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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.844 of 2013

and

MP No.1 of 2013

Minor Mohanasundaram

Rep by his Guardian mother and next friend

Poongothai

...Appellant

Vs.

1.Viswanathan

2.Kamakshi

3.Dhanalakshmi

4.M.Suriya Prabu

...Respondents

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 27.03.2013 passed in Civil Appeal suit No.2 of 2010 and Cross Appeal on the file of the I Additional District and Sessions Judge, Vellore, Vellore District reversing the judgement and decree dated 29.10.2008 made in O.S.No.96 of 1998 on the file of Subordinate Judge, Vellore.

For Appellant : M/s.T.Dhanyakumar

For Respondents : Mr. S.N.Ravichandran
for R1 to R4

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The case of the plaintiff is that the suit properties are joint family properties and the plaintiff who is entitled for a share in the properties sought for division of the properties and for allotment of his share. Since the pre-suit notice was not acted upon, the plaintiff filed the suit for partition and for allotment of 1/2nd share in the suit properties.

3. The 1st defendant filed a written statement. A categorical stand was taken in the written statement to the effect



that the suit properties are not joint family properties and it was not purchased out of the nucleus of any joint family property. It was stated that five of the properties were infact purchased by the 1st defendant and his brother jointly out of their own income and hence, the plaintiff is not entitled for any share in any of the suit properties. The 2nd defendant also filed an independent written statement and she has also taken a very specific stand that the properties in question are not joint family properties and hence, the plaintiff is not entitled for any share in the properties and accordingly, the 2nd defendant had also sought for the dismissal of the suit.

4. The Trial Court after appreciating the oral and documentary evidence and after considering the facts and circumstances of the case found that five of the properties are joint family properties and hence, passed a preliminary decree granting $\frac{1}{2}$ share in those properties. Insofar as the property situated in Survey No.448/12B is concerned, the Trial Court dismissed the suit.

5. Aggrieved by the same, both the plaintiff as well as the defendants filed Appeal and cross Appeal in A.S.No.2 of 2010. The Appellate Court on reappreciation of the facts of the case and also on perusing the oral and documentary evidence, found that except one property viz., the property situated at Survey No.448/12B, all the other properties were jointly purchased by the 1st defendant and his brother out of their income and hence, the remaining five properties were held to be the individual properties of the 1st defendant and his brother. Accordingly, the Lower Appellate Court allowed the appeal in part and held that the plaintiff is entitled only for $\frac{1}{4}$ th share in Survey No.448/12B and insofar as the other properties are concerned, the suit was dismissed. Aggrieved by the same, the plaintiff has filed the present second appeal.

6. Heard the learned counsel for the appellants and the learned counsel for the respondents.

7. The learned counsel for appellant submitted that Ex.A3 (same document was marked as Ex.B3) makes it very clear that the suit properties are joint family properties. The learned counsel submitted that Ex.A3 is the partition deed that was entered into between the 1st defendant and two sisters. In this partition deed, there is a clear statement to the effect that the properties in question are joint family properties. It is these properties that were partitioned among the 1st defendant and his two sisters. Therefore, whatever was allotted in favour of the 1st defendant under this partition deed will retain its character as joint family properties. Hence, the plaintiff is entitled for a share in those properties. The learned counsel further submitted



that this was properly appreciated by the Trial Court and the Lower Appellate Court went wrong in reversing the well considered findings of the Trial Court.

8. This Court has carefully gone through the document marked as Ex.A3 and also the findings of the Lower Appellate Court. It is to be borne in mind that the partition deed between the 1st defendant and his two sisters was executed in the year 1996. If really the properties were joint family properties, the two sisters can never have a share in those properties at that point of time. Merely because the word “பிதூராஜிதமாக பாத் தியப்பட்டு” is used in the said document, it cannot be assumed that all the properties covered therein are joint family properties.

9. The Lower Appellate Court on appreciation of facts has given a categoric finding that Ex.B1, which is a Sale Deed dated 12.04.1961, was the document through which the 1st defendant and one Giri Govindan have jointly purchased the properties in Survey Nos.439/3, 448/11, 448/13, 439/3 and 448/11. Similarly, through Ex.B2, dated 24.10.1966, the 1st defendant along with his brother had purchased the property situated at Survey No.442. It is an admitted case that the plaintiff was not even born at the time when these transactions took place.

10. The Lower Appellate Court also found that the 1st defendant had source of income to purchase the properties and hence, the properties that are covered under the Sale deeds cannot be considered as joint family properties.

11. It is now a settled law that a property which is standing in the name of an individual / individuals should be presumed to be their self acquired property and if any person claims those properties to be joint family properties, the burden of proof is upon him to prove the same. The aspects to be considered to determine whether the property is a joint family property or a self acquired property was dealt with by this Court in [K.V.Ramasamy V. K.V.Raghavan] reported in 2009 4 CTC 440.

12. The relevant portions in the judgement are extracted hereunder :-

34. From the conjoint reading of the decisions referred to supra, the following aspects can be culled out easily:

(a) The joint family nucleus must have left sufficient surplus income so as to enable acquisition.

(b) Initially burden lies upon a member who alleges that a particular property is a joint family property



to the extent that the alleged joint family nucleus must have left sufficient surplus income and by Utilising the same, the property in question could have been acquired.

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(c) If the initial burden as referred to above is proved then the burden shifts to the member of the joint family setting up claim that it is his personal property and the same has been acquired without any assistance from the joint family property.

(d) Failure to prove existence of nucleus, the inevitable presumption is that the acquisition in question is nothing but self acquisition.

(e) Mere fact of existence of a joint family does not lead to presumption that a property held by any of its member is joint family property unless the above aspect are proved.

(f) If the property acquired is standing in the name of the female member of a joint family, she need not prove as to how she acquired it.

13. It is clear from the above that construing a property to be a joint family property is not a matter of assumption and it requires proof. In the present case, except Ex.A3, there is nothing to show that the five properties that were purchased in the name of the 1st defendant and his brother through Ex.B1 and B2 were infact purchased from the income derived from the joint family. The plaintiff will not be in a position to speak about the income through which the properties were purchased, since the plaintiff was not even born at the time when these transactions took place.

14. In the considered view of this Court, the Lower Appellate Court has properly appreciated the evidence available on record and has come to a correct conclusion and this Court does not find any ground to interfere with the same. This Court cannot indulge in re-appreciation of evidence in exercise of its powers under Section 100 of CPC. This Court does not find any substantial questions of law involved in the present second appeal. In the result, this Second appeal stands dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Subordinate Judge,
Vellore

2. I Additional District and Sessions Judge,
Vellore,
Vellore District

Copy To:-

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

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.7927

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.8407

SA.No.844 of 2013

AK-II (CO)
RN(13/04/2022)