



A.S.No.68 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. Maheswari
2. Anandayee

.. Appellants

Versus

1. N.Raman Pillai
2. Bakkiyalakshmi
3. Tamilselvi
4. Kumar

.. Respondents

Prayer : Appeal Suit filed under Order 41 Rules 1 & 2 read with Section 96 of Civil Procedure Code against the judgment and decree of the learned I Additional District Judge, Salem, made in O.S.No.56 of 2010, dated 26.07.2013.

For Appellants : Mr.J.Titus Enock
for Mr.V.Murugesan

For Respondents : Mr.T.S.Vijaya Raghavan,
for RR-2 and 3

: No Appearance, for RR-1 and 4



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JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the judgment and decree dated 26.07.2013, passed by the learned I Additional District Judge, Salem in O.S.No.56 of 2010, in and by which, the suit for partition and declaration declaring that the settlement deed executed by the first defendant in favour of the defendants 2 and 3 as null and void, was dismissed by the Trial Court.

B. The Plaintiff :

2. The case of the plaintiff is that the first defendant/*Raman Pillai*, is the father of the first plaintiff/*Maheswari* and the fourth defendant/*Kumar*. He was first married to one *Sivagamiammal* and through his first marriage, the second defendant/*Bakkiyalakshmi* and the third defendant/*Tamilselvi* were born. Thereafter, he got married to the second plaintiff/*Anandayee* and through the second defendant, the first plaintiff/*Maheswari* and the fourth defendant/*Kumar* were born. The suit properties were the ancestral properties in the hands of the first defendant/*Raman Pillai*. Some items of the suit properties were purchased by the first defendant/*Raman Pillai*, out of the income from the said joint family nucleus. The said *Raman Pillai* had



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illegally settled majority of the items in the suit properties in favour of the defendants 2 and 3 by a settlement deed dated 02.07.2009, except in respect of one item of the suit properties. Therefore, the said settlement deed, which is executed without any valid right, title or interest whatsoever is liable to be declared as null and void and the plaintiffs are entitled to 2/6 shares in the suit properties.

C. The Written Statement :

3. The defendants resisted the suit by filing a written statement. It is the case of the defendants that the first defendant is the father and one *Kamala @ Sivagami*, who died, was the mother of the defendants 2 and 3. As far as the second plaintiff/*Anandayee* is concerned, she was married only to *Velu Asari* and it was through him only, the fourth defendant/*Kumar* and the first plaintiff/*Maheswari* were born, and therefore, the genealogy as in the plaint, was denied. As stated in paragraph No.6 of the written statement, as far as the self-acquired properties are concerned, the defendant has executed a settlement deed, and for the rest of the properties, the plaintiffs cannot claim any right as they are not members of the joint family and therefore, both the plaintiffs cannot claim 1/6th share each.



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D. The Issues :

4. On the said pleadings, the Trial Court framed the following issues:-

1) Whether the 2nd plaintiff is the wife of the 1st defendant and the 1st plaintiff and 4th defendant are children born between them?

2) Whether suit property is the joint family property?

3) Whether suit property covered in sale deed dated 30.10.1961 purchased from the income of the joint family?

4) Whether the plaintiffs are having 2/6 shares in the suit property?

5) Whether the settlement deeds executed by 1st defendant dated 2.7.2009 is void?

6) Whether plaintiffs are entitled for preliminary decree for partition and separate possession as prayed for?

7) Whether plaintiffs are entitled for permanent injunction as prayed for?

8) To what other relief plaintiffs are entitled to?

E. The Evidence :

5. The first plaintiff examined herself as P.W.1 and the second plaintiff was examined as P.W.2. **Exs.A-1** to **A-7** were marked on behalf of



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the plaintiffs. On behalf of the defendants, the third defendant/*Tamilselvi*, was examined as D.W.1 and one *Velusamy*, who was the original husband of the second plaintiff/*Anandayee*, was examined as D.W.2. and **Ex.B-1** was marked on behalf of the defendants.

