

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 14.03.2022
PRONOUNCING ORDERS ON : 17.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal Nos.630, 631 and 738 of 2016

S.A.No.630 of 2016

Jagadeesan ..Appellant/1st Respondent/Plaintiff

..Vs..

1.Chellammal
2.J.Anbazhagan
3.Dhanalakshmi
4.Kanmani
5.Poongothai
6.Alangarammal
7.Chakkaravarthy
8.J.Vijayalakshmi

..Respondents/Appellants 1 to 3,
Respondents 2 to 7/Defendants

Prayer in S.A.No.630 of 2016: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.5 of 2015, on the file of the Principal District Judge, Krishnagiri dated 01.02.2016 in reversing the well considered judgment and decree in O.S.No.191 of 2014, on the file of the Subordinate Judge, Uthangarai, dated 28.11.2014.

S.A.No.631 of 2016

1.Jagadeesan
2.Alangarammal
3.Chakkaravarthy
4.J.Vijayalakshmi

..Appellants/Respondents 1,4,5 & 6 /
Defendants 1,4,5 & 6

..Vs..

1.Dhanalakshmi
2.Kanmani
3.Poongothai
4.Chellammal
5.J.Anbazhagan
6.Azhagesan

..1 to 3 Respondents/Appellants/Plaintiffs

..4 to 6 Respondents/Respondents 2,3
& 7/Defendants 2,3 & 7

Prayer in S.A.No.631 of 2016: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.6 of 2015, on the file of the Principal District Judge, Krishnagiri dated 01.02.2016 in reversing the well considered judgment and decree in O.S.No.190 of 2014, on the file of the Subordinate Judge, Uthangarai, dated 28.11.2014.

S.A.No.738 of 2016

G.Alagesan ..Appellant/7th Respondent /7th Defendant

..Vs..

1.Dhanalakshmi

2.Kanmani

3.Poongothai

..1 to 3 Respondents/Appellants/Plaintiffs

4.M.Jagadeesan

5.Chellammal

6.J.Anbazhagan

7.Alangarammal

8.Chakravarthi

9.Vijayalakshmi

..4 to 9 Respondents/1 to 6 Respondents /
1 to 6 Defendants

Prayer in S.A.No.738 of 2016: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal District Judge, Krishnagiri dated 01.02.2016 made in A.S.No.6 of 2015, in modifying the judgment and decree of the learned Subordinate Judge, Uthangarai, dated 28.11.2014 made in in O.S.No.190 of 2014.

In S.A.No.630/2016

For Appellant : Mrs.Chithra Sampath, Senior Counsel

for Mr.S.N.Ilangovan

For Respondents: Mr.B.Gnana Vinothan

for RR 1 & 2

Mr.V.Nicholas

for RR 3 to 5

Mr.G.Dinesh Kumar

for RR 7 & 8

For R 6 - served - No appearance

In S.A.No.631/2016

For Appellants : Mrs.Chithra Sampath, Senior Counsel
for Mr.S.Ganesan

For Respondents: Mr.V.Nicholas
for RR 1 to 3
Mr.B.Gnana Vinothan
for RR 4 & 5
For R 6 - served - No appearance

In S.A.No.738/2016

For Appellant : M/s.I.Abrar Md.Abdullah

For Respondents: Mr.V.Nicholas
for RR 1 to 3
Mrs.V.Srimathi
for R4
Mr.B.Gnana Vinothan
for RR 5 & 6
Mrs.Chithra Sampath, Senior Counsel
for Mr.S.Ganesan
for RR7 to 9

COMMON JUDGMENT

The issue involved in all these Second Appeals are common and hence they are taken up together, heard and disposed of through this Common Judgment.

2. Second Appeal Nos. 630 and 631 of 2016 has been filed by the defendants 1, 4, 5 and 6 in O.S. No. 190 of 2014 and plaintiff in O.S. No. 191 of 2014. Second Appeal No. 738 of 2016 has been filed by the 7th defendant (subsequent purchaser) in O.S. No. 190 of 2014.

3.For better understanding, the parties will be identified with their rank in O.S. No. 190 of 2014.

4. The plaintiffs filed a suit seeking for the relief of partition and allotment of 3/5th share in the suit properties and for a permanent injunction restraining the 1st defendant from alienating the suit properties and for declaring the partition deed dated 2.5.2002 as bad and not binding.

5.The 1st defendant filed the suit in O.S. No. 191 of 2014 seeking for a declaration of title in the A schedule properties and for a permanent injunction against the defendants therein from in any way interfering with the possession and enjoyment of the A schedule properties.

