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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.03.2022

PRONOUNCING ORDERS ON : 21.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.230 of 2013

& M.P.No.1 of 2013

- 1.Chandra
- 2.Ravichandran
- 3.Geetha
- 4.Jayachandran
- 5.Soundararajan

.. Appellants/Defendants
12, 15 to 18

/versus/

- 1.Ramachandran
- 2.M.Ethiraj (Died)
- 3.Krishnan
- 4.Senthamaraikannan
- 5.Rukkumani Ammal
- 6.Mathiazhagan
- 7.Senthamizh Selvi
- 8.Selvapandian
- 9.Chandrasekaran
- 10.Elangovan
- 11.Elamurugan

...Respondents 1 to 11/Plaintiff,
Defendants 9 to 11, 19 to 25

- 12.Saraswathi
- 13.Shanthi
- 14.Rajasekar

...Respondents

[R12 to R14 as Lrs of the deceased R2 vide Court Order dated 08.03.2022 made in CMP.Nos.3562, 3566 and 3569 of 2022 in S.A.No.230 of 2013]

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 07.12.2012 in A.S.No.39 of 2011 on the file of the Principal District Court, Villupram, as confirmed by the Judgment and Decree dated 23.12.2010 in O.S.No.3 of 2005 on the file of Subordinate Court, Gingee.



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For Appellants : Mr.A.R.L.Sundaresan
Senior Counsel for
Ms.AL.Gandhimathi

For Respondents: Mr.T.Sai Krishnan for R1

R2 Died Step taken
R3 & R4 - Served
No Appearance

M/s.N.V.Prasanna for R5 to R11

R12 to R14 - Not ready in notice

JUDGMENT

The defendants 12, 15 to 18 are the appellants in this Second Appeal.

2.The 1st respondent/plaintiff filed the suit seeking for the relief of partition and for allotment of 1/3rd share in the suit properties and for rendition of accounts by the 2nd defendant.

3.The case of the plaintiff is that the "A" Schedule property was left behind by Elumalai Gounder and the plaintiff and defendants 1 & 2 being his sons are entitled to the said property. The further case of the plaintiff is that the plaintiff and the 1st defendant were living away from the property in view of their avocation and initially the property was under the control of the mother and thereafter, it came into the absolute control of the 2nd defendant. The further case of the plaintiff is that the "A" Schedule property yielded sufficient income. The "B" Schedule property initially stood in the name of the mother and she settled the property in favour of her three sons through a registered Settlement Deed dated 22.07.1972. Insofar as the "C" Schedule property is concerned, it was purchased in the name of the 1st defendant. The "D" Schedule property was purchased in the name of the 2nd defendant and the "E" Schedule property was purchased in the name of the plaintiff. According to the plaintiff, even though the "B" Schedule, "C" schedule, "D" Schedule and "E" Schedule properties were purchased in individual names, all these properties formed part of the joint family property, since it was purchased from the income yielded from the "A" Schedule property.



4.The grievance of the plaintiff is that the 2nd defendant was not willing to come forward to partition the properties and to render the accounts for the income derived from the properties and hence, the suit came to be filed for the relief of partition and allotment of 1/3rd share in the suit properties.

5.The case of the 2nd defendant is that he was employed during the period from 1959 to 1962 and thereafter, he left employment and started doing contract work from the year 1963 onwards. He became a major contractor in the year 1970. Hence, he had sufficient source and earnings to purchase properties individually in his name. Accordingly, all the properties mentioned in the "D" Schedule were purchased by the 2nd defendant with his own income and the revenue records were also mutated in his name. Therefore, the 2nd defendant had taken a stand that the "D" Schedule property cannot form part of partition, since he is the exclusive owner of the property.

6.The 12th defendant filed a separate written statement and she claimed her right through the 11th defendant by virtue of the registered Sale Deed dated 13.01.1992. The 12th defendant is none other than the wife of the 2nd defendant who was claiming ownership in the "F" Schedule property. This defendant virtually supported the stand taken by the 2nd defendant.

7.The defendants 15 to 18 are none other than the legal heirs of the deceased 2nd defendant and they were impleaded after the demise of the 2nd defendant during the pendency of the suit.

8.The trial Court after considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence decreed the suit in O.S.No.3 of 2005 and a preliminary Decree was passed with respect to suit Schedule "A" to "E" and the plaintiff was held to be entitled for 1/3rd share in those properties.

9.Aggrrieved by the same, the defendants 12, 15 to 18 filed A.S.No.39 of 2011 before the Principal District Judge, Villupuram. This appeal was dismissed by Judgment and Decree dated 07.12.2012 and the Judgment and Decree passed by the trial Court was confirmed. Aggrrieved by the same, defendants 12, 15 to 18 have filed this Second Appeal.

10.When the Second Appeal was admitted, the following substantial questions of law were framed:



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- a) Whether the Courts below are right in granting decree for partition in respect of properties in Schedule "D" to the plaintiff, which are admittedly purchased under Sale Deeds in the name of the 2nd defendant?
- b) Whether the Courts below have committed an error in treating the separate property of the 2nd defendant as joint family property without adequate pleadings and evidence in this regard?
- c) Whether the Judgments of the Court below are against settled principles of law relating to pleadings and proof in respect of properties standing in the name of the individual members of the joint family?

11. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.

12. This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

13. At the outset, it must be mentioned that the Second Appeal confines itself only with regard to the dispute surrounding the "D" Schedule property. Therefore, there is no requirement for this Court to discuss about the other properties in this appeal.

