



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON
22.09.2021

JUDGMENT PRONOUNCED ON
24.01.2022

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CORAM :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

SECOND APPEAL NO. 774 OF 2019

1. Kuppusamy Gounder
2. Sakthivel

.. Appellants/
Respondents/Defendants

Versus

Mohanraj

... Respondent/
Appellant/Plaintiff

This Appeal is filed under Section 100 CPC against the judgment and decree dated 05.01.2019 made in A.S.No.19 of 2015 on the file of learned Sub-Judge, Dharapuram, partly allowing the judgment and decree dated 09.06.2015 in O.S.No.131 of 2007 on the file of learned District Munsif, Dharapuram.

For Appellants : Mr.S.Kumaresan

For Respondent : Mr.T.Kishore Kumar

JUDGMENT

This Appeal is filed against the judgment and decree dated 05.01.2019 made in A.S.No.19 of 2015 on the file of learned Sub-Judge, Dharapuram, partly allowing the judgment and decree dated 09.06.2015 in O.S.No.131 of 2007 on the file of learned District Munsif, Dharapuram.

2. Appellants herein are the defendants and respondent herein is the plaintiff before the trial Court. For the sake of convenience, the parties are referred to herein as per their rank in Original Suit.

3. The respondent herein, as the plaintiff, filed the suit in O.S.No.131 of 2007 seeking the relief of partition of the suit schedule properties - items 1 to 3 into three equal



motive to deceive the defendants. Even assuming that, as alleged by the plaintiff, if all the suit properties are common undivided family properties, then the properties purchased in the name of plaintiff from and out of the income derived by the common undivided family also ought to have been included in this suit and the defendants are entitled to share in those properties. Hence, the suit filed by the plaintiff for partial partition, by suppressing these facts, is not maintainable. If the plaintiff seeks share in the properties purchased by the first defendant, as common properties, he is also liable to pay the debts/borrowals borrowed for the welfare of common undivided family. The alleged oral partition is not true and the possession of suit schedule 3rd item is not handed over to the plaintiff. Suit schedule 3rd item is in the possession of first defendant and the first defendant has every right to sell the properties purchased by him through his income. Plaintiff has no cause of action. Cause of action alleged in the suit is not correct. Hence, the suit is liable to be dismissed with costs.

6. The facts, as averred in the additional written statement of the first defendant, which was adopted by the second defendant, were as follows:-

1st and 2nd items of suit properties and other properties were partitioned on 20.04.1971 between first defendant and his brothers and father, in which 'B' schedule of property was allotted to this defendant. The extent of 2nd item of the suit property is 1 acre 34 $\frac{1}{2}$ cents, but plaintiff stated it by leaving $\frac{1}{2}$ cent. From the date of partition, first defendant is in possession and enjoyment of the same by digging up open well and obtaining service connection in his name. Partition was effected even prior to the birth of the plaintiff. Subsequent to the partition, first defendant also mortgaged his properties in the Land Development Bank (Kundadam), Dharapuram in the year 1972. While the father is alive, the son is not entitled to any share in the ancestral property or self acquired property, as denoted in Section 8 of Hindu Succession Act. 1st and 2nd items of suit schedule are allotted to first defendant by way of partition and, as such, the character of 1st and 2nd items of suit properties are self acquired. 3rd item of suit property was settled by this defendant in favour of second defendant under a registered settlement deed, dated 14.07.2008. Since the properties purchased in the name of plaintiff by this defendant under two different sale deeds, dated 17.04.1995 and 12.04.2002 are not incorporated in the schedule of properties, the suit is hit by 'partial partition'.

7. Before the trial Court, on the side of plaintiff, plaintiff has examined himself as PW.1 and one more witness as PW.2 and marked documents Exs.A1 to A7. On the side of



defendants, no oral evidence was adduced, but six documents were marked as Exs.B1 to B6.

8. The trial Court, after considering the oral and documentary evidences adduced, came to the conclusion that the suit properties are self acquired properties of first defendant and, therefore, the plaintiff is not entitled to any share in the suit properties and accordingly, dismissed the suit.

