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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No. 1107 of 2021

1. Vadhani,
W/o, Selvam
2. Pallipattal
W/o, Thiyagarajan
3. Anandhan
S/o, Selvam

... Appellants/Petitioners

Vs.

1. Mangayarkarasi
W/o, Deivanayaka Kounder
2. Thamizharasi
W/o, Murthi
3. Ezhilarasi,
W/o, Madhivadhanan
4. Narayani,
W/o, R.Govindhan
5. Rajam
W/o, Balaram
6. Selvam
S/o, Deivanayaka Kounder
7. Kavitha
W/o, Backiaraj
8. Minor Arulselvam
S/o, Backiaraj

Represented by his Natural Guardian
Kavitha, W/o, Backiyaraj

... Respondents/Respondents



Prayer:

Second Appeal is filed under Section 100 of C.P.C., against the judgment and Decree dated 24.09.2021 in A.S.No.15 of 2018 on the file of the II Additional District Court, Tindivanam, confirming the judgment and decree dated 14.06.2018 in O.S.No.67 of 2011 on the file of the Principal Subordinate Court, Tindivanam.

For Appellants : Mr.P.Pandiyaraj

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 24.09.2021 passed in A.S.No.15 of 2018 on the file of the II Additional District Court, Tindivanam, confirming the judgment and decree dated 14.06.2018 passed in O.S.No.67 of 2011 on the file of the Principal Subordinate Court, Tindivanam.

2. The respondents 1 to 5 filed a suit claiming partition of 5/6 share in the suit properties against the appellants and respondents 6 to 8. The case of the respondents 1 to 5 is that one Deivanayaka Kounder is the husband of the first respondent and the father of the respondent 2 to 5 and the 6th respondent. He was employed in Rodiar Mills, Pudhucherry for about 25 years and he had considerable savings out of his salaried income from Rodiar Mills, Puducherry. He received substantial lumpsum as retirement benefits. He purchased properties under different sale deeds on various dates. The details are as follows:

i. The first item of the suit property was purchased by him on 05.05.1980 from one Radha.

ii. The second item of the suit property was purchased by him on 27.09.1978 from one Aravamudhu Kounder.

iii. The third item of the suit property was purchased by him on 22.10.1979 from one Krishnan.

iv. The fourth item of the suit property was purchased by him on 02.06.1979 from one Kkannan.

v. The fifth item of the suit property was purchased by him on 19.05.1980 from one Ranganayaki Ammal

All the suit properties are purchased out of his own income. Therefore, the suit properties are the separate and self acquired properties of Deivanayaka Kounder and he was in exclusive possession and enjoyment of the suit properties. He died in the year 1995 leaving behind the respondents 1 to 5 and the 6th respondent as his class I legal heirs. Therefore, all of them are entitled to 1/6 share in the suit properties. The 6th respondent is the only son of the first respondent and brother of the respondents 2 to 5. Therefore, they permitted the 6th



respondent to be in possession and enjoyment of the suit properties out of trust and confidence. The respondents used to receive the produces, whatever delivered by the 6th respondent. It appears that the respondents 6-8 and the appellants fell apart and developed strained relationship. The respondents demanded the suit properties to be partitioned among themselves. The respondents 1 to 5 have come to know that the appellants filed a collusive and fraudulent suit for partition against the 6th respondent. The respondents 1 to 5 are not parties to the suit. Subsequently, the respondents 1 to 5 met the appellants and requested them to divide the suit properties into six equal shares and to allot 5/6 share by metes and bounds and the same was not considered by the appellants. Therefore, the suit has been filed for the relief for partition.

3. It is seen from the written statement filed by the 6th respondent/first defendant that he admitted that the plaintiffs are entitled to 5/6 share as claimed by them and they also entitled for decree as prayed for. Infact, he has no objection to pass a preliminary decree declaring the plaintiffs' 5/6 share in the suit properties.

4. The case of the appellants/defendants 2 to 5 is that the first appellant/second defendant married the 6th respondent/first defendant 35 years ago. At that time, her husband and father-in-law Deivanayaga Kounder were working in Anglo French Textiles and in Bharathi Mills. Both were living under the same roof. The sisters of 6th respondent were married and left the family and living with their respective husbands. Deivanayaga Kounder's father was Balakrishnan. He had ancestral properties. They were acquired and compensation paid to Deivanayagam. Out of the income and earnings of her husband and father-in-law, the suit properties were purchased in the name of Deivanayagam, who is the Kartha of the family. Therefore, the suit properties were treated as joint family properties. Deivanayaga Kounder retired in the year 1977 and the 6th respondent voluntarily retired from service about 7 or 8 years ago. The suit properties were purchased from the contribution made by the 6th respondent also and therefore, the suit properties are not the absolute properties of Deivanayaga Kounder. After the death of Deivanayaga Kounder in 1995, the 6th respondent totally neglected the family and took to bad ways. Therefore, the appellants filed the suit against the 6th respondent in O.P.No.64/1995 and it was later registered as O.S.No.136 of 1996 on the file of the Subordinate Judge, Tindivanam for partition and separate possession of their $\frac{3}{4}$ share in the suit property. The 6th respondent filed the written statement and contested the suit. The respondents 1 to 5 were fully aware of the suit filed by the appellants/defendants and they never claimed any right nor they attempted to come on



record. The suit was decreed and a Preliminary decree was passed followed by final decree. The respondents 1 to 5's right if any has been extinguished and they cannot claim any right in the properties and their claim is barred by limitation. Therefore, the suit is liable to be dismissed.

