



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2022

Coram

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.504 of 2016

Leelavathy

.. Appellant

Vs.

1. Dhanachezhiyan,
2. Sasikala
Respondents

..

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 05.12.2015 made in A.S.No.42 of 2014 on the file of Principal District Judge, Tiruvallur by reversing the Judgment and decree dated 06.08.2013 made in O.S.No.92 of 2009 on the file of Subordinate Judge, Poonamallee.

For Appellant : Mr. N. Suresh
for Mr. T.R. Rajaraman
M/s. P. Veena Suresh
For Respondents : No Appearance

J U D G M E N T

The appellant is the plaintiff in O.S. No.92 of 2009 on the file of the Sub-ordinate Judge, Poonamallee, challenging the judgment and decree passed by the Principal District Judge, Tiruvallur made in AS.No.42 of 2014



dated 05.12.2015 by setting aside the judgment and decree made in O.S.No.92 of 2009 dated 06.08.2013 on the file of the Sub-ordinate Judge, Poonamallee.

2. For the sake of convenience, the parties are referred to as per the rank cited in the plaint. The appellant is the sister of the 1st respondent and 2nd respondent is the wife of the 1st respondent.

3. The case of the appellant is that the suit property was originally belonged to plaintiff's mother Mrs. Sakkubai under registered Sale Deed dated 14.10.1976. Out of love and affection on the plaintiff, the suit property was executed in her favour by way of registered settlement deed dated 29.01.2007 as she has only looked after her mother despite four sons and three daughters were born to her including the plaintiff. The plaintiff and her mother are in the First floor of the suit property and the defendants are in possession in the Ground floor of the suit property. After execution of the said Settlement Deed, the plaintiff demanded the defendants to vacate and handover the suit premises to her. As the defendants have not vacated and handed over the suit property to the plaintiff/appellant herein, she filed the suit in O.S. No.92 of 2009 on the file of the Sub-ordinate Judge,



Poonamallee, seeking for direction to the defendants to quit and deliver vacant possession of the suit premises to the plaintiff/appellant herein. In O.S. No.92 of 2009, the Trial Court after considering the oral and documentary evidence, held that the suit property is not a joint family property and it is separate property of the plaintiff's mother Sakkubai and as she was the absolute owner of the suit property, Settlement Deed dated 29.01.2007 has been executed in favour of the plaintiff. The defendant has not established that the said property was purchased by their father out of his income. Hence, the suit was decreed in favour of the plaintiff directing the respondents to vacate the possession of the property and handover the same to the plaintiff by Judgment and decree dated 06.08.2013.

4. Being aggrieved by the aforesaid findings, the defendants 1 and 2 had preferred First Appeal in A.S. No.42 of 2014 on the file of the Principal District Judge, Tiruvallur. The First Appellate Court after hearing both sides, allowed the appeal by Judgment dated 05.12.2015, by setting aside the Judgment and Decree dated 06.08.2013 passed by the Trial Court observing that the salary of the husband of Sakkubai was sufficient to purchase the suit property in the name of his wife/mother of both parties, where all family members enjoyed the property and the superstructure was constructed by



obtaining loan from the Co-operative Society in which the 1st defendant and his brother D.W.2 lodged their signature as co-owners and also held that the nature of the property is not separate property of the Sakkubai. Being aggrieved by the aforesaid Judgment dated 05.12.2015 passed by the First Appellate Court, the plaintiff has filed the present Second appeal seeking to set aside the same.

5. The case of the defendants is that the Plaintiff's mother Sakkubai had no means to buy the house site. She is dependent on her husband Murugesu Naicker who was employed in Railways. Her husband purchased the site in the name of his wife for the Hindu Joint Family consisting of himself, his wife, sons, and daughters. Out of income from Textile shop owned by the 1st defendant, the Ground Floor and 1st Floor on the suit site were constructed. Hence, the 1st defendant is entitled to 1/6th share as the suit property is the Joint Family property. Therefore, the 1st defendant has filed a suit in O.S. No.114 of 2009 on the file of the Sub-ordinate Judge, Poonamallee, seeking for partition 1/6th share in the suit property as if the suit property being joint family property which was purchased out of the income of the 1st defendant's father Mr.Murugesan in the name of his mother Mrs. Sakkubai and the superstructure over the vacant land was constructed out of



his income, also contend that his mother Sakkubai is not the owner of the property thereby the settlement deed would not confer any right in favour of the plaintiff. Hence, the plaintiff is not entitled to evict the defendants from the suit premises.

6. Before the Trial Court, the plaintiff herself has examined as P.W.1 and the mother of the plaintiff has examined as P.W.2 and Ex.A1 to Ex.A10 were marked on the plaintiff's side. On the defendant's side, the 1st defendant has examined as D.W.1 and his brother one M.Rajendran, has been examined as D.W.2 and Ex.B1 to Ex.P7 were marked on their side.