F. The Findings of the Trial Court :

6. Thereafter, the Trial Court proceeded to consider the case of the parties, and by a judgment dated 26.07.2013, it found that even as per the plaintiffs, since the properties are purchased by the plaintiff's grandfather i.e. the father of *Raman Pillai*, namely one *Narayanapillai*, and since there is no evidence that the properties were ancestral in the hands of *Raman Pillai*, the Trial Court held that the properties devolved under Section 8 of the Hindu Succession Act, 1956, and therefore they would be separate properties. Once it is held to be his separate properties, the other properties purchased from and out of the income arising out of the said properties were also be held as separate properties, therefore, the Trial Court held that, all the suit properties were separate properties of the first defendant/*Raman Pillai*. Once the properties are the separate properties of the first defendant/*Raman Pillai*, no exception can be taken to the right to convey



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the same to the defendants 2 and 3, and therefore it held that the plaintiffs were neither entitled for the relief of partition, nor for the relief of declaration relating to the settlement deed. The contention of the first defendant that the first plaintiff is not the daughter was rejected . As a matter of fact he has executed a Will in respect of one property which is left out in favour of the first plaintiff. The Trial Court even requested the first defendant not to revoke the said Will and dismissed the suit. Aggrieved by the same, the plaintiffs have filed this Appeal Suit.

G. The Submissions :

7. Heard *Mr.J.Titus Enock*, the learned Counsel appearing on behalf of the appellants and *Mr.T.S.Vijaya Raghavan*, the learned Counsel appearing on behalf of the respondents 2 and 3.

8. *Mr.J.Titus Enock*, the learned Counsel appearing on behalf of the appellants, taking this Court through the pleadings and the evidence on record, specifically drew the attention of this Court to the paragraph Nos.5, 6 and 8 of the plaint to contend that it is the specific case of the plaintiffs that the properties are the joint family properties and therefore, the purchase



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made from and out of the income from the joint family properties would also be treated as properties purchased out of joint family nucleus and therefore, all the suit properties are in the nature the joint family properties. The defendants have not denied the nature of suit properties in their written statement. Once the properties are proved to be joint family properties, it should be held that the first plaintiff being the daughter, by virtue of a judgment of the Hon'ble Supreme Court of India in ***Vineeta Sharma Vs. Rakesh Sharma***¹, is entitled for a share in the suit properties. He would specifically draw the attention of this Court to the paragraph No.6 of the written statement, where under, even though the defendants have specifically pleaded that, in respect of his self-acquired properties the properties are dealt with by way of the settlement deed, it is not specifically denied by them anywhere in the written statement that the other properties are not joint family properties. He would then contend that, it is the specific contention of the defendants that the plaintiffs are not the members of the joint family. Therefore, he would submit that once the Trial Court found that the first plaintiff is the daughter, even if automatically going by the written statement of the defendants, the Trial Court ought to have decreed the suit.

¹ (2020) 9 SCC 1



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9. Per contra, *Mr.T.S.Vijaya Raghavan*, the learned Counsel appearing on behalf of the respondents 2 and 3 would contend that, it cannot be held that the defendants have not denied the properties as joint family properties. Even though the pleadings could have been more clear and categorical, he would submit that on a reading paragraph Nos.3 to 6 in toto, it would be clear that, firstly the defendants had denied the relationship, and secondly, they have also denied that the plaintiffs have no share in the properties. As a matter of fact, once the defendants specifically contend that the self acquired properties are dealt with by settlement deed, it goes without saying that they have claimed the properties as self-acquired properties only. Therefore, a mere confusion or less clarity in the written statement by and itself will not vest the title or share to the plaintiffs. He would also submit that, even from a reading of the plaint itself, it is clear and categorical that the properties were not ancestral properties. It was the self-acquired properties of late *Narayanapillai*, who was the grandfather of the first plaintiff. Once it is the self-acquired properties of *Narayanapillai*, upon his death, it devolves on the first defendant/*Raman Pillai* under Section 8 of the Hindu Succession Act, 1956, and therefore, would only be



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his separate properties and he is free to deal with the same in any manner whatsoever. Accordingly, the Trial Court has rightly dismissed the suit. With respect to the Will, it has been subsequently revoked in view of the subsequent developments, which cannot be questioned by the plaintiffs.

H. Points for consideration :

10. Upon considering the rival submissions made on either side and on perusal of the material records of the case, the following questions arise for consideration:-

- (i) What is the relationship between the parties?
- (ii) What is the nature of the suit properties and if so, to what shares the parties are entitled in the suit properties?