5. On the basis of this pleadings, the trial court framed the following issues:

1. Whether the plaintiffs are entitled to 5/6 share in the suit properties?
2. Whether the plaintiffs are entitled to get mesne profits?
3. Any other relief?

6. During the course of trial, P.Ws.1 to 3 were examined and Exs.A1 to A5 were marked on the side of the appellants/plaintiffs. D.Ws.1 to 4 were examined and Exs.B1 to B10 were marked on the side of the defendants/respondents 1 to 5.

7. On going through the oral and documentary evidence, the trial court found that the appellants had failed to prove the owning of ancestral properties by Deivanayaga Kounder and there was a nucleus to purchase of the suit properties. On the other hand, it is found from Exs.A1 to A5 that the suit properties were purchased exclusively by Deivanayaga Kounder from his income and therefore, the suit properties are his separate and self acquired properties. In this view of the matter, the trial court decreed the suit for partition of 5/6 share in favour of the respondents 1 to 5. Aggrieved against the judgment and decree, appellants/defendants filed the appeal in A.S.No.15 of 2018. The learned Appellate Judge also on elaborate consideration of evidence, especially oral evidence of D.Ws.3 and 4, found that there were no ancestral properties and no income from the ancestral properties, the suit properties were purchased by Deivanayaga Kounder. Therefore, the respondent 1 to 5 are entitled to claim partition in the suit properties. Thus, the learned Appellate Judge confirmed the judgment and decree of the trial court and dismissed the appeal. Challenging the said judgment and decree, the appellants have filed this second appeal.

8. Learned counsel for the appellants submitted that the respondents 2 to 5 were married long back, especially before the introduction of Tamilnadu Act 1 of 1990. As per section 29(a) of Hindu Succession Act and they are not entitled to claim any share in the suit properties. Appellants 1 to 3 filed a suit for partition in O.S.No.136 of 1996 and got a decree. Therefore, respondents 1 to 5 are not entitled for partition. The judgment of the Courts below, especially the judgment of first appellate court has to be set aside.



9. Considered the submissions, both the Courts below have held that the appellants are not entitled claim share in the suit properties. As narrated above, the appellants based the case on the ground that there were certain ancestral properties available with Deivanayaga Kounder and those properties were acquired and he was paid compensation for the same. Deivanayaga Kounder and the 6th respondent were working in Mill and they were earning income. Using the compensation amount and monthly salary of Deivanayaga Kounder and 6th respondent, the suit properties were purchased in the name of Deivanayaga Kounder as elder member/kartha of the joint family. However, it is seen from the oral and documentary evidence and on perusal of the records that the appellants have not produced any single piece of evidence to show that Deivanayaga Kounder owned ancestral properties and those properties were acquired and he was paid compensation. That apart, there is no evidence/document produced to show what was the income earned by the 6th respondent and whether he contributed his part of the income for the purchase of the suit properties. On the other hand, Exs.A1 to A5, clearly show that the suit properties were purchased by Deivanayaga Kounder.

10. The only conclusion that can be reached in this case is that the suit properties are self acquired properties of Deivanayaga Kounder. When it is found that the suit properties are self acquired properties of Deivanayaga Kounder, the legal heirs of Deivanayaga Kounder, most specifically, the respondents 1 to 5 and 6th respondent are governed by section 8 of Hindu Succession Act, in the matter of succession to the suit properties. All of them are class I legal heirs as per section 8 of Hindu Succession Act. Each one of them is entitled to equal share ie. 1/6 share.

11. The 6th respondent fairly conceded that the respondents 1 to 5 are entitled to 5/6 share. Both the Courts below have rightly found that the suit properties are self acquired properties of Deivanayaga Kounder and therefore, the respondent 1 to 5 and 6 are each entitled to 1/6 share. Respondents 1 to 5 are not parties to O.S.No.136 of 1996. The judgment in O.S.No.136 of 1996 will not bind them. This Court finds no reason to interfere with the judgment of the Courts below. There is no substantial question of law arise for consideration in this Second Appeal.

12. In view of the above, the Second Appeal is dismissed. Considering the facts and circumstances of the case, the parties



are directed to bear their own costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge,
II Additional District Court,
Tindivanam.
2. The Principal Subordinate Judge,
Principal Subordinate Court, Tindivanam.

+1cc to M/s.P.Pandiyaraj, Advocate, S.R.No.1313

S.A.No. 1107 of 2021

BP (CO)
UMA (22/06/2022)