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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2022

PRONOUNCED ON : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.No.107 of 2018

Ajagaya Le Beau Christian
Antoine Balla

... Appellant/Defendant

Vs.

Louis Antoinette Eugenie Noeline,
Louise Aroquiamarie,

... Respondent/Plaintiff

Prayer: Appeal Suit has been filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code against the decree and judgment dated 28.09.2017 passed in O.S.No.25 of 2012 on the file of the Family Court, Pondicherry.

For Appellant : Mr.K.Sukumaran

For Respondent : Mr.R.Thiagarajan

JUDGMENT

(Judgment of the Court was delivered by V.SIVAGNANAM, J)

The defendant in O.S.No.25 of 2012 on the file of the Family Court, Pondicherry, is the appellant herein and the plaintiff/respondent is his wife.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff/respondent filed the suit for the following prayer:

(a).Pass a Preliminary Decree for equitable Partition of suit "A" and "B" schedule mentioned properties and separate possession of the suit "A" schedule mentioned



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property hereto by metes and bounds into two equal shares as between plaintiff and defendant and consequently directing allotment and delivery of $\frac{1}{2}$ share to this plaintiff in A & B schedule properties having regard to the good and bad nature and convenient enjoyment of the house site;

(b).To appoint Advocate Commissioner to effect partition of the suit properties in terms of the Preliminary Decree and Judgment;

(c).Direct the defendant to deliver possession of her $\frac{1}{2}$ share in the suit "A" schedule property as per allocation that may be made by this Hon'ble Court in the Final Decree proceedings;

(d).Pass a Decree of Permanent Injunction restraining the defendant his men, hooligan, servants and agents or anyone claiming under him from alienating or encumbering the suit "A" schedule mentioned property to any third parties in any manner whatsoever;

(e).Directing the defendant to pay costs of this suit; and

(f).And pass such other relief as this Hon'ble Court may deem thinks fit and necessary in the circumstances of this case.

4.The plaintiff's case is as follows:

The plaintiff is the wife. The defendant is the husband. They are French Nationals. They married on 07.02.1979. The marriage was registered at Pondicherry Etat Civil, Pondicherry Municipality vide Registration No.24/1997/PMC as per French Code Civil. They had three children viz., (i).Marie Chantal Ajagaya Le Beau, (ii).Ajagaya Le Beau Blandine and iii.Ajagaya Le Beau Leandre Blaise.

5.The plaint "A" schedule property, which is a house at No.74, Montorsier Street, Pondicherry - 605 001, was purchased



6. The plaintiff "A" schedule property was purchased during the subsistence of marriage between the plaintiff and the defendant. The plaintiff schedule properties are form part of the assets of community. By applying the French Code Civil, the plaintiff and the defendant having equal rights and interest in the subject matter of the suit properties. Hence, the plaintiff is entitled to half share in the plaintiff schedule properties and filed the suit for partition of half share in the plaintiff schedule properties and for permanent injunction restraining the defendant from alienating the plaintiff "A" schedule property to the third parties.

the ancestral property of the adoptive parents of the defendant and his adoptive mother died in the year 2001. Therefore, the plaint "A" schedule property is in his own absolute personal property prior to the marriage with the plaintiff on 07.02.1979. As per the French Law, the plaintiff has no right in respect of the plaint "A" schedule property and she is not entitled to claim any share in the property. The suit for partition has no merit. The plaint 'B' schedule properties viz., jewels are not in his custody. They are with the plaintiff. Hence, the suit is not maintainable.

(i).Whether the "A" schedule property is of Community property or separate property of the defendant



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(ii).Whether the "B" schedule properties are in the custody of the defendant and the plaintiff is entitled for half share in the plaint "A" and "B" schedule properties.

9.Before the trial Court, the plaintiff examined herself as PW1 and also examined another witness viz., Marie Therese Elisabeth as PW2 and also filed 15 documents as Exs.A1 to A15. The defendant examined himself as DW1 and also filed 24 documents as Exs.B1 to B24.

10.On considering the evidence on record, the trial Court found that the plaintiff is entitled to claim half share in the plaint schedule properties and passed a preliminary decree for half share with regard to the plaint schedule properties with the relief of permanent injunction against the defendant from alienating or encumbering the plaint "A" schedule property to the third parties. Aggrieved by this, the defendant filed the present appeal.