6. The "A" schedule properties in O.S. No. 190 of 2014 is the "B" schedule properties in O.S. No. 191 of 2014. Similarly

the B schedule properties in O. S. No. 190 of 2014 is the "A" schedule properties in O.S. No. 191 of 2014. The 7th defendant who has filed Second Appeal No. 738 of 2016, has purchased 3 items of properties in the B schedule properties in O.S. No. 190 of 2014 from the 1st defendant. For easy understanding, the "A" schedule properties in O. S. No. 190 of 2014 can be identified as the joint family properties and the "B" schedule properties in O.S. No. 190 of 2014 can be identified as the self-acquired properties of the 1st defendant. It will also be more appropriate to state that the present appeals confines itself to the dispute and the relief granted insofar as the "B" schedule properties are concerned. The relief granted for the "A" schedule properties by the Trial Court in favour of the plaintiffs has become final and it has not been put to challenge by the defendants.

7.The case of the plaintiffs is that they are the daughters of the 1st and 2nd defendants and the 3rd defendant is their brother. It is stated that the 1st defendant married the 4th defendant as his second wife and the 5th and 6th defendants were born to them. The further case of the plaintiffs is that the "A" schedule properties are ancestral properties with good yielding coconut trees and granite quarry. They have also pleaded that the "A" schedule properties was the main source of income and there was a surplus left after meeting the family expenses. They contended that with the surplus income, the 1st defendant purchased various properties mentioned in the B schedule and these properties are also joint family properties. According to them, the 1st defendant had put up 7 shops and 2 residential houses and he was earning monthly income from the rents collected from the lessees.

8.The plaintiffs further pleaded that the 1st defendant created a partition deed dated 2.5.2002 in connivance with the 3rd and 5th defendants and the joint family properties were dealt with and the same is not binding on the plaintiffs. The plaintiffs were claiming their rights in their capacity as coparceners by taking advantage of the 2005 Amendment that was introduced in the Hindu Succession Act. Thereby, the plaintiffs claimed 3/5 share in the suit properties.

9. The case of the 1st defendant is that the "A" schedule properties are not income yielding properties and it was not a joint family property as claimed by the plaintiffs. According to the 1st defendant, the "A" schedule properties were the self-acquired properties of his father and he as the only son was entitled for the entire properties. Insofar as the "B" schedule properties are concerned, the 1st defendant took a specific stand that those properties were earned out of his own income by doing

palmyra jaggery business and by running a cinema theatre. According to the 1st defendant, those properties were not purchased from the income derived from the "A" schedule properties. The 1st defendant has also justified the partition deed entered into on 2.5.2002. The 1st defendant has also claimed for declaration of title insofar as the B schedule properties are concerned in the suit filed by him in O.S. No. 191 of 2014. The 1st defendant has thus denied the entitlement of any share in the suit properties in favour of the plaintiffs.

10.The Trial Court conducted a joint trial in both the suits. On consideration of the facts and circumstances of the case and after appreciating the oral and documentary evidence, the Trial Court partly decreed the suit through a Judgment and Decree dated 28.11.2014 and thereby the plaintiffs were found to be entitled for 3/5 share in the "A" schedule properties and permanent injunction was also granted insofar as the "A" schedule properties are concerned. The partition deed dated 2.5.2002 pertaining to the A schedule properties was also held to be bad and not binding on the plaintiffs. The suit was dismissed insofar as the reliefs claimed by the plaintiffs with respect to the "B" schedule properties. Insofar as O.S. No. 191 of 2014 filed by the 1st defendant is concerned, the suit was decreed by declaring the title of the 1st defendant in the "A" schedule properties (B schedule properties in O.S. No. 190 of 2014) and permanent injunction was also granted. The 1st defendant was further directed to pay a monthly maintenance of Rs.3000/- to his wife till her lifetime.

11.Aggrieved by the same, the plaintiffs filed A.S. No. 5 of 2015 and A.S. No. 6 of 2015 before the Principal District Court, Krishnagiri. The Lower Appellate Court on re-appreciation of the facts and after considering the findings of the Trial Court, allowed both the Appeals. Thereby, the plaintiffs also got the relief for the "B" schedule properties and the 1st defendant was held not entitled for any relief for the "B" schedule properties. As against the same, all these Second Appeals have been filed before this Court.

12.The following substantial questions of law were framed by this Court while admitting the Second Appeals

i)Whether the Appellate Court was right in decreeing the suit in the whole in the absence of material evidence by the daughters of Jegadeesan to show that the properties in dispute were purchased from and out of the funds from the ancestral properties?

ii) Whether the appellate court was right in

giving its own interpretation as to material facts in the said documents which has not been substantiated with other relevant material?

iii) Whether the appellate court was right in coming to the conclusion that the properties in dispute were purchased out of income from the ancestral properties when as per Section 102, 103 and 104 of Indian Evidence Act, the burden was on the daughters to prove the said factum?

13. Heard Mrs.Chithra Sampath, Senior Counsel, Mr.I.Abrar Md.Abdullah, learned counsel for appellants and Mr.B.Gnanavinothan, Mr.V.Nicholas, Mr.G.Dinesh Kumar and Ms.V.Srimathi, learned counsel for respondents. This Court also carefully considered the materials placed on record and the findings of both the courts below.