7. The learned counsel for the plaintiff would submit that the learned 1st Appellate Judge failed to see that the document of title with reference to the suit property is in the name of the mother of the plaintiff which itself proves that she is the absolute owner of the property. While being so, merely because of signatures of the plaintiff's father and brothers in the loan document executed in favour of the plaintiff's mother-Sakkubai cannot be taken for granted that it is a joint family property. Further also submitted that the learned 1st Appellate Judge Judge failed to see that unless and otherwise a strong evidence, particularly a documentary evidence, is needed



to dislodge the said presumption of the suit property is Joint Family Property and not the separate property of the plaintiff's mother while the title deed was in favour of the plaintiff's mother. Without considering the aforesaid factual aspects, the learned District Judge erred in allowing the appeal and dismissing the suit without properly rendering any finding. Since the suit property was purchased by the plaintiff's mother out of her earnings and savings, she is entitled to settle the property in any one favour by way of registered settlement Deed. Thus, the plaintiff's mother executed the suit property in favour of her daughter/plaintiff herein. Hence, the plaintiff's counsel argues that the Judgment dated 05.12.2015 passed by the Principal District Judge, Tiruvallur made in AS.No.42 of 2014 is unsustainable and liable to be set aside.

8. By reply, the defendants would submit that the suit property was purchased by his father when he was employed in OCF, Avadi in the name of his wife. During that period, mother Sakkubai was dependent on his father and she had no income. Further, the building was constructed from the income of the father and 1st defendant by receiving loan from the Co-operative Society having lodged signatures in the Mortgage Deed. From the beginning of construction of building, the 1st defendant is occupying the suit



property as a co-sharer. Therefore, the 1st defendant is entitled to 1/6th share as the suit property is the Joint Family property, he has filed a suit in O.S. No.114 of 2009 on the file of the Sub-ordinate Judge, Poonamallee, seeking for partition 1/6th share in the suit property as if the suit property being joint family property. Hence the settlement deed executed by his mother would not confer any right in favour of the plaintiff. So, the plaintiff is not entitled to evict the defendants from the suit premises. Hence, the Lower Appellate Court has rightly dismissed the Judgment and Decree dated 06.08.2013 passed by the Trial Court after considering the oral and documentary evidence placed by both parties and allowed the First Appeal in A.S. No.42 of 2014 by Judgment dated 05.12.2015.

9. Second appeal is admitted in the following substantial question of law:

i) When it is settled in law that a presumption exists in favour of a female member regarding the ownership with reference to properties standing in her name, is the learned District Judge right in dismissing the suit when the title deeds with reference to the suit property stood in the name of the plaintiff?



ii) In the absence of any issue being framed with reference to the termination of tenancy as well as any pleading in that regard, still is the learned District Judge right in discussing the suit for non issuance of notice to quit?

iii) When the 1st defendant failed to establish the Joint Family Character of the suit property, still is the learned District Judge right in dismissing the suit?

10. Heard the learned counsel for the appellant and there is no appearance on the side of the respondents as well as perused the materials available on record.

11. According to the plaintiff, the suit property originally belonged to Sakkubai Ammal by way of Ex.A1-Original Sale Deed dated 14.10.1976. The 1st defendant being one of the son of Sakkubai, was permitted to occupy the portion of the Ground Floor in the suit property. After executing the Settlement Deed dated 29.01.2007 in favour of the plaintiff, the 1st defendant was demanded to vacate the portion of Ground Floor in the suit property.

However, the 1st defendant refused to vacate and handover the possession to



the plaintiff. Hence, the plaintiff has filed the suit in O.S. No.92 of 2009 on the file of the Sub-ordinate Judge, Poonamallee, for recovery of possession occupied by the 1st defendant.

12. As per the contention of the 1st defendant, the suit property was originally purchased by his father Murugesu Naicker in the name of his Wife Sakkubai when he was employed in Railway Department. Further out of contribution of the 1st defendant as well as by obtaining loan from the Co-operative Society, the Ground floor and First Floor were constructed. Thus, the suit property was enjoyed all the family members occupying the Ground Floor and First Floor.

13. Admittedly, on a perusal of Ex.A10-Salary Slip of father of the plaintiff, his take home salary was taken as Rs.347/- per month which itself reveals that it is not sufficient to purchase the suit property in the name of his wife/mother of the plaintiff. Except Ex.A10, there is no other proof on the side of the defendants to establish that the suit property was purchased by 1st defendant's father and construction was made out of contribution of the 1st defendant and other family members. Hence, the Lower Appellate Court erroneously observed that the suit property was purchased by way of Salary



of the husband of the plaintiff's mother in the name of his wife is not sustainable and liable to be set aside.

14. Furthermore, Ex.A4- Plan, Ex.A5- Plan for additional construction, Ex.A6-Property Tax receipts Ex.A7-Building plan approval and Ex.A8 -TNEB Receipts are in the name of the plaintiff's mother. The property tax and Electricity Bill were paid in the name of Sakkubai. The aforesaid documents are sufficient to prove the title, right and interest of the Plaintiff's mother over the suit property.

