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S.A.Nos.459 and 460 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.459 and 460 of 2006

Natesa Gounder (Deceased)

2. S.Suseela
3. M.Jeyalakshmi
4. A.Ganga.
5. N. Ramajeyam

Appellants 2 to 5 brought on records as LR's
of the deceased sole appellant vide order of Court
dated 21.09.2017 made in C.M.P.Nos.399 to 404 of 2014
in S.A.Nos.459 and 460 of 2006 ...Appellants in both S.As

Vs

1. Ramasamy Gounder
2. Elumalai
3. Perumal (Deceased)
4. Raghupathi Ammal
5. Sundarambal
6. Sundaravalli
7. Venkatesan (Minor)

R4 to R7 are brought on record as
legal representatives of the deceased
3rd respondent and the 4th respondent is



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appointed as the guardian of the 7th respondent
vide order of Court dated 26.10.2006 made
in C.M.P.No.9049 to 9052 of 2006

....Respondents in S.A.No.459 of 2006

Narayanasamy (Died)

2. Ramamoorthy Gounder
3. N.Yasothaiammal
4. E.Malliga
5. K. Sagunthala
6. T.Indira
7. K.Manjula
8. N.S.Valli
9. P.Anchalatchi

(R3 to 9 brought on records as LR's of the
deceased 1st respondent vide order of Court
dated 17.02.2021 made in
C.M.P.Nos.15872 to 15874 of 2017 in
S.A.No.460 of 2006)

....Respondents in S.A.No.460 of 2006

Prayer in both SAs: Second Appeals are filed under Section 100 of C.P.C
against the judgment and decree dated 27.12.2002 made in A.S.Nos.30 and
31 of 2001 on the file of the Additional District and Sessions Judge,
Tindivanam reversing the well considered judgment and decree dated
04.04.2001 made in O.S.No.212 of 1991 and O.S.No.565 of 1990 on the file
of the Principal District Munsif Court, Gingee.

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For Appellants : Mr.P.Srinivas
in both S.As

For Respondent-1 : Mr.C.Ramesh

For Respondents-2
4 to 6 : Served-No Appearance

For Respondent-3 : _Died

For Respondent-7 : Minor, Rep by R4

COMMON JUDGEMENT

S.A.No.459 of 2006 is filed challenging the judgment and decree passed by the Additional District and Sessions Judge, Tindivanam in A.S.No.31 of 2001, which has been filed against the judgment and decree in O.S.No.212 of 1991 on the file of the Principal District Munsif Court, Gingee. This suit is filed by the 1st respondent herein for a declaration and injunction in respect of the suit properties.

S.A.No.460 of 2006 is filed challenging the judgment and decree in A.S.No.30 of 2001 on the file of the Additional District and Sessions Judge,



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Tindivanam, which has been filed against the judgment and decree in O.S.No.565 of 1990 on the file of the Principal District Munsif Court, Gingee. This suit is also filed for a declaration and injunction in respect of the suit properties by the appellant herein. The parties while narrating the pleadings are referred to in their ranking before the Trial Court and thereafter as per the ranking before this Court.

2. The facts in brief in O.S.No.565 of 1990 are as follows:

(i) The case of the plaintiff was that the suit properties are his absolute self-acquired properties which he had purchased under various Sale Deeds. It is his case that he is in possession and enjoyment of the same for more than 12 years. The suit schedule consists of 27 items. The defendants had no right over these properties and defendants 1 and 2 are brothers. When the plaintiff's father was alive, the plaintiff had purchased the properties in his own name. The plaintiff's father had also purchased separate properties in his name. The properties purchased by the 1st defendant and 2nd defendant's father have not been included in the suit properties. Therefore, the entire suit



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properties belong only to the plaintiff and he had therefore filed a suit for the reliefs claimed therein.

3. Written statement of the defendants in O.S.No.565 of 1990

(i) The case of the defendants is that they are siblings of the plaintiff and co-owners as the properties belong to the Hindu Undivided Family as it is purchased from out of the ancestral nucleus. It is their case that the plaintiff has already filed a suit O.S.No.78 of 1991 and therefore, the present suit is not maintainable. It is their case that both the plaintiff and defendants had worked together and out of the income derived, the properties had been purchased. It is not true that when the father of the plaintiff was alive, he had purchased the suit properties in his name. As the plaintiff and 1st defendant's father were illiterate, the properties were purchased in common. Hence, the plaintiff cannot claim an absolute right to the suit properties. It is the case of the defendants that there was a panchayat held in the year 1967 and an oral partition had taken place. The defendants are in possession of the shares allotted to them and paying taxes for the same. They



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had denied the contention of the plaintiff that he has been paying the taxes in respect of the entire suit properties.

ii) The defendants would further contend that during the Land Improvement Scheme, separate pattas had been issued to the plaintiff and the defendants separately against which, the plaintiff had not raised any objections. In the partition, the vacant land, house, garden etc., were partitioned and the 1st defendant after the partition has mortgaged some properties on 05.04.1971 and obtained loan. The defendants would further submit that the mortgaged properties belonged to Narayanasamy Gounder. The lands belonging to the plaintiff are under S.Nos.17/1, 22/1 and 21/2. Since the plaintiff had forced the defendants to part with additional properties and the defendants had not complied with the request, the suit in question has been filed.

