



A.S.Nos.372,749 of 2005 and 749 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:03.04.2023

Delivered on: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.Nos.372 of 2005, 749 of 2005 and 749 of 2008

&

C.M.P.No.6143 of 2005

A.S.No.372 of 2005

M.Ilangovan

.. Appellant

Vs.

1.Murali

2. Roja

3.Minor Divya Bharathi
rep by mother and natural
guardian Roja the 2nd respondent

4.Sivaranjani

.. Respondents

Prayer:- Appeal Suit filed under Section 96 of Code of Civil Procedure
against the judgment and decree dated 03.02.2005 made in O.S.No.131 of
2004 on the file of the Additional District Court, Dharmapuri.



A.S.Nos.372,749 of 2005 and 749 of 2008

For Appellant : Mr.P.Mani

For Respondents : Mr.S.Ilamvaludhi for R2 and 3

R1 and 4- Served No appearance

A.S.No.749 of 2005

Murali

.. Appellant

Vs.

Ilangovan

.. Respondent

Prayer:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 03.02.2005 made in O.S.No.131 of 2004 on the file of the Additional District Judge, Dharmapuri (O.S.No.32 of 2003 on the file of the Court of the Subordinate Judge, Dharmapuri)

For Appellant : Served- No Appearance

For Respondent : Mr.P.Mani for sole respondent



A.S.Nos.372,749 of 2005 and 749 of 2008

A.S.No.749 of 2008

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M.Elangovan

.. Appellant

Vs.

1.Unnamalaiammal (deceased)

2.Sivaraj

3.Madesh

4.M.Murali

5.Roja

6. Hema Ramanathan

.. Respondents

Prayer:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 27.03.2008 made in O.S.No.13 of 2008 on the file of the Additional District Court, Dharmapuri, Fast Track Court.

For Appellant : Mr.P.Mani

For Respondents : Mr.R.Thirugnanam for R2 and 3

R4 & 5- Serve No appearance

R6- No appearance



A.S.Nos.372,749 of 2005 and 749 of 2008

COMMON JUDGMENT

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(Judgment of the Court was made by P.B.BALAJI,J.)

The array of parties before the Trial Court is being adopted for the sake of convenience.

A.S.No.749 of 2005:

2. The plaintiff filed O.S.No.32 of 2003 before the Sub Court, Dharmapuri, (subsequently renumbered as O.S.No.131 of 2004 on the file of Additional District Court, Dharmapuri) against the defendants, seeking recovery of a sum of Rs.1,70,000/- and also a relief of partition, seeking 1/3rd share of the plaintiff in the suit properties to be declared. The suit property is a lodge being run in the name and style of “Sumathi lodge” and “Shanmuga lodge”.

3. It is the case of the plaintiff that the suit property was purchased in the joint names of the plaintiff, the 1st defendant and one Shanmugam, in and by a sale deed dated 03.03.1984. The plaintiff further stated that the 1st defendant was appropriating the rental income from the said lodges right



A.S.Nos.372,749 of 2005 and 749 of 2008

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from March 1989 & that the 1st defendant had taken on lease the 1/3rd share of the plaintiff, in respect of which rents to Rs.1,70,000/- had not been paid. Despite the plaintiff issuing a notice on 05.10.2002 calling upon the 1st defendant to settle the arrears and also divide the suit property, the 1st defendant did not choose to reply to the said notice. The said notice which was followed up with another notice dated 19.11.2002, which was received by the 1st defendant on 21.11.2002. Despite the service of the second notice also, the 1st defendant did not send any reply. Defendants 2 to 4 are the legal heirs of the other co-owner of Mr. Shanmugam who had died before the institution of the suit. The plaintiff was therefore constrained to file the suit.

4. The 1st defendant filed a written statement independently. The defendants 2 and 3 filed a separate written statement. The 4th defendant chose to remain exparte.

5. Before the Trial Court, the plaintiff examined himself as P.W.1 and Exs.A1 to A7 were marked on his side. On the side of the defendants, the 1st and 2nd defendants examined themselves as D.W.1 and 2 respectively



A.S.Nos.372,749 of 2005 and 749 of 2008

and Exs.B1 to B19 were marked.

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6. The Trial Court on appreciation of the oral and documentary evidence adduced by the parties, came to the conclusion that the plaintiff was entitled to a 50% share in Sumathi lodge alone and the remaining 50% belonged to the 1st defendant. In so far as Shanmuga lodge, it was held that the entire lodge belonged to Late Shanmugam. The Trial Court held that the 1st defendant was liable to pay a sum of Rs.1,70,000/- to the plaintiff and granted relief as prayed for by the plaintiff in this regard. In so far as relief of partition, the Trial Court found that the plaintiff was not entitled to the relief of partition, much less 1/3rd share in the suit property and consequently dismissed the suit. Incidentally, the Trial Court also found that the suit is bad for partial partition and also non-joinder of necessary parties.

7. The 1st defendant aggrieved by the decree granted against him, directing him to pay a sum of Rs.1,70,000/- to the plaintiff has filed the above A.S.No.749 of 2005. Similarly, the plaintiff aggrieved by the relief of partition being negated, has filed A.S.No.372 of 2005.