11.The learned counsel for the defendant/appellant submitted that the trial Court failed to consider the evidence on record properly. The plaint "A" schedule property was the ancestral property of the appellant/defendant's adoptive mother. The plaintiff did not plead that the plaintiff sold her jewels and gave money for purchasing the plaint "A" schedule property. The defendant filed documents to prove the fact that the plaint "A" schedule property was bequeathed to him by his adoptive mother MARIE JOSEPHIHE CAMALA AJAGAYA LE BEAU. The trial Court failed to consider the fact that in spite of the Will executed in favour of the defendant in the year 1972 by the adoptive mother of the defendant, to safeguard his right, she also executed a registered sale deed dated 24.12.1997 in favour of the defendant and no consideration was paid by the defendant for the same. The trial Court misunderstood the Article 1403 of French Civil Code that the property becomes community property only when the sale consideration is paid by both the spouses. The trial Court erred in treating the plaint "A" schedule property as community property in the absence of any pleadings and evidence by the plaintiff for contribution to purchase the property. The plaint "B" schedule properties are consisting of four items of jewels valued at Rs.9,35,000/-. The possession of jewels with the defendant is not proved and there is no evidence for that. The plaintiff admitted in her evidence that the locker key is with her and the alleged jewels were in the locker. When the jewels were with the plaintiff, she never gave the jewels to



the defendant. The trial Court ought to have dismissed the claim of partition over the plaint "B" schedule properties and the relationship between the husband and wife become strained and now living separately and reiterated the other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal.

12.To support the argument of the learned counsel, placed reliance on the following judgements;

1.Nazir Mohamed Vs.J.Kamala and other
reported in 2020 (6) CTC 320.

2.Bhagwat Sharan (Dead)thr.L.Rs. Vs.
Purushottam and Ors. Reported in 2020 (3) CTC
111.

3.Vidhyadhar Vs.Manikrao and another
reported in (1999) 3 Supreme Court Cases 573
and

4.Dahiben Vs.Arvinbhai Kalyanji Bhanusali
(Gajra) (D) thr L.Rs & others reported in 2020
(5) CTC 471.

13.The learned counsel for the respondent/plaintiff supported the judgment of the trial Court and further contended the fact that the plaintiff and the defendant were married on 07.02.1979 is not disputed. The property was purchased by the defendant by way of the sale deed dated 24.12.1997 during the subsistence of the marriage is also not disputed. Therefore, invoking the French Civil Code 1401, all the immovables purchased during the subsistence of the marriage become assets of community and the husband and wife having equal share upon the assets of the community. Hence, the trial Court rightly decreed the suit. There is no reason to interfere with the finding of the trial Court, there is no merit in the appeal and pleaded to dismiss the appeal.

14.To support the argument, the learned counsel placed the reliance on the decision of this Court in Perianayagasamy Madrid (died) rep.by his Legal Representative Swapna Ghosai Vs. Marie Yvette Gisele Madrid and 4 others reported in MANU/TN/0271/2003 Equivalent citation (2003) 2 MLJ 26.



15. We have considered the matter in the light of the submissions made by the counsel for the parties and perused the records.

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16. The defendant/appellant is the husband. The respondent is the wife. They married on 07.02.1979, which was registered Etat Civil, Pondicherry Municipality as per French Code Civil. This fact is not disputed. They are the French Nationals. Therefore, the French Civil Code will be applicable for them for the purpose of personal laws, they were renocants. As far as the renocants are concerned, the French Civil Code 1954 alone is applicable.

17. Therefore, the French Civil Code 1954 is to be applied to the parties, The French Civil Code, 1954, Chapter II speaks about the System of Community of Property, Code 1401 speaks about the assets of community. For better appreciation reproduced the Act;

"1401. The following things form the assets of the community:-

1. All the movables which husband and wife possess on the day of their marriage, and also all the movables which they may acquire during marriage, either under a succession or by gift inter vivos; unless the donor has expressed a contrary intention (q).