14. There is no dispute with regard to the relationship between the parties. As stated herein above, these Second Appeals confines itself only with regard to the dispute pertaining to the B schedule properties.

15. The Trial Court while dealing with the oral and documentary evidence, specifically framed an issue with regard to the exclusive entitlement claimed by the 1st defendant for the "B" schedule properties and applied the evidence while rendering a finding. The case of the 1st defendant is that the B schedule properties are his exclusive properties purchased out of his own income. Admittedly all these properties stood in the name of the 1st defendant. The case of the plaintiffs is that the "B" schedule properties were purchased by the 1st defendant from the surplus income derived from the "A" schedule properties. The Trial Court took into consideration the evidence of PW1 and PW2 who were the 1st and 3rd plaintiffs in the suit. On analysing the evidence, the Trial Court came to a conclusion that these witnesses did not establish the availability of the surplus income from the A schedule properties and for most of the questions pertaining to the income, they were feigning ignorance. The Trial Court also analysed the evidence of DW1 to DW3 and took into consideration Exhibits B19 to B25 and found that the 1st defendant was earning independent income from his business and had purchased the B schedule properties in his name. The Trial Court also found that the plaintiffs were married in the year 1974, 1977 and 1983 respectively and they were living in their matrimonial home and they were not aware of any income earned from the "A" schedule properties or the individual income of the 1st defendant through which he purchased the "B" schedule properties. It is under these circumstances,

the Trial Court denied the claim made by the plaintiffs for the B schedule properties and held that the first defendant is the exclusive owner of those properties.

16.The Appellate Court on re-appreciation of the oral and documentary evidence, rendered findings which are either not in line with the evidence available on record or based on assumptions and surmises. The Appellate Court went to the extent of rendering findings as if the 1st defendant was earning income from granite business. It is not known from where the First Appellate Court rendered such a finding when it was not even spoken to by PW1 and PW2. The Lower Appellate Court committed a fundamental error in assuming that the "B" schedule properties should have been purchased by the 1st defendant only from the income derived from the "A" schedule properties. This is not a matter of assumption and it has to be specifically proved by the plaintiffs.

17. It is now a settled law that where the plaintiffs are claiming that the properties standing in the individual name of the 1st defendant must also be treated as joint family properties, they must establish the following:

- a) That there was a joint family nucleus.
- b) The same yielded income.
- c) The income derived from the joint family properties was used towards incurring the family expenses.
- d) There was surplus income after meeting the family expenses sufficient enough to purchase the properties in the individual name of the 1st defendant and ;
- e) That the 1st defendant did not have sufficient independent income to purchase the B schedule properties in his individual name.

18.The burden of proof under Section 101, 102 and 103 of the Evidence Act, is first upon the plaintiffs to establish the above ingredients. Till this burden is discharged, the "B" schedule properties will be considered as individual properties of the 1st defendant. Only after discharging this burden, it will be shifted to the shoulders of the 1st defendant and the 1st defendant must establish that he purchased the B schedule properties out of his own income.

19.The Lower Appellate Court committed a fundamental error while dealing with the Appeal, without following the settled principles of law mentioned supra. The Lower Appellate Court completely disregarded the individual income that was earned by the 1st defendant which was substantiated through Exhibits B19 to B25. While rendering the findings, the Lower Appellate Court did not even spell out the reason and discuss the point as to why it

was disagreeing with the findings of the Trial Court. This is totally opposed to the mandate imposed under Order XLI Rule 31 of C.P.C. Moreover, the 1st defendant had incurred expenses towards the marriage of the plaintiffs and was meeting the other family expenses, which is clear from the evidence. This was also not been taken note of by the Lower Appellate Court. It is clear that the 2005 amendment Act was the only cause of action for filing the suit since the suit itself came to be filed in the year 2007, well after the marriage of the plaintiffs.

20. In view of the above discussion, this Court holds all the three substantial questions of law in favour of the appellants. The Judgment and Decree of the Lower Appellate Court deserves to be interfered by this Court since the findings of the Lower Appellate Court is also found to be perverse.

21. In the result, all the Second Appeals are allowed and the Judgment and Decree of the Lower Appellate Court made in A.S. No. 5 of 2015 and A.S. No. 6 of 2015, dated 1.2.2016 is hereby set aside. The Judgment and Decree of the Trial Court is upheld. Considering the fact and circumstances of the case, there shall be no order as to cost.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

KP

To

1. Principal District Judge, Krishnagiri.

2. Subordinate Judge, Uthangarai.

Copy To:

The Section Officer

V.R. Section, High Court, Madras.

+3cc to Mr. S. Ganesan, Advocate, S.R.No.17916 to 17918

+1cc to Mr. V. Raghavachari, Advocate, S.R.No.17968

+1cc to Mr. I. Abrar Md. Abdullah, Advocate, S.R.No.18090

+3cc to Mr. V. Nicholas, Advocate, S.R.No.18322 to 18324

Second Appeal No.630, 631 and 738 of 2016

SSD(CO)

SB(06/04/2022)