Plaintiff and his three brothers. Though it is admitted that there was a partition among the three brothers, namely, the Plaintiff and his three brothers, it is stated in the plaint that the suit properties were not included in that partition due to some unavoidable reasons. However, stating that the Plaintiff and the Defendants are in joint possession of the suit properties and that suit properties were purchased in the name of the 1st Defendant, being the eldest member of the joint family, the Plaintiff claimed 1/4th share in all the suit properties. It is admitted by the Plaintiff and the Defendants that the father of the Plaintiff died on 22.02.1978 and his mother, namely, Ammakannu also died in the year 2001.



AS.No.747 of 2015

3. By filing a written statement, the suit was resisted by the 1st Defendant, denying the specific averments made in the plaint. It is the case of the 1st Defendant that he was employed at Neyveli from the year 1967 and that after the death of their father, Nallamuthu Moopanar, all the properties of the family was maintained by Alagappan and Palaniswamy, namely, the brothers of the 1st Defendant. It is also stated in the written statement that their father himself, during his life time, purchased 86 cents of land in S.No.131/4 and another extent of 62 cents in S.No.23/8 in the name of the 1st Defendant. Similarly, it was contended that Alagappan, the deceased brother purchased an extent of 22 cents in S.No.23/10 in the name of the 1st Defendant. While the properties purchased by the 1st Defendant and by his brother in his name were included in the partition deed, dated 22.06.1998, the 1st Defendant pointed out that the suit properties, which were purchased before the partition were not included in the said partition. Relying upon the specific recitals of the partition deed, dated 22.06.1998, it was further contended by the 1st Defendant that all the properties that were treated as family properties and enjoyed in common were divided among them and no property belonged to the family was left out in the earlier partition.

4. On the pleadings of both sides, the Trial Court framed the following issues:-

- (1) Whether the suit properties had not been covered in the partition deed dated, 22.06.1998 since the same were not joint family properties?



AS.No.747 of 2015

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(2) Whether the suit properties are the individual and separate properties of the Defendants 1 and 4?

(3) Whether the Plaintiff is entitled for claim of the litigation expenses pertaining to the proceedings connected to the Item (3) of the suit properties?

(4) Whether the suit properties were managed solely by the 1st Defendant?

(5) Whether the Plaintiff is entitled to 1/4th share in the suit properties?

(6) To what relief the Plaintiff is entitled?

5. Before the Trial Court, on the side of the Plaintiff, the Plaintiff examined himself as PW.1 and one Ramalingam as PW.2 and marked Ex.A1 to A5. On the side of the Defendants, Ex.B1 to B8 were marked and the 1st Defendant examined himself as DW.1. The Trial Court dismissed the suit, by the impugned judgement, holding that the parties, namely, the Plaintiff and the Defendants had already partitioned all the properties belonged to the joint family and that the suit properties are the self acquired and separate properties of the 1st Defendant and the 4th Defendant. Aggrieved by the impugned judgement and decree of the Trial Court, the above appeal is preferred by the Plaintiff.

6. During the pendency of the appeal, the 1st Respondent died. Though the 4th Respondent, who is the son of the 1st Respondent is already on record, the Respondents 5 and 6 were subsequently impleaded as his legal heirs.

7. This Court heard the submissions of the learned counsel on either side.



AS.No.747 of 2015

8. The learned counsel for the Appellant strenuously argued, by pointing out that the 1st Defendant, who is the eldest member of the family, has failed to prove the character of the properties as his self acquired properties. The learned counsel further submitted that the items (2) and (3) of the suit properties were not included in the earlier partition by mistake and that the Trial Court cannot dismiss the suit only on the basis of the recitals in the previous partition deed, dated 22.06.1998. The learned counsel then submitted that the findings of the Trial Court are erroneous as the Trial Court failed to look into the documents, under which the suit properties were purchased prior to partition and that the findings of the Trial Court, regarding the character of the properties, are also perverse as the same are not based on the evidence and admitted facts.

9. Per contra, in reply to the above contentions of the learned counsel for the Appellant, the learned counsel for the contesting Respondents submitted that as per the partition deed, dated 22.06.1998, all the properties that were treated and enjoyed in common as joint family properties were divided among the brothers and no property belonged to the family was omitted in the said partition and that the suit properties are the self acquired properties of the 1st Defendant and the 4th Defendant, as is evident from the sale deeds, dated 28.10.1999, 23.03.1994, 28.08.1998 and 01.04.1980. It is submitted that the Defendants 1 and 4 alone are in possession of the suit properties and that



AS.No.747 of 2015

except the Defendants 1 and 4, no one claimed any right over the suit properties. Referring to the oral and documentary evidence, it is submitted that the Trial Court has rightly dismissed the suit, by the impugned judgement, which warrants no interference by this Court.

10.This Court thoroughly analysed the submissions of the learned counsel on either side and the entire evidence and the materials available on record.

11.At the outset, this Court, on a perusal of the pleadings, documents and evidence, is unable to countenance any of the arguments advanced by the learned counsel for the Appellant.

