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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.12.2021

PRONOUNCED ON: 11.01.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.770 of 2019
and C.M.P.No.14919 of 2019

1.A.Ananda Babu

2.K.Ramesh Shankar

3.A.Sasikala

4.D.Jayanthi

5.H.Sridevi

...Appellants

Vs.

R.Selvi

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.02.2019 in A.S.No.6 of 2013 on the file of the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District by reversing the judgment and decree in O.S.No.90 of 2008 dated 14.02.2012 on the file of the learned Subordinate Judge, Ranipet, Vellore District.

For Appellants : Mr.B.Sundarapandiyan

For Respondent : Mr.R.S.Anandan

JUDGMENT

This Second Appeal is filed challenging judgment and decree of the learned II Additional District and Session Judge, Vellore at Ranipet in A.S.No.6 of 2013 reversing the judgment of the learned Subordinate Judge, Ranipet in O.S.No.90 of 2008.



2. The respondent/plaintiff filed the suit for partition claiming the division of suit properties into seven equal shares and to allot one such share to her; for the relief of permanent injunction restraining the appellant from in any way alienating the suit properties in favour of any person and for costs.

3. The case of the respondent is that the suit properties are self-acquired properties of one Lakshmi Ammal, who is the wife of the deceased Kannapiran, first defendant and mother of other appellants and respondent. Lakshmi Ammal purchased the 1st item of the suit property on 14.02.1971, 2nd item on 03.04.1978, 3rd item on 15.11.1999, 4th item on 19.11.1999, 5th item on 14.07.2003. Except Lakshmi Ammal, no one has got any right, title in the suit properties. She was enjoying the suit property till her life time. She died intestate on 08.05.2007 leaving behind appellants and respondent as the legal heirs to succeed to her estate. The respondent and appellants are in joint possession and enjoyment of the suit properties as co-owners. Respondent felt that, it is no more feasible to be in joint possession and enjoyment of the suit properties. She issued notice on 27.08.2007 to the appellants 1 to 3 to divide the suit properties into seven equal shares and allot her one share. The appellants 1 to 3 received notice and gave a reply with false averments. Therefore, the suit.

4. The case of the appellants, in brief, is as follows.

The written statement was filed by deceased first defendant kannapiran and adopted by other defendants, namely the appellants. It is denied that the suit properties were purchased by Lakshmi Ammal. Lakshmi Ammal was house wife. The suit properties were purchased by her husband Kannapiran in the name of his wife Lakshmi Ammal, for the reason that Kannapiran was central Government servant. Therefore, he purchased the suit properties in the name of his wife Lakshmi Ammal. The suit properties are the self-acquired properties of first respondent Kannapiran. While Lakshmi Ammal was alive, she and Kannapiran had executed a Will on 04.01.2007 in favour of appellants 1 and 2 to succeed to the suit properties after their death. It has been specifically mentioned in the Will that the suit properties were purchased from the earnings of the Kannapiran. Lakshmi Ammal died on 08.05.2007. After her death, Kannapiran was entitled to be in possession of the suit properties and accordingly he was in possession and enjoyment of the suit properties. Kannapiran directed the appellants 1 and 2 to take steps for patta transfer



in their name as per Will dated 04.01.2007. Now appellants 1 and 2 are in possession and enjoyment of the suit properties. Respondent was never in possession and enjoyment of the suit properties. She was given all Seervarisai at the time of her marriage. More money was given to respondent than other daughters. Appellants 3 to 5 executed a release deed on 06.06.2007 in favour of appellants 1 and 2. Kannapiran had also joined in executing this document. Respondent has absolutely no right to claim partition in the suit properties.

5. The trial Court framed the following issues.

- i) Whether the plaintiff is entitled to divide their suit properties into seven equal shares as prayed for?
- ii) To what other relief?

6. During the trial, PW1 was examined and Exhibits A1 to A11 were marked on the side of the respondent/plaintiff. DW1 to DW3 were examined and Exhibit B1 was marked on the side of the appellants/defendants.

7. On considering the oral and documentary evidence, trial Court found from the evidence, especially the evidence of PW1 that a suit properties were the properties purchased by Kannapiran in the name of his wife as benami, for his benefit. In view of the execution of Exhibit A8 release deed, Exhibits A9 to A11 settlement deeds, Exhibit B1 Will, respondent cannot claim any partition in the suit properties and in this view of the matter, dismissed the suit. Respondent filed appeal in A.S.No.6 of 2013. The learned Appellate Judge, on reconsideration of oral and documentary evidence, found that there is no material filed to show that Kannapiran purchased the suit properties, benami, in the name of his wife, for his benefit. On the other hand, documents filed in the case show that the suit properties were independent and self-acquired properties of Lakshmi Ammal. Kannapiran has no right to execute Will or Settlement deed in respect of the suit properties in favour of appellants 1 and 2. Thus, reversed the finding of the trial Court and decreed the suit for partition as claimed in the plaint. Challenging the said judgment, the appellants/defendants have filed this Second Appeal.