14. The learned Senior Counsel appearing on behalf of the appellants submitted that both the Courts below failed to take note of the fact that the plaintiff did not establish that the "D" Schedule property was purchased from the surplus income derived from the "A" Schedule property. It was further submitted that the 2nd defendant had independent income from the year 1959 onwards and he was able to purchase the "D" Schedule properties for the period from 1965 to 1989 and by no stretch, these properties can be thrown into the common hotchpot.

15. The learned Senior Counsel extensively relied upon the evidence of PW1 in this regard. The learned Senior Counsel in order to substantiate his submissions relied upon the judgment of the Division Bench of this Court in the case of R. Deivanai Ammal (Died) and another vs. G. Meenakshi Ammal and others reported in 2004 4 CTC 208. The learned Senior Counsel concluded his arguments by submitting that both the Courts below had erroneously granted a share to the plaintiff even in the "D" Schedule property when the said property exclusively belongs to



the 2nd defendant. It was therefore, contended that the Judgment and Decree of both the Courts below deserves to be interfered insofar as the "D" Schedule property is concerned.

16. The learned counsel for the 1st respondent/plaintiff submitted that the plaintiff had sufficiently pleaded and proved that the "A" Schedule property was the nucleus from which the income was derived and Schedule "B" to "E" properties were purchased only out of the said income. The learned counsel further submitted that even the other Schedule properties viz., "B" Schedule, "C" Schedule and "E" schedule properties were standing in the name of individuals and they were held to be the joint family properties and the very same yardstick should be applied for the "D" Schedule properties also. The learned counsel further submitted that the properties in the "D" Schedule were purchased during the period from 1965 to 1989 in the name of the 2nd defendant. Whereas, the 2nd defendant stopped going for work from the year 1963. He became a contractor only in the year 1970 and Exhibits B16 at B21 which were relied upon by the 2nd defendant to prove the income only pertained to the year 1979 to 1992. Therefore, there was absolutely no explanation for any income from 1963 to 1979. That apart, most of the properties in the "D" Schedule were purchased during the period when the "C" Schedule properties were purchased in the name of the 1st defendant and many were adjacent properties. Therefore, what was applied for the "C" Schedule properties, should be applied for the "D" Schedule properties also. The learned counsel submitted that the plaintiff sufficiently discharged the burden and the 2nd defendant was not able to prove sufficient individual income to purchase the "D" Schedule properties. Hence, the learned counsel concluded his arguments by submitting that there are absolutely no grounds to interfere with the Judgment and Decree of both the Courts below. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Division Bench of this court in the case of Ponnuswamy vs. Meenakshi Ammal and others reported in 1989 2 LW 227.

17. In the present case, there is no dispute with regard to the fact that "A" Schedule property was a joint family property containing 15 items and it was an income yielding property. The "B" Schedule property containing 7 items was purchased in the name of the mother. She has executed a Settlement Deed in favour of her three sons on 22.02.1972. Thereby, the plaintiff and defendants 1 & 2 became entitled for 1/3rd share in the properties. The "C" Schedule property containing 10 items was purchased in the name of the 1st defendant. The "D" Schedule



evidence in order to hold that the "D" Schedule property also forms part of the joint family property and it is not the individual property of the 2nd defendant:

- a) The "A" Schedule property was a surplus income yielding property through which all the other properties were purchased.
- b) The reasoning that was given for the "B" Schedule, "C" Schedule and "E" Schedule properties was applied for the "D" Schedule property also and the same yardstick was followed.
- c) Both the courts below carefully considered the deposition of DW2 who is the son of the 2nd defendant and found that the 2nd defendant did not earn any income after he lost his job in the year 1963. He further stated that his father became a contractor in the year 1970/1972. Exhibits B16 to B21 which was marked through DW2 pertained to the period from 1979 to 1992 and insofar as the payment of income tax is concerned, it was filed for the period from 1980 to 1992. Whereas, the properties were purchased in the name of the 2nd defendant from 1965 to 1989. There was absolutely no source of income atleast for the period from 1965 to 1980. There was absolutely no explanation from DW2 in this regard.
- d) Both the Courts below also took into consideration the Release Deed executed by the aunt, which was marked as Ex.A12 and it was found that the Release Deed was executed in favour of the plaintiff and defendants 1 & 2 and in that Release Deed, items 1, 4 and 6 of the "D" Schedule also formed part. If really, the 2nd defendant is the exclusive owner of the "D" Schedule property, there was no requirement for the aunt to execute a Release Deed for these properties. When this was put to DW2, he was not able to give any explanation for the same.

23. Apart from the above factors, it can also be seen that the "C" Schedule properties purchased in the name of the 1st defendant also took place in or around the same time when the "D" Schedule properties were purchased in the name of the 2nd defendant. That apart, many of the properties in the "D" Schedule was adjacent to the "C" Schedule properties. These are also factors that can be taken into consideration by this Court.



24. This court does not find any perversity in the findings rendered by both the Courts below. Both the Courts were perfectly right in holding that the "D" Schedule properties which stood in the name of the 2nd defendant must also be thrown into the common hotchpot. This is in view of the fact that the "A" Schedule property was yielding surplus income, the 2nd defendant was managing the said property and there was no proof on the side of the 2nd defendant to show that he had sufficient income to purchase the properties in the "D" Schedule in his name. The factual findings of both the Courts below does not warrant any interference. The substantial questions of law are answered accordingly against the appellants.

25. In the result, this second appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

ssr
To

1. The Principal District Judge,
Villupram.

2. The Subordinate Judge,
Gingee.

Copy to

The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.T.Saikrishnan, Advocate SR.18921
+1cc to M/s.A.L.Ganthimathi, Advocate Sr.19119

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srg 28/04/2022