I. Question No.1 :

11. As far as the relationship between the parties is concerned, the fact that *Raman Pillai* is the father and *Sivagamiammal* is his first wife is admitted. The contentious issue is that whether *Anandayee* got married to one *Velu Asari* and whether *Anandayee* subsequently got married to *Raman Pillai*, and if so, whether *Maheswari* and *Kumar* were born to them. In this



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regard, on a cumulative reading of the evidence on record, both the oral testimonies of P.Ws.1 and 2, their cross-examination, their respective dates of birth and age, **Ex.B-1**, death certificate and the oral testimony of D.W.2/*Velusamy*, the following facts are clear:-

(i) Originally, the first defendant was married to one *Sivagamiammal* and she died in the year 1969.

(ii) The second plaintiff was originally married to one *Velu Asari*, in the year 1967 and the fourth defendant was born to them; As a matter of fact, the fourth defendant, *Kumar*, did not join the two plaintiffs and he even remained *ex parte* and did not contest the suit;

(iii) From the evidence of *Velusamy*, it is clear that there arose differences of opinion between them within three years and therefore, the fact that the first defendant being widower, subsequently got married again to the second plaintiff, and from **Exs.A-3** to **A-5** it would be clear that the first plaintiff/*Maheswari* was born to the first defendant and the second plaintiff.

Accordingly, I reject the case of the plaintiffs in as much as their assertion that the fourth defendant, *Kumar*, was also born to the first defendant/*Raman Pillai* and I reject the case of the defendants in as much as



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the first plaintiff was born to the second plaintiff/*Anandayee* and D.W.2/*Velusamy*. Accordingly, the question relating to the relationship between the parties is answered.



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J. Question No.2 :

12. As far as the suit properties are concerned, if the suit properties are coparcenary properties as contended by the learned Counsel for the appellants, the first plaintiff being the daughter of the first defendant, would be entitled to a share by birth by virtue of the judgment of the Hon'ble Supreme Court of India in *Vineeta Sharma Vs. Rakesh Sharma* (cited supra). Therefore, the point that has to be determined is whether the suit properties were coparcenary in nature in the hands of the first defendant or his separate properties. In this regard, all properties inherited by a male Hindu from his father, will not automatically be coparcenary properties. It is the plaintiffs assertion of the plaintiffs and that they ought to have proved the same. Even as per the case of the plaintiffs in paragraph No.5, the properties were purchased by *Raman Pillai's* father *Narayanapillai*. Therefore, upon the death of *Narayanapillai*, it devolves on *Raman Pillai* under Section 8 of the Hindu Succession Act, 1956 and therefore, the properties were his separate properties and cannot be said to ancestral or purchased out of ancestral or properties which are thrown into the joint family hotchpot. Therefore, once the suit properties were held to be separate properties, some of the items in the suit properties which were



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purchased by *Raman Pillai*, will also be his self-acquired/separate properties and therefore, I am afraid that the first plaintiff is entitled to any right to the suit properties during the lifetime of the first defendant. The plaintiffs failed to prove that the properties are coparcenary properties and I accordingly answer the point.

13. In view thereof, I hold that the plaintiffs are not entitled to the relief of partition as well as to the relief of declaration that the settlement deed is null and void. However, during the course of the arguments, the learned Counsel for the appellants would submit that, the revocation of the Will is disputed. I am of the view that this is not the *lis* between the parties arising out of the Will, thus, whether the Will was revoked validly or not will not depend upon the request of the Trial Court, but, otherwise, whether it was executed with a sound state of mind etc., could be gone into only when an appropriate question as to the devolution of the said items of the properties comes before the Court and cannot be decided in the present suit and as such, is left open for the parties to contest.

K. Answers to the Issues :



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14. In view of my above findings, I find that the findings of the Trial Court in respect of the issue No.1 framed with respect to the relationship between the parties as correct and I affirm the same. I answer the issue Nos.2 to 5, in the Original Suit, that the properties are not coparcenary properties and would be separate properties of the first defendant and as such, the plaintiffs are not entitled for the relief of partition as well as the declaration. Accordingly, the said issues are also answered that the plaintiffs will not be entitled to any relief whatsoever.

L. The Result :

15. In the result, this Appeal Suit in A.S.No.68 of 2014 is dismissed. The judgment and decree of the Trial Court, dated 26.07.2013 in O.S.No.56 of 2010 is confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs.

28.11.2022

Index : yes
Speaking order
grs

To

1. The I Additional District Judge,



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- Salem.
2. The Section Officer,
VR Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

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