8. The following substantial question of law arised for consideration of this Second Appeal,

When the trial Court found that the suit properties were purchased by deceased first defendant Kannapiran



in the name of his wife Lakshmi Ammal, as benami and therefore, the plaintiff is not entitled to claim share of the suit properties, whether the reversal of the said finding, by the First Appellate Court, stating that the suit properties are the self-acquired properties of Lakshmi Ammal without any evidence can be sustained?

9. The learned counsel for the appellants submitted that Lakshmi Ammal was house wife and she had no independent earnings. The deceased first defendant Kannapiran, who was the husband of the deceased Lakshmi Ammal, was working in Indian Railways. There were certain restrictions for purchasing the properties in his name. Therefore, he purchased the suit properties from his earnings in the name of his wife deceased Lakshmi Ammal. Even, PW1 admitted that the suit properties were purchased by Kannapiran in the name of his wife deceased Lakshmi Ammal. In a Will dated 04.01.2007, executed by deceased Lakshmi Ammal and deceased Kannapiran, they settled the suit properties in favour of appellants 1 and 2. In the said Will, it is specifically stated that the suit properties were purchased in the name of Lakshmi Ammal from the income of the deceased Kannapiran. When there is positive evidence to show that the suit properties were purchased from the income of deceased Kannapiran in the name of his wife deceased Lakshmi Ammal and it was so found by the trial Court, the reversal of the said finding by the First appellate Court, without any evidence in support of the claim of the respondent that the suit properties were self-acquired properties of deceased Lakshmi Ammal, cannot be sustained at all.

10. It is further submitted that during the hearing of the appeal, the appellants produced Exhibit A13 report of the handwriting expert, with regard to his analysis and the report on the disputed Will dated 04.01.2007. The original Will dated 04.01.2007 is in the custody of Civil Court. It is not known on what basis Exhibit A13 handwriting expert's opinion was given stating that the signatures found in the Will are not the signatures of Lakshmi Ammal. It is not known whether original Will was sent for analysis by the handwriting expert. Respondent's husband is working in police department as a Sub-Inspector of Police, using his position, he filed case against the appellants 1 and 2. The reliance placed by the first Appellate Judge to reach her conclusion on the basis of Exhibit A8 release deed, Exhibits A9 to A11 settlement deeds, Exhibit B1 Will is not correct. Therefore, the learned counsel for the appellants prayed for setting aside the judgment of the First Appellate Court and for restoring the judgment of the Trial



Court. He relied on the judgment reported in AIR 1995 Supreme Court 2145 (Nand Kishore Mehra Vs. Sushila Mehra) for the proposition that prohibition to plea of benami is not applicable to purchase of property by a person in the name of his wife or unmarried daughter, if he is able to prove that the property had not been purchased for their benefit, but purchased for his benefit.

"8.....Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of Section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchases of the properties had been paid by him".

11. Per contra, learned counsel for the respondent submitted that the trial Court has picked some part of the evidence of PW1 to come to conclusion that PW1/respondent admitted that the suit properties were purchased by her father in the name of her mother. Consistent evidence of PW1 is that she denied that the suit properties were purchased by father, with his income in the name of her mother. Though it is claimed in Exhibit B1 Will that the suit properties were purchased out of income of father Kannapiran, the Will is a forged Will. It has been sent to the handwriting expert's opinion. Handwriting expert's opinion is given in a criminal case filed against appellants 1 and 2. The handwriting expert opined that the signatures in the Will dated 04.01.2007 are not the signatures of Lakshmi Ammal. Therefore, appellants cannot claim on the basis of the recitals in Exhibit B1 Will, that the suit properties are the self-acquired properties of father Kannapiran in the name of Lakshmi Ammal. On the other hand, it is seen from the recitals made in Exhibit A8 release deed, Exhibits A9 to A11 settlement deeds, it is categorically admitted that the suit properties are the self-acquired properties of deceased Lakshmi Ammal. There is also a mention about another Will dated 05.02.2007 in these settlement deeds. Subsequent Will dated 05.02.2007 is suppressed. If there is a subsequent Will dated 05.02.2007, then automatically no right can be claimed on the basis of Exhibit B1 Will dated 04.01.2007. Therefore, the learned counsel for the



respondent submitted that the First Appellate Court had considered all these aspects in detail, which were not considered by the trial Court, and came to the right conclusion of granting a decree of partition in favour of the respondent. Thus, he prayed for confirming the judgment of the First Appellate Court and dismissal of this Second Appeal.

