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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022
PRONOUNCED ON : 28.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.1310 of 2011
and M.P. No.1 of 2011

1.Dilli Babu
2.K.V.Sathyanarayanan ... Appellants /Appellants/
Plaintiffs 1 & 2

versus

1.Arumugam
2.K.J.Munusamy ...Respondents//Respondents
Defendants 2 & 3

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 16.08.2010 made in A.S.No.31 of 2009 on the file of the Sub-Court, Madurantagam, confirming the judgment and decree dated 21.12.2004 made in O.S.No.163 of 1995 on the file of the learned District Munsif Court, Madurantagam.

For Appellants : Ms.R.Rajashama Gayathri
for Mr.K.Govi Ganesan

For Respondent No.1 : No Appearance

For Respondent No.2 : Mr.N.Nagusah

J U D G M E N T

Aggrieved over the concurrent findings made in A.S.No.31 of 2009 dated 16.08.2010 on the file of the learned Subordinate Judge, Madurantagam and in O.S.No.163 of 1995 dated 21.12.2004 on the file of the learned District Munsif, Madurantagam, the appellants, who are the plaintiffs 1 and 2 in the above referred suit, are before this Court with the present Second Appeal.

2.The suit is for declaration, declaring that the suit property is the joint family property of the plaintiffs and the defendants.



3. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

4. The laconic averments made in the plaint, are as follows:

(i) The plaintiffs 1 and 2 are recognised as the legal representatives of the deceased 3rd plaintiff. The father of the first plaintiff, namely, K.J.Damodaran has got 3 brothers, viz. K.J.Venkataperumal, K.J.Bhakthavatchalam (3rd plaintiff) and K.J.Munuswamy (3rd defendant). As of now, the father of the first plaintiff (K.J.Damodaran) and the father of the second plaintiff (K.J.Venkataperumal), are no more.

(ii) The suit property is the joint family property of the plaintiffs and the defendants 1 and 3. The suit schedule property was purchased, out of the joint exertions and earnings of the first plaintiffs' father K.J.Damodharan, the second plaintiffs' father K.J.Venkataperumal and K.J.Bhakthavatchalam, K.J.Munusamy along with K.L.Jeyarama Naidu. While at the time of purchasing the said property, the same was purchased in the name of the first defendant. K.J.Venkataperumal's son K.V.Sathiyanarayanan [2nd plaintiff], K.J.Bhakthavatchalam [3rd plaintiff] and defendants 1 and 3 have got equal shares in the suit property along with the other joint family properties. After made purchase, the first plaintiff alone, is maintaining the property on behalf of other plaintiffs. At the instigation of the third defendant, the first defendant is attempting to alienate the suit property to the second defendant.

(iii) The first defendant herein has given a false notice to one Sarangan calling upon him to hand over the possession of the suit property. The said Sarangan is the friend of the first plaintiff. In the said notice, it is submitted that the first defendant is not in possession of the suit property. Now, the first defendant is attempting to alienate the suit property by denying the joint family nature of the suit property, the same was denied by the plaintiffs. Therefore, it would necessary to declare that the suit property is the joint family property of the plaintiffs, first defendant and third defendant and for consequential permanent injunction. Hence, the suit.



5.The case of the first defendant, as averred in the written statement, is as follows:

(i) The relationship mentioned in the plaint, is admitted. The suit schedule property has not been purchased by utilising the joint earnings of the plaintiffs' father K.J.Venkataperumal and his brother Bakthavatchalam. The first defendant has purchased the suit property from Vasudeva Naidu under a registered Sale Deed dated 14.05.1958 out of her own earnings and out of her own funds. After made purchase, the first defendant has been in possession and enjoyment of the suit property. She has orally mortgaged the said property with the second defendant. Now, the first defendant is very old and suffering from many ailments and taking treatment, only the third defendant is maintaining the first defendant. The suit is not maintainable under Benami Transaction Prohibition Act. Hence, the suit filed by the plaintiffs is liable for dismissal with costs.