12.The relationship between the parties, as per the genealogy described in the plaint, is not in dispute. The Plaintiff's father died on 22.02.1978 and his mother also died in the year 2001. Though the partition deed, dated 22.06.1998 was not marked by the Plaintiff, on the side of the Defendants, the certified copy of the registered partition deed, dated 22.06.1998 was marked as Ex.B1. The recitals of the said partition deed give an indication that the parties have divided all the parties, which were kept in common and joint till then. It is seen from the recitals of the said partition deed that all the joint family properties leaving no other property are divided among the brothers. The document Ex.B1 also contains the following recitals:-

“....இனி நமக்குள் ரத்த சம்பந்தமே தவிர திரவிய சம்பந்தம் ஏதும் கிடையாது. நமக்குள் பொதுவில் பாத்தியப்பட்ட அசையும் சொத்துக்களை ஏற்கெனவே பிரித்துக்கொண்டுவிட்டோம். இந்த படிக்கு நம்முடைய மனராசியில் சேர்ந்து செய்துகொண்ட பாகப்பிரிவினை பத்திரம் ஆகும்”



AS.No.747 of 2015

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13.It is also relevant to point out that the properties purchased by the father of the Plaintiff in the name of the 1st Defendant out of the income derived from the joint family were also included in the said partition deed, Ex.B1. Further, the recitals of the partition deed, Ex.B1, disclose that the parties have already divided the movable properties. When a partition deed is executed among the co-owners or co-parceners in a family, a presumption can be drawn that such partition is complete and that the parties have not kept any other property, which is to be divided in future. Considering the specific recitals of the partition deed, Ex.B1 that the parties have not kept any other property to be divided in future, this Court is unable to consider the case of the Plaintiff that some properties were left in the partition deed for unavoidable circumstances. The Plaintiff's claim is, therefore, contrary to the specific recitals in the registered partition deed. As a matter of fact, no unavoidable circumstance is also indicated either in the pleadings or during the evidence.

14.It is seen from the records that the item (I)(1) of the suit properties was purchased by the 4th Defendant, after the partition, under the sale deed, dated 28.10.1999, which is marked as Ex.B4, out of his own income. Similarly, with regard to the item (II) of the suit properties, as seen from the sale deed, dated 28.8.1998 which is marked as Ex.B6, the said property was also purchased after the partition, in the name of the 1st Defendant. In view of this position, this Court has no reason to interfere with the findings of the



AS.No.747 of 2015

WEB COPY

Trial Court as regards the character of the suit properties described as item (I)(1) and the item (II) of the suit properties, inasmuch as the parties were divided in status after the partition deed, Ex.B1. The properties purchased by the Defendants 1 and 4, as stated above, after the partition can never be treated as the joint family properties.

15. Further, as regards the item (I)(2) of the suit properties, it is admitted that the said property was purchased before the partition deed, Ex.B1, by the 1st Defendant by a sale deed, dated 23.03.1994, which is marked as Ex.B5. It is contended that the said property was purchased, out of his separate earnings. As regards the item (III) of the suit properties, as seen from the sale deed, dated 01.04.1989, which is marked as Ex.B3, it is evident that the said property was also purchased before the partition deed Ex.B1. It is admitted and proved by evidence that the 1st Defendant was employed at Neyveli. This Court has already found that some of the properties, which were purchased in the name of the individuals before the partition, out of the family income, were included in the partition deed Ex.B1. Further, this Court is unable to find any evidence to prove that the family had sufficient nucleus. Having regard to the specific recitals in the partition deed Ex.B1 and the documents of sale, by which the properties were purchased by the 1st Defendant and the evidence on record, this Court is unable to interfere with the findings of the Trial Court as regards the character of the suit properties.



AS.No.747 of 2015

WEB COPY

16.The law is settled that there is no presumption that a property acquired by an individual member in his name is also a joint family property. The Defendants 1 and 4 were employed and they were not doing agriculture in the Village. In the present case, there is no dispute with regard to item (I) (1) and item (III) of the suit properties, which were purchased after the partition deed. The Plaintiff admitted in his evidence about the partition of all these properties purchased in the name of the 1st Defendant, out of the joint family income. The Plaintiff has admitted the recitals in the partition deed under Ex.B1 and also the fact that they have divided all the properties as were available as joint family properties at the time when the partition deed, Ex.B1 was made. Though the Plaintiff has stated that he has filed the original documents in the Court, this Court finds no such document filed by him before the Court. That itself gives an indication that the Plaintiff has not come to Court with clean hands.

17.As regards the item (III) of the suit properties, it is to be noted that the said property was the subject matter of another litigation initiated by a Temple. It appears that the Temple, who claimed title to the said property, filed a civil suit and it went upto the Honourable Supreme Court and ultimately, the said suit was decided by the Honourable Supreme Court, holding that the said property is the property of the 1st Defendant. In the case on hand, the evidence on record indicates that the 1st Defendant was conducting the case



AS.No.747 of 2015

WEB COPY

by spending a huge money as the exclusive owner of the property. As discussed above, this Court is unable to doubt the real character of the suit properties as the self acquired properties as contended by the 1st Defendant.

18.In view of the reasons and conclusions, this Court has reached on appreciation of evidence, as discussed above, we find no reason to interfere with the findings of the Trial Court. Hence, this appeal deserves to be dismissed.

19.In the result, this Appeal Suit is dismissed. The judgement and decree, dated, 07.11.2014, made in OS.No.4 of 2013, by the Principal District and Sessions Court, Ariyalur is confirmed. No costs.

(S.S.S.R.J.) & (N.M.J.)
16.11.2022



WEB COPY



AS.No.747 of 2015

S.S.SUNDAR, J.
and
N.MALA, J.

Srcm

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Principal District and Sessions Court, Ariyalur
2. The Record Keeper, VR Section, Madras High Court

AS.No.747 of 2015

16.11.2022