2. All the produce, revenues, interest or arrears of every kind which fell due (r), or have been received during marriage from property which belonged to either husband and wife at the time of their marriage, or from property which they fell into during the marriage, whether as heirs or otherwise.

3. All the immovables purchased during marriage. (C.529, 1393, 1400, 1404, 1433, 1437, 1470, 1497, 1498, 1500)"



18. In view of Code 1401(3), all the immovable purchased during the subsistence of the marriage become the assets of Community. In this case, the plaint "A" schedule property was purchased as per sale deed dated 24.12.1997, which is evidenced by PW1 by filing the document as Ex.A7. In view of Code 1474, the property is equally divided between the parties.

19. We have gone through the evidence of PW1 and DW1, from their evidence, it is clear that the plaint "A" schedule property was purchased during the subsistence of the marriage on 24.12.1997.

20. We have further considered the argument of the learned counsel for the defendant/appellant that there is no pleading or evidence by the plaintiff to show that the plaintiff had contributed for purchasing the property. Hence, it will not become the property of community and the defendant/appellant initially got the property through the registered Will dated 20.10.1972 and subsequently, her adoptive mother executed the sale deed. Therefore, it is a separate property, the argument is unsustainable because the Will came into force only after the death of the Testator. Admittedly, the mother died in the year 2001. Before her death, she executed a sale deed on 24.12.1997 during the subsistence of the marriage. Thus, the appellant/defendant got the absolute right over the property by way of the sale deed during the subsistence of marriage. In view of the French Code, 1401(3), all the immovables purchased during the marriage, become the assets of the community. We are of the view that the French Code 1401(3) cannot be differently interpreted to mean that the another spouse has to contribute for purchasing the property. We are of the view that, irrespective of contributions in purchasing the immovable property during the subsistence of the marriage, it will become the assets of community. There is no scope to view the French Code 1401(3), in any other way. Further, there is no evidence on the defendant's side to show that the "A" schedule property has been in his legal possession before the marriage on 07.02.1979. The alleged Will dated 20.10.1972 will not confer any legal right during the life time of the Testator viz., his adoptive mother MARIE JOSEPHIHE CAMALA AJAGAYA LE BEAU, she died in the year 2001. Before her death, she executed the sale deed dated 24.12.1997, which confer the legal right after the marriage. Hence, it would be construed that he had acquired the property during the subsistence of the marriage. Therefore, the argument placed by the learned counsel for the defendant/appellant is unsustainable and rejected. We have no reason to interfere with the finding of the trial Court in this regard.



21. With regard to the plaint "B" schedule property, admittedly, PW1 plaintiff during his evidence did not produce any evidence to show that the jewels stated in the "B" schedule property was in the custody of the appellant/defendant. Apart from this, there is no evidence on record to show that the plaint "B" schedule properties were left by the plaintiff in the custody of husband/defendant. Under such circumstances, there is no evidence for the availability of plaint "B" schedule property for partition. The trial Court, without any evidence of availability of the plaint "B" schedule property for partition, decreed for partition of "B" schedule property. Since the finding of the trial Court in this regard not being supported by any evidence on record, it is not acceptable and liable to be set aside. Accordingly, the finding of the trial Court with regard to the plaint "B" schedule property is set aside.

22. The reliance placed by the learned counsel for the defendant/appellant are not helpful to decide the issue on hand, as they were factually distinguished from the facts on hand and the reliance placed by the learned counsel for the plaintiff/respondent was taken into consideration for the purpose of definition of assets of community as per French Civil Code 1401.

23. For the forgoing reasons, we confirmed the preliminary decree passed by the trial Court with regard to the plaint "A" schedule property alone and set aside the preliminary decree with regard to the plaint "B" schedule properties and thus, the appeal is partly allowed in respect of plaint "B" Schedule property and dismissed in respect of plaint "A" schedule properties. Consequently, connected miscellaneous petition, if any, is closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

sms

To

1. The Judge,
The Family Court, Pondicherry.



2. The Section Officer,
VR Section High Court, Madras.

+1cc to Mr.R.Thiagarajan, Advocate SR.No.30105

+3ccs to Mr.M.B.Dominique, Advocate SR.No.32130 (09.06.2022)

A.S.No.107 of 2018

NRJK (CO)
GMY (07/06/2022)