15. The learned counsel for the defendant relying upon the Ex.B1- Co-operative Society Loan Pass Book, Ex.B2- Receipts and Ex.B3- Copy of the Mortgage Deed, contended that the building was constructed after obtaining Loan from the Co-operative Society wherein other family members have signed as co-owners. Merely signing in the Mortgage Deed as a co-owner, it would not amount to consider the suit property as Joint Family Property while the valid sale deed dated 14.10.1976 was executed in favour of Sakkubai and other statutory documents are in her name and statutory taxes have been paid in her name. Hence, the Lower Appellate Authority erroneously appreciated the Mortgage Deed executed by the family members



for obtaining the loan. Further, it is sufficient to prove the absolute owner of the suit property by virtue of Ex.A1-Sale Deed was executed in favour of the Sakkubai. When she was the absolute owner of the suit property, the 1st respondent being one of the son of Sakkubai, was allowed to occupy the Ground floor of the possession. As on date, as per Ex.A2- Settlement Deed which was executed by Sakkubai in her daughter favour, the plaintiff is the owner of the suit property. For the aforesaid reason, the defendants are not entitled to occupy the Ground Floor of the suit property claiming that it is a Joint Family property. So, the Plaintiff is entitled to vacate the Defendants from the possession of the suit property. As the defendants refused to vacate the premises, the Plaintiff approached the Trial Court for appropriate remedy.

16. The Trial Court has rightly relied on the decision of this Court in the case of *K.V. Ramasamy Vs. K.V. Ragavan reported in 2009 (4) C.T.C. 440* wherein it has been observed that if the property is in the name of a female member of the Hindu undivided Family, the same cannot be treated as Joint Family Property. She need not prove how she acquired the property. It has to be considered as her separate property unless the contrary has been proved. Since the respondents have not proved by valid oral and documentary evidence to establish that the suit property was purchased out of



income of father of the 1st defendant, as per the Sale Deed dated 14.10.1976, the mother of the plaintiff is the absolute owner of the suit property and the same cannot be considered as Joint Family Property. Accordingly, issue No.1 is answered.

17. Now, the plaintiff became absolute owner of the suit property as per Settlement Deed dated 29.01.2007 executed by her mother Sakkubai who was the absolute owner of the suit property as per Sale Deed dated 14.10.1976. So, she is entitled to the relief sought for the delivery of the possession of the suit schedule property as per the proposition that possession follows title. While being so, the Lower Appellate Court held that without relief of declaration, the plaintiff is not entitled to recover the possession and hence directed to file fresh suit for declaration of title is not maintainable.

18. While adjudicating the issues framed by this Court, as per Ex.A1-Sale Deed dated 14.10.1976, the suit property is belonged to Sakkubai-mother of the plaintiff. Out of love and affection, Ex.A2 -Settlement Deed dated 29.01.2007 was executed in favour of the plaintiff/appellant herein. Therefore, there is no necessity for declaration of title and right of the



plaintiff. Hence, the Lower Appellate Court erroneously held that the suit property was purchased by the joint contribution of husband and sons of the Sakkubai is not acceptable.

19. It is also pointed out by the learned counsel for the plaintiff that the 1st defendant has filed the suit in O.S. No.114 of 2009 on the file of the Subordinate Judge, Poonamallee against the plaintiffs and other sisters and his mother for the relief of partition and other consequential relief. In the aforesaid suit, the mother of the 1st defendant-Sakkubai has filed written statement claiming that the suit property was purchased by her with her hard earnings by selling clothes, and her tailoring work and enjoying along with her unmarried daughters as absolute owner of the same. Subsequently, the aforesaid suit filed by the 1st defendant was dismissed for default. Further, Sakkubai admits herself that she has settled the suit property to an unmarried daughter/appellant herein for her future. Therefore, there is no necessity to file a fresh suit seeking for declaration, indeed Ex.A1 - Sale Deed and Ex.A2- Settlement Deed are proved the title, right and interest of the mother of the Plaintiff and the plaintiff respectively and it is not proved by valid documentary evidence as the suit property is Joint Family property on the side of the defendants/ respondents herein. Hence, the Judgment dated



05.12.2015 passed by the First Appellate Court is hereby set aside.

Accordingly, issue Nos. 2 and 3 are answered.

20. In view of the aforesaid observations, the Second Appeal is allowed confirming the Judgment and decree dated 06.08.2013 passed by the Sub-ordinate Judge, Poonamallee. Accordingly, the suit in O.S. 92 of 2009 is decreed as prayed for. Time to surrender the possession is three months. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2022

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Index : Yes/No

Internet : Yes/No

To

1.The Principal District Judge, Tiruvallur.

2.The Sub-ordinate Judge, Poonamallee.



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T.V.THAMILSELVI, J.

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Pre-Delivery Judgment in
SA.No.504 of 2016

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