9. Against the said dismissal, plaintiff has filed the appeal before the Subordinate Judge, Dharapuram, stating that in the absence of any proof to prove the income of the first defendant, the findings of the trial court that the the suit properties are self acquired properties of first defendant and the plaintiff is not a co-parcener and hence, not entitled to any share in the suit properties, and the properties purchased in favour of the plaintiff through the documents dated 17.04.1995 and 12.04.2002 are properties purchased from and out of the common undivided family income and the dismissal of the suit on the ground of 'partial partition' are not acceptable. He further stated that the properties purchased in favour of the plaintiff through the documents dated 17.04.1995 and 12.04.2002 are self acquired properties of plaintiff.

10. The lower appellate Court, on considering the appeal grounds and the written arguments submitted by the plaintiff and the defendants, came to the conclusion that since the suit schedule items 1 and 2 were allotted to the first defendant through the partition of ancestral properties, they cannot be considered as self-acquired properties of the first defendant and therefore, the plaintiff is entitled to 1/3rd share in suit schedule items 1 and 2 as a co-parcener. The lower appellate Court also came to the conclusion that suit schedule 3rd item is the self-acquired property of the first defendant and hence, the plaintiff is not entitled to any share in suit schedule 3rd item. Accordingly, the lower appellate Court partly allowed the appeal, against which, the defendants are before this Court, with this Second Appeal.

11. At the time of admission, following substantial questions of law were framed for consideration in this Second Appeal :-

(1) Whether the first appellate Court is right in partial allowing of appeal suit by granting 1/3rd share in items 1 and 2 of suit property which was acquired by the 1st defendant/appellant herein through family partition ?



(2) Whether the judgment and decree of the first appellate Court is contrary to the provisions of Sections 8, 9 and 10 of the Hindu Succession Act ?

12. Learned counsel for the appellants/defendants submitted that the lower appellate Court ought to have considered Ex.A1-family arrangement between first defendant and his brother for their family properties inherited and that the judgment impugned cannot be sustained in view of Section 8 of the Hindu Succession Act, whereunder the suit property acquired by inheritance is also deemed to be self acquired property. According to him, the lower appellate Court failed to understand how the grandson/plaintiff could be the co-parcener as long as the immediate successor/first defendant is alive.

13. On the other hand, learned counsel for the respondent/plaintiff would submit that the lower appellate Court has discussed the matter in detail and rendered a reasoned finding and, therefore, the judgment and decree of the lower appellate Court are not to be interfered with.

14. I have heard the learned counsel for the parties and also gone through the records.

15. It is not in dispute that suit schedule items 1 and 2 are inherited by the first appellant/defendant through partition on 20.04.1971 among the first appellant and his brother and father. This fact is also corroborated by Ex.A-7, Partition Deed.

16. Now, the only point for consideration in this case is, whether the respondent/plaintiff can seek partition and possession of the inherited properties of his father, as a coparcener ?

17. A similar issue has been dealt with by this Court in S.A.No.273 of 2014 in the case of Govindan and Another v. Revathi and Others, wherein, the points for consideration were, (i) whether the property inherited by a son from his father could be an ancestral property in his hands and his sons will get right by birth ? and (ii) whether Section 8 of the Hindu Succession Act is not applicable to the case on hand ? The relevant portions of the said judgment are extracted hereunder for ready reference :

'17. Section 6 of the Act makes an exception and provides for devolution of interest in coparcenary property and Section 8 provides for inheritance of a property of the Hindu, who dies intestate after the



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commencement of the Act, by his heirs. The heirs are divided into Class I and Class II, while Class I heirs take the property simultaneously to the exclusion of all the other heirs, as regards Class II heirs those in the first entry of Class II exclude the others. Coming to the facts of the present case, the averments in the plaint are to the effect that the suit properties belonged to Ranganatha Kounder and at a partition that took place about 20 years prior to the filing of the suit, i.e. in or about 1988, soon after the death of Ranganatha Kounder, the suit properties were allotted to the first defendant towards his share. The plaint averments in this regard read as follows:

"The suit properties and some other properties were originally belonged to one Ranganatha Kounder, who was the paternal grandfather of the plaintiffs. The suit properties are allotted to the first defendant's share in the oral partition effected between the first defendant and his brother at about 20 years back after the death of the first defendant's father." (Sic) (emphasis supplied)

18. In response to this plea, the defendants 3 and 4, the purchasers in their written statement had specifically pleaded that the properties are not joint family properties of the plaintiffs and the first defendant. It was further contended that the properties are owned by the first defendant as his absolute properties and he had a disposing power over the same. An alternate plea was taken to the effect that even assuming that the properties are held to be joint family properties, the sale being for legal necessities is binding on the plaintiffs. The second defendant though remained ex-parte was examined as P.W.2. She had in her evidence categorically admitted that the suit properties belonged to Ranganatha Kounder and he had even during his lifetime divided the properties amongst his sons. This evidence is contrary to the plea in the plaint. In the proof affidavit filed by her, the second defendant namely, P.W.2 has very clearly stated that the suit properties and other properties belonged to her father-in-law Ranganatha Kounder and the suit properties were allotted to her husband/the first defendant at a partition that took place between the first defendant and his brother Krishnamoorthi about 20 years prior to the suit. This evidence of P.W.2 makes it abundantly clear that it is not the case of the plaintiffs that



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the suit properties were ancestral properties which were inherited by Ranganatha Kounder, the grandfather of the plaintiffs, or were purchased out of any ancestral nucleus that was available.

19. The defendants had examined one Annamalai, as P.W.3. He has specifically deposed that the properties belonged to Ranganatha Kounder, father of the first defendant. If we examine the nature of the properties in the above factual backdrop, the only possible conclusion is that the suit properties belonged to Ranganatha Kounder, who died some time in 1988 and they were allotted to the second defendant Radha at a partition that took place between him and his brother Krishnamoorthy.

20. In the absence of any plea or evidence to the effect that the properties were ancestral in nature in the hands of Ranganatha Kounder, the grandfather of the plaintiffs or the properties were acquired by Ranganatha Kounder out of any ancestral nucleus that was available, the essential conclusion is that the properties are absolute properties of Ranganatha Kounder. He having died after 1956, the properties which are absolute properties of Ranganatha Kounder would be inherited by his children on his death as his Class I heirs under Section 8 of the Hindu Succession Act. If the properties were inherited by a Hindu as a Class I heir under Section 8 of the Hindu Succession Act, his children or grandchildren will not get a right by birth over the properties....''

21.....From the above judgments, it is clear that a property that is inherited by a Hindu on the death of his father after 1956 as a Class I heir under Section 8, will not partake the character of coparcenary property qua his children. He will be the absolute owner of the property and he have absolute power of alienation over the property.

22. Adverting the decisions relied upon by the Mr.P.Dineshkumar, appearing for the respondents, the judgment of the Hon'ble Supreme Court in Shyam Narayan Prasad v. Krishna Prasad and Others, reported in 2018 (7) SCC 646, related to a property that was allotted to the father at a partition between him and his



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father. There was no dispute about the character of the property in the hands of the father as ancestral property. Therefore, the Hon'ble Supreme Court concluded that the property having devolved under Section 6, the plaintiffs therein would get a right by birth. This essential distinction has already been pointed out by the Full Bench in P.L.Karuppan Chettiar's case, referred to supra. As regards my judgment in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (3) CTC 170, there also there was no dispute that the property was held by the father Krishnamoorthy as ancestral property and the minor son would get a right by birth.

23. The questions that arose in M.Krishnamurthi v. K.Pondeepankar's case, as to whether, the son born after 1956 would get a right by birth. On facts it was conceded that the property was the ancestral property or coparcenary property in which the son would get a right by birth and therefore, both the decisions relied upon by the learned counsel appearing for the respondents would not applicable to the facts of the present case.

24. In view of the above discussions, the essential conclusion is that the property which belonged to Ranganatha Kounder, which was inherited by the first defendant Radha as the Class I heir on the death of Ranganatha Kounder after 1956, will not partake a character of coparcenary property or joint family property so that his children, namely, the plaintiffs would get a right by birth over the same and they will not have a right to challenge the alienation made by the first defendant or the second defendant as the power agent of the first defendant.