6.Brief contentions of the additional written statement filed by the third defendant, are as follows:

(i) The first defendant has died on 30.10.1996 and while she was alive, she executed a registered Will dated 15.07.1993 bequeathing all her properties in favour of this defendant. The said Will is executed out of her own free will and desire. After the death of the first defendant, this defendant got the suit property and he became the absolute and exclusive owner. The plaintiffs have no manner of right, title or interest in the suit property. Hence, the suit filed by the plaintiffs, is liable for dismissal with costs.

7.From the above averments, the learned District Munsif, Madurantagam, framed necessary issues and tried the suit. On the side of the plaintiffs, P.W.1 to P.W.3 were examined and 25 exhibits were marked as Ex.A.1 to Ex.A.25. Similarly, on the side of the defendants, 3 witnesses were examined as D.W.1 to D.W.3 and 1 exhibit was marked, as Ex.B.1.

8.Having considered the materials placed before him, the learned District Munsif, Madurantagam, by judgment and decree dated 21.12.2004, came to the conclusion that the plaintiffs had not proved their case and ultimately, dismissed the suit. In the appeal preferred by the plaintiffs in A.S.No.31 of 2009, the learned Subordinate Judge, Madurantagam, had confirmed the findings arrived at by the trial Court and dismissed the appeal.



9. Feeling aggrieved over the findings arrived at by the lower appellate Court, the plaintiffs 1 and 2 / appellants, are before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial questions of law;

"(i) When Order 14 Rule 2 of C.P.C. mandates that judgment should be pronounced on all issues whether the Courts below are correct in not answering all the issues framed in the suit ?

(ii) Whether the non-consideration of the Will set up by the defendants is fatal to the case when the 1st defendant had died pending suit ?

(iii) When the 1st defendant has died pending suit and the suit properties will devolve on the legal heirs whether the Will pleaded by the defendants have to be proved or not for claiming exclusive right ?"

10. Heard Ms.R.Rajashama Gayathri, learned counsel for Mr.K.Govi Ganesan appearing for the appellants and Mr.N.Nagusah, learned counsel appearing for the second respondent and also perused the materials available on record.

11. One K.J.Damodaran, who is the father of the first plaintiff (Dilli Babu); one K.J.Venkataperumal, who is the father of the second plaintiff (K.V.Sathyanarayanan); the third plaintiff K.J.Bhakthavatchalam; and the third defendant K.J.Munuswamy, are all brothers, born to one K.L.Jeyarama Naidu. As of now, none of the four brothers, are no more. The first defendant Krishnaveni Ammal was the mother of the above referred 4 brothers. In respect of the said relationship, there was no denial on either side.

12. It is not in dispute that the suit schedule property stands in the name of the first defendant Krishnaveni Ammal. The case of the plaintiffs is that, the suit property has been purchased by utilising the funds realised from the income derived from the ancestral property having by K.L.Jeyarama Naidu's family. The said stand taken by the plaintiffs was denied by the defendants as the suit schedule property has been purchased by the first defendant by utilising her own funds.

13. Therefore, being the reason that the plaintiffs asserted their case as the suit schedule property has been purchased from the funds realised from the joint family



property, it is for them to prove their case. In this regard, it would necessary to see the recital found in the Sale Deed stands in the name of the first defendant, but here is the case, the plaintiffs have not produced a copy of the said Sale Deed, as exhibit. So, we have to decide the plaintiffs' case, without seeing the Sale Deed, which stands in the name of the first defendant.

14. Secondly, before the trial Court on the side of the plaintiffs, they had produced a number of kist receipts [Ex.A.3 to Ex.A.8] and cash bills [Ex.A.9 to A.22] to the year of 1989-2002. On going through the said documents, it would reveal the fact that, all the above said documents, are stands in the name of the first defendant. Except the said documents, the plaintiffs have not produced a single document, which alleged to be stands in the name of the four(4) brothers.