4. Additional Written Statement of the defendants:

In the additional written statement, the defendants would submit that



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the 8th item of suit property comprised in S.No.2/6, measuring 1.34 cents has been allotted to the 1st defendant. The 23rd item of property comprised in S.No.22/8, measuring 0.21 cents was allotted to the share of the 1st defendant. Item No.10 and $\frac{1}{2}$ of Item No.24 in S.No.59/6, $\frac{1}{2}$ of item 25 comprised in S.No.59/7, $\frac{1}{2}$ of item 26 in S.No.24/6A were allotted to the share of the 2nd defendant. Revenue records have also been mutated in their respective names. Survey No.63/5 is not in enjoyment of any person. The 5th item of property, which was purchased from one Dhanakoti has been sold back to him. Therefore, it the contention of the defendants that the plaintiff is seeking an order of injunction for the properties which are not in his possession and enjoyment.

5. Reply Statement of the plaintiff:

The plaintiff had filed a reply *inter-alia* reiterating the contentions made in the plaint and denying that the some of the properties were purchased jointly and stated that he had sold some of the properties that belonged only to him.

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6. Trial Court:

The Trial Court had framed the following issues:

- i. Whether the suit properties are the plaintiffs absolute properties?*
- ii. Whether the defendants are claiming right out of enmity?*
- iii. Whether the properties with the plaintiff at the time of institution of the suit?*
- iv. Whether the plaintiff has already filed O.S.No.78 of 1991 with regard to some of his suit properties?*
- v. Whether the plaintiff purchased all the suit properties during the life time of his father?*
- vi. Whether the suit properties were purchased as he was the head of the family.*
- vii. Whether the plaintiff is entitled for declaration and injunction?*
- viii. To what relief, the plaintiff is entitled for?*

7. The facts in brief in O.S.No.212 of 1991 are as follows:

The appellant is the 3rd defendant in the suit O.S.No.212 of 1991 on the file of the Principal District Munsif Court, Gingee. The said suit was filed by the plaintiff for a declaration of his title to the suit properties and for



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a permanent injunction. It is the case of the plaintiff that he is the absolute owner of the suit properties under separate patta No.293. The plaintiff's father, Kanni Gounder, Natesa Gounder and Narayanasamy Gounder were brothers and had constituted a Hindu Joint Family. The plaintiff and Narayanasamy Gounder out of their hard work and profits from their lands have purchased the suit properties and other properties in the name of the Narayanasamy Gounder, since he was the head of the family. However, the said Narayanasamy Gounder has never enjoyed the property as his separate and absolute property. In the year 1967, the plaintiff, Ramamurthy Gounder, the 3rd defendant and Narayanasamy Gounder had entered into an oral partition and an extent of 0.31 cents and other properties were allotted to the plaintiff, for which the revenue records were mutated in his name. He was also paying taxes in respect of his share. On account of the prior enmity, the 3rd defendant claimed that the properties had been sold to the defendants who started to interfere with the peaceful possession and enjoyment of the lands of the plaintiff. The plaintiff would contend that sale was not binding on him and the properties continued to be in his possession. That apart, when the



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UDR patta was allotted in his name, there was no objection from the 3rd respondent nor was an appeal filed. The plaintiff would submit that the sale in favour of defendants 1 and 2 would not bind on him and therefore, he has come forward with the above suit.

8. Written statement of the defendant:

The 3rd defendant / appellant herein had filed herein a written statement, which was adopted by the defendants 1 and 2 contending that the suit property is his absolute property. This property belonged to one Chinnammal and others and it was purchased by the 3rd defendant and he has been in enjoyment of the same for over 35 years. Later, the same was sold to Elumalai, the 1st defendant and he is in enjoyment of the same. The plaintiff has never enjoyed the property and neither is it the joint family property of Kanni Gounder, the 3rd defendant and Narayanasamy Gounder. The suit properties are the separate properties of the appellant and neither he nor his brothers have either jointly or separately purchased and are in possession and enjoyment. No property was purchased on the basis of the fact that the 3rd

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defendant was the head of the family. There was no oral partition and the suit is barred by limitation.