25. In view of the above conclusion,

25 (i). the question of law (a) is answered to the effect that the Lower Appellate Court was not right in concluding that Section 6 of the Hindu Succession Act, would apply to the facts of the case.

25 (ii). The question of law (b) is answered to the effect that the property inherited by a son from his father as a Class I heir under Section 8 of the Hindu Succession Act will not partake a character of



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ancestral property in which his children would get a right by birth.

25 (iii). The question of law (c) is answered to the effect that the First Appellate Court was not right in concluding that Section 8 would not apply to the facts of the case.

25 (iv). The question of Law (e) is answered to the effect that though a grandson would have a right to seek partition during the lifetime of his father in the ancestral property, but the same analogy cannot be extended to the self-acquired property of the grandfather which inherited by the father under Section 8 of the Act.

25 (v) As regards the cancellation of power of attorney, no doubt, a document dated 06.10.2003 styled as a cancellation deed has been marked as Ex.A4, but there is no evidence to show that the said document was executed in compliance with the provisions of Section 208 of the Indian Contract Act. Even otherwise once it is found that the plaintiff has no subsisting right over the suit properties they cannot question the alienation on the ground of cancellation of the power of attorney, hence question of law (d) is answered against the respondents and in favour of the appellants.

26. For the foregoing reasons, the Second Appeal is allowed. The judgment and decree of the Lower Appellate Court are set aside, and that of the Trial Court are restored. However in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.''

18. In view of the above decision, this Court has no iota of doubt to hold that since it is not established to the effect that the suit properties were ancestral properties in nature in the hands of Muthupalani Gounder, grandfather of the respondent/plaintiff, or they properties were acquired by Muthupalani Gounder out of the ancestral nucleus that was available, the suit properties are absolute properties of Muthupalani Gounder. He having died, the properties, which are absolute properties of Muthupalani Gounder, would be inherited by his children on his death as his Class I heirs under Section 8 of the Hindu Succession Act, which has exactly happened in this case. Once the properties are inherited by a Hindu as a Class I heir under Section 8 of the Act, his children or grandchildren will not get a right by birth over the properties and they cannot also claim or demand or seek for a share in the



inherited properties of their father. In other words, a property, that is inherited by a Hindu on the death of his father as a Class I heir under Section 8, will not partake the character of coparcenary property qua his children. He will be the absolute owner of the property and he will have absolute power of alienation over the property as well. Therefore, the plaintiff cannot seek partition and possession of the inherited properties of his father, as a coparcener, as he cannot be the coparcener at all in the absolute property of his father, especially when he is alive. A person can seek for rights in the ancestral joint family property, but not inherited property of his father, as a coparcener, when the property is not divided and settled, that too subject to establishment that the said property is ancestral property or coparcenary property, and he cannot seek for partition and possession of the inherited properties of his father, as a coparcener. Therefore, in the considered opinion of this Court, the first appellate Court fell in gross error in partial allowing of appeal suit by granting 1/3rd share in items 1 and 2 of suit schedule property to the plaintiff, which was acquired by the 1st defendant/appellant herein through family partition, thereby also rendering a finding contrary to the provisions of Sections 8 of the Hindu Succession Act.

19. While answering the substantial questions of law and the point for consideration as above, this Second Appeal is allowed. As such, the judgment and decree, dated 05.01.2019, passed in A.S.No.19 of 2015, on the file of Sub-Court, Dharapuram, are set aside and the judgment and decree, dated 09.06.2015, passed in O.S.No.131 of 2007, on the file of District Munsif Court, Dharapuram, are confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra/dixit

To

1. The Sub-Judge,
Sub-Court,
Dharapuram.



2. The District Munsif,
District Munsif Court,
Dharapuram.

3. Section Officer
Vernacular Records Section
High Court, Madras.

+lcc to Mr.S.Kumaresan, Advocate, S.R.No.4081

+lcc to Mr.K.Premkumar, Advocate, S.R.No.3905

S.A. No. 774 of 2019

AK (CO)
PM/07/03/2022