15. The Court below concluded the suit as the plaintiffs have not discharged the onus of proof and therefore, they are not entitled to any relief. Before that, the trial Court referred the judgment of MUDI GOWDA GOWDAPPA SANKH vs. RAM CHANDRA RAVAGOWDA SANKH reported in AIR 1969 SC 1076 wherein, it has held as follows;

"there is no presumption that a Hindu family merely because it is joint, possesses any joint property, the burden of proving that any particular property is joint family, is therefore, in the first instance upon the person who claims it as coparcenary property. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate."

16. Accordingly, applying the principle set out in the above referred judgment, here, it is a case, the plaintiffs have to show that, there was an adequate nucleus having by them for purchasing the suit schedule property in the name of the first defendant. In this regard, in order to show the same, none of the document has been exhibited on the side of the plaintiffs.

17. More than that, the first defendant being the lady, the law is well settled, unless there is definite, clinching proof that the property stands in the name of the female was purchased by utilising the joint family fund, which is not for the female to prove how she acquired the same. In this regard,



the Hon'ble Division Bench of this Court in the judgment of RANGANAYAKI AMMAL vs. SRINIVASAN reported in 1978 (1) MLJ 56 has observed as follows;

"It is by now well established that properties standing in the names of the female members are their own, unless there is definite, clinching proof to the contrary by the challenging member. It is not for the female member to prove how she acquired the same."

18. Now, applying the principle set out in the above referred judgment to the case on hand, though the first defendant has not produced any relevant document to show how can she purchased the property, that would not defeat the case of the first defendant. In fact, the pleadings set out in the plaint, the plaintiffs have not averred about the income derived from the joint family property. Therefore, on that score alone, the evidence let in by the plaintiffs cannot be taken into account. Therefore, in view of the above, this Court cannot be termed that the suit schedule property, is the joint family property of the plaintiffs and the defendants' family.

19. As far as the relief of injunction also, being the reason that the plaintiffs have not proved their case, as the suit property is the joint family property of the plaintiffs and the defendants, they cannot ask such a relief as against the first defendant, who is having a title. Therefore, in all, the evidence let in by the plaintiffs have not shown that the property has been purchased by utilising the funds realised from the ancestral property of the plaintiffs and defendants. Since the title and possession have not been proved by the plaintiffs, they are not entitled to the relief of injunction. The Courts below had also traversed in the same line and concurrently held that the plaintiffs have not proved their case.

20. Another aspect, which is necessary to decide in this appeal is that, while at the time of framing the substantial questions of law, the alleged Will executed by the first defendant has been mentioned as the same has not been answered. In this regard, on going through the judgment rendered by the Court below, after the death of the first defendant, the plaintiffs have not taken any steps to amend the plaint, and impleaded the legal representatives of the deceased first defendant.

21. It is well settled that without any pleading, the evidence let in on that score, cannot be looked into. Herein also, without producing the alleged Will and without amending



the pleading in respect to the death of the first defendant and in respect to the execution of the Will, it is not necessary for the Court below to decide whether the suit property will devolve upon the legal representatives of the deceased first defendant. In this regard, the only option available for the plaintiffs is to file a suit for partition and in otherwise, answering the said issue, is not necessary in this Second Appeal.

22. Accordingly, the substantial questions of law, are all answered in favour of the respondents and thereby, the Second Appeal is dismissed. The judgment and decree dated 16.08.2010 passed in A.S.No.31 of 2009 on the file of the learned Subordinate Judge, Madurantagam, is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sri
To

1. The Subordinate Judge,
Madurantagam.

2. The District Munsif,
Madurantagam.

Copy to

The Section officer,
VR Section, High Court, Madras.

+1cc to M/s.K.Govi Ganesan, Advocate Sr.5442
+1cc to M/s.N.Nagu sah, Advocate Sr.5954

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and M.P. No.1 of 2011

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