9. Trial Court:

(i) The Principal District Munsif Judge, Gingee has framed the following issues for consideration:

(i) *Whether the suit property is the private property of 3rd defendant?*

(ii) *Whether it is true that the 3rd defendant purchased the suit property on 03.07.1956 and was in possession and enjoyment for more than 35 years?*

(iii) *Whether no prima-facie case is made out?*

(iv) *Whether suit is barred by limitation?*

(v) *Whether the plaintiff is entitled for declaration and injunction?*

(vi) *To what other relief the plaintiff is entitled for?*

(ii). Both the suits were jointly tried and the plaintiff had examined 2 witnesses and Exs.A1 to A51 were marked. On the side of the defendants, 6



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witnesses were examined and 48 documents were exhibited. After considering the evidence let in by the witnesses and documents filed thereon, the learned Principal District Munsif, Gingee decreed the suit O.S.No.565 of 1990 and dismissed the suit O.S.No.212 of 1991. Challenging the said judgments and decree, the defendants in O.S.No.565 of 1990 had filed an appeal in A.S.No.30 of 2001 and the plaintiff in O.S.No.212 of 1991 filed an appeal in A.S.No.31 of 2001. The learned Additional District and Sessions Judge, Tindivanam on considering the evidence on record and hearing the arguments proceeded to allow both the appeals. The learned Judge had relied on the evidence of the appellant that the suit properties are the joint family properties belonging to all of them. The learned Judge had also relied upon the consent statements given by the brothers of Natesa Gounder when he was obtaining a loan from the Cooperative Land Development Bank to show that the properties are the joint family properties and not the separate properties of the appellant. Challenging the said judgments, the appellant is before this Court.



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10. Second Appeal

The second appeal has been admitted on the following substantial questions of law:

(i) *Whether the plaintiff / appellant has established his case by proving the documents which were the sale deeds marked as Exs.A1 to A17?*

(ii) *Whether the lower appellate Court decreed the suit in O.S.No.212 of 1991 where the respondent has failed to prove his title regarding to the suit property without any oral and documentary evidence?*

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

12. A perusal of the records would show that though the appellant had contended that the suit properties are the separate properties purchased



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from out of his income, he is not able to prove his independent source of income. On the other hand, the respondents / defendants in the 2 suits have examined the vendors of the various sale deeds in favour of the appellant and respondents as D.W2 to D.W6 all of whom stated that the properties were purchased as joint family properties and not individually by the appellant. The appellant who had filed Exs.A1 to A21 has not examined any of the vendors and there is nothing to show that the property was sold by him in his individual capacity. Ex.A1 exhibited by the appellant would show that the property is a joint family property. In the documents, it is mentioned as “எங்கள் மிச்ச நிலத்திற்கு தெற்கு”. That apart, P.W1 in his cross examination has admitted that the properties are joint family properties. He has also admitted that there was a partition after the death of Kanni Gounder. The various documents like the Mortgage Deed, Ex.B44 and 45 would show that the properties are only joint family properties. The appellant, who has come forward with the case that the properties are self-acquired properties has not let in any evidence whatsoever to prove the said statement. He has not proved his individual source of income to purchase the properties nor



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examined any independent witness to prove the same. The defendants on the other hand have been able to show an ancestral nucleus which has aided the purchase of the other properties. Therefore, considering the fact that the appellant has not able to prove his case that the suit properties are self acquired properties, the lower appellate Court has rightly allowed the appeals. The purchase of the properties in the name of Narayanasamy Gounder has been explained by the respondents/defendants that the same was done only because he was the eldest member of the joint family. Although in his pleadings he would state that his wife comes from a wealthy family, there is no independent witness examined on his side to prove that his in-laws have contributed to purchase of the properties. After the death of his father, there was a partition of the properties, in which, the suit properties had been allotted to share of the Ramamoorthy Gounder and each of the sharers have been enjoying their respective properties. The respondents/defendants have produced the documents to show their exclusive possession of the suit properties. The respondents have proved their title to the suit properties, since the appellant himself has admitted the partition and the allotment of the



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shares. That apart, to show that he has been in enjoyment of the property allotted to him, the said Ramamoorthy Gounder has produced Kists, patta and chitta. To show the partition and the fact that the sharers are enjoying their respective shares, the respondents/defendants have produced Ex.B5 to B42 and B47 and B48 which would show that after the partition, the sharers are enjoying the properties separately. Therefore, the substantial questions of law are answered against the appellant. Accordingly, these second appeals are dismissed. No costs.

22.12.2022

Index : Yes/No
Speaking Order : Yes / No
srn

To

1. The Additional District and Sessions Judge, Tindivanam
2. The Principal District Munsif Court, Gingee.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.

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P.T. ASHA, J,

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