12. Considered the rival submissions and perused the records.

13. Exhibits A1 to A5 are the sale deeds in respect of the suit properties. Exhibits A1 and A2 had come into existence in 1971 and 1978 respectively. Exhibits A3 and A4 had come into existence in 1999 and Exhibit A5 had come into existence in 2003. Prima-facie these documents show that Lakshmi Ammal had purchased these properties. When the appellants claim that these properties were not purchased by Lakshmi Ammal, but purchased from the income of their father Kannapiran, in the name of their mother Lakshmi ammal, it is for them to prove this case. Especially, they have to prove that their father Kannapiran purchased these properties in the name of his wife Lakshmi Ammal, not for her benefit, but for his benefit. In support of their case, appellants heavily relied on the recitals in Exhibit B1, wherein, it is mentioned that the suit properties were purchased from the income of Kannapiran in the name of his wife Lakshmi Ammal. He also relied on the deposition of PW1/respondent that the suit properties were purchased by her father in the name of his wife. That apart, it is claimed that Kannapiran was working in railways and earning sufficient income to purchase properties and on the other hand Lakshmi Ammal was only a house wife and she had no independent income.

14. Perusal of oral and documentary evidence shows that there is recital in Exhibit B1 Will that the suit properties were purchased from the income of Kannapiran. There is also an admission by PW1 that the suit properties were purchased by her father in the name of her mother. However, she also claims that her mother's family is rich family and they provided funds to her mother. Using that funds, she purchased the suit properties. But, there is no evidence to support this claim. Entire evidence has to be taken into consideration for taking a decision. It is the consistent evidence of PW1 that suit properties were purchased by her mother and she denied on very many occasions that her father contributed funds for the purchase of the suit properties.

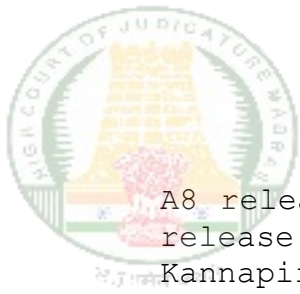
She also said that her father purchased properties in her mother's name in 1999 and 2003. She also stated that her father got retirement in 1991 and using the retirement benefits, he



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purchased the suit properties. One of the contentions of the appellants for purchasing the suit properties in the name of mother Lakshmi Ammal is that father Kannapiran was working in the central Government and therefore, he purchased the suit properties in the name of his wife. When father Kannapiran retired in 1991, what is the hurdle in purchasing the suit properties in his name and what is the need to purchase the suit properties in the name of his wife in 1999 and 2003. Therefore, the very ground taken by the appellants that, since, father Kannapiran was Government servant at the time of purchasing the suit properties, he purchased the suit properties in the name of his wife, falls to ground.

15. The recitals in the Exhibit B1 Will is strongly relied by the appellants 1 and 2 for canvassing their claim that the suit properties were purchased with the funds provided by father Kannapiran. As pointed out earlier Exhibit A13 shows that the signatures in Exhibit B1 Will are not the signatures of Lakshmi Ammal. Appellants claim that taking advantage of the position of respondent's husband in the police department, criminal case had been foisted against the appellants 1 and 2. However, additional documents had been filed in the Appellate Court namely, Exhibit A14, copy of the charge sheet filed in Cr.No.508 of 2010 and the copies of the order dated 18.03.2010 in Cr1.O.P.No.5237 of 2010 and order dated 01.04.2011 in Cr1.O.P.No.7482 of 2011 to show that the respondent approached this Court for registering FIR against the appellants 1 and 2 for the alleged forgery of Exhibit B1 Will. Then they also filed petition for direction to file final report in the case. Therefore, it cannot be stated that first respondent's husband influenced his position as a police officer to foist false case against appellants 1 and 2.

16. With regard to the submission of the learned counsel for the appellants that when the original Will is in the custody of Civil Court, how it was possible for the expert to compare the signatures in the Exhibit B1 Will and come to the conclusion. Neither party has produced evidence to show that whether Exhibit B1 original was sent for analysis by handwriting expert or the report was given on the basis of analysis of xerox copy. Therefore, this Court does not want to dwell on this. Moreover, the concerned expert has not been examined before the Trial Court. Therefore, not much reliance can be based on Exhibit A13 report. However, there are other evidences available to conclude that the suit properties were treated as self-acquired properties of Lakshmi Ammal.



17. It is pertinent to refer to recitals in Exhibit A8 release deed, Exhibits A9 to A11 settlement deeds. Exhibit A8 release deed is dated 06.06.2007. It was executed by deceased Kannapiran, and defendants 4 to 6 in favour of appellants 1 and 2/defendants 2 and 3. It is recited in this release deed that the properties covered in this release deed were acquired by deceased Lakshmi Ammal. Similar recitals are found in Exhibits A9, A10 and A11 settlement deeds. In these documents, it is clearly mentioned that the suit properties were purchased in the name of Lakshmi Ammal. There is no specific mention that her husband Kannapiran contributed funds for the purchase of the properties covered in these documents. In fact, in Exhibit A10, there is a clear mention that the property concerned in that document was purchased by Lakshmi Ammal from her own earnings. Similar recital is also found in Exhibit A11. These recitals clearly show that Kannapiran had accepted that the properties covered under these settlement deeds were purchased by his wife Lakshmi Ammal from her own earnings, meaning thereby self-acquired by her.

18. Not only that, there is a reference about a Will dated 05.02.2007 in Exhibits A9, A10 and A11 settlement deeds. Kannapiran claims that he is entitled to the properties through Will dated 05.02.2007, executed by his wife Lakshmi Ammal. There is also claim made on the basis of the Will dated 04.01.2007 said to have been executed by Lakshmi Ammal. The Will dated 05.02.2007 is subsequent to the Will dated 04.01.2007. But this Will is not produced before this Court. When there are two Wills, only the latest Will is to be enforced is a common fact known to everyone. When DW1 Kannapiran was confronted with the Will dated 05.02.2007, he admitted that he has not produced the Will dated 05.02.2007 and he has to verify as to whether it is available in the house or not. When there is a subsequent Will dated 05.02.2007, in respect of the suit properties, in the absence of production of Will dated 05.02.2007, Kannapiran cannot claim an independent right over the suit properties. May be there is no evidence produced by the respondent to show that the suit properties were purchased by her mother either from the funds provided to her by her parents or through money mobilized through chit transaction, recitals in Exhibits A8, A9 to A11, show that the suit properties are the self-acquired properties of deceased Lakshmi Ammal. Thus, it can be concluded that the appellants had treated the suit properties are the self-acquired properties of Lakshmi Ammal. The judgment reported in AIR 1995 SC 2145 relied in support of the case that the suit properties were purchased by Kannapiran in the name of his wife Lakshmi Ammal, this Court finds that, is not applicable to this case, for the reasons stated above.



19. This finding is fortified by the fact that Exhibit A8 release deed was executed by Kannapiran and defendants 4 to 6, only after getting a consideration of Rs.18,00,000/- for releasing their right in the suit properties. If Exhibit B1 Will is true, what is the necessity for Kannapiran to relinquish his right in favour of his sons. When there is a release deed executed then, what is the necessity for again executing the settlement deeds. Thus, it is clear that the appellants had created documents one after other to deny the respondent, her right of share in the suit properties. From the oral and documentary evidence produced in this case, it can be concluded that suit properties are the self acquired properties of deceased Lakshmi Ammal and therefore, as a daughter, respondent is entitled to claim her share in the suit properties. The First Appellate Court considered the evidence in detail, reached right conclusion and decreed the suit. This Court finds no reason to take a different view of the matter and confirms the judgment of the First Appellate Court. Thus, substantial question of law is answered.

20. In fine, this Court confirms the judgment of the First Appellate Court in A.S.No.6 of 2013 reversing the judgment and decree in O.S.No.90 of 2008 on the file of the learned Subordinate Judge, Ranipet and dismisses this Second Appeal. Consequently, connected miscellaneous petition is closed. Considering the relationship between the parties, parties are directed to bear their own costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

Ep

To

1.The II Additional District and Sessions Judge,
Vellore @ Ranipet,
Vellore District.

2.The Subordinate Judge,
Ranipet,
Vellore District.



3.The Section Officer,
VR Section,
High Court of Madras.

+lcc to Mr.R.S.Anandan, Advocate SR.No.2443

S.A.No.770 of 2019
and C.M.P.No.14919 of 2019

AD(CO)
CB(23/02/2022)