A.S.Nos.372,749 of 2005 and 749 of 2008

8. Thus, it can be seen that two of the three Appeals now before this Court viz., A.S.No.372 of 2005 and 749 of 2005 arise from the judgment and decree in O.S.No.131 of 2004 (on the file the Additional District Judge, Dharmapuri (originally O.S.No.32 of 2003 before the Sub Court, Dharmapuri).

9. The main ground of challenge raised by the 1st defendant in so far as the money decree passed against him, are that the Trial Court having dismissed the suit for partition, ought not have granted the relief of recovery of arrears of rent in respect of the same subject matter of property. The 1st defendant also contended that there was no rent actually paid and it was only a book adjustment agreed to between the plaintiff and the 1st defendant.

10. The challenge to the judgment and decree by the plaintiff was on the following grounds:

(A) Admittedly, the suit property was purchased by three owners under a registered sale deed and therefore, the Trial Court ought to have decreed the 1/3rd share of the plaintiff.



A.S.Nos.372,749 of 2005 and 749 of 2008

(B) The finding of the Trial Court that the plaintiff was entitled to only 1/4th share in view of the partnership agreement, where he had contributed only 25% of the capital was erroneous.

(C) The Trial Court failed to see that the Arbitration Award was unregistered and the Trial Court ought not to have relied upon the same, especially in view of Sec.17 (1) (e) of the Registration Act, 1908.

(D) The Trial Court ought to have seen that the suit was not bad for partial partition and non-joinder of proper parties.

A.S.No.749 of 2008

11. This Appeal arises from the judgment and decree passed in O.S.No.13 of 2008, before the Additional District Judge, Dharmapuri (originally instituted as O.S.No.52 of 2007 on the file of District Court, Krishnagiri). The suit was filed for partition by the mother and two sons as plaintiffs against two sons(defendants 1 and 2) and daughter (3rd defendant) and the tenant who was in enjoyment of the first item of the suit property (4th defendant). The first item of the suit property was a spinning mill situated in Adhiyamankottai Village, Dharmapuri district. The second item of the suit property is Shanmuga lodge, which is the subject matter of the other two suits (now in Appeals A.S.No.749 of 2005 and 372 of 2005).



A.S.Nos.372,749 of 2005 and 749 of 2008

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Items three to seven are various properties situated in Annasagaram Pillayar Kovil Street, Annasagaram Village, Dharmapuri district. Item eight is a vacant piece of land situated in Bajanai Kovil street, Annasgaram Village. Item nine is one another property which is a thatched roof house situated at No.41, Bajanai Kovil Street. The case of the plaintiffs in the said suit was that the above nine items were joint family properties being enjoyed in common by the plaintiffs and defendants 1 to 3 and therefore the plaintiffs were entitled to 1/6th share each, in all the nine items of the suit properties.

12. The 1st defendant who is none else than the plaintiff in O.S.No.131 of 2004 and the appellant in A.S.No.372 of 2005 filed his written statement contending that even though the relationship between the parties was admitted, only 1/3rd share of the first item of the suit property was available for partition and not the entire property. It is also contended by him that items four and eight were purchased by him, in his name and they were not available for partition. In so far as the second item being Sumathi lodge, the 1st defendant contended that the property was purchased in three names and he was entitled to 1/3rd share in respect of



A.S.Nos.372,749 of 2005 and 749 of 2008

which he has already instituted O.S.No.131 of 2004. In so far as the seventh item of the suit schedule property, the 1st defendant contended that the entire property belonged to the 2nd defendant who is the appellant in A.S.No.749 of 2005.

13. Before the Trial Court, the 2nd plaintiff was examined as P.W.1 and the 1st defendant was examined as D.W.1. On the side of the plaintiffs, Exs.A1 to A16 were marked and on the side of the defendants, Ex.B1 to B9 were marked.

14. The Trial Court, came to the conclusion that all the properties were belonging to the joint family of Late Munusamy Mudaliar and decreed the suit as prayed for.

15. Aggrieved against the said decree granting 1/6th share each to the plaintiffs, the 1st defendant has filed the above Appeal in A.S.No.749 of 2008, on the grounds that the plaintiffs failed to even establish that the properties were ancestral joint family properties, by adducing necessary documentary evidence. The Trial Court, according to the 1st defendant had



A.S.Nos.372,749 of 2005 and 749 of 2008

even failed to see that the 2nd plaintiff himself had admitted that in respect of second item, he was only a tenant. The findings of the Trial Court was challenged on the ground that there cannot be any presumption as to joint family properties when the properties stood in the individual names of the members of the family, who were living separately.

16. Heard Mr.P.Mani, learned counsel appearing for the appellant in A.S.No.372 and 749 of 2008 and for the sole respondent in A.S.No.749 of 2005 and Mr.S.Ilamvaludhi for the respondents 2 and 3 in A.S.No.372 of 2005 and Mr.R.Thirugnanam for the respondents 2 and 3 in A.S.No.749 of 2008.

17. At the outset, this Court would like to record the fact that in A.S.No.749 of 2005, the sole appellant i.e., Mr.Murali has not appeared despite being served with notice from this Court, regarding hearing of the Appeal.

18. The common thread in all the three Appeals is item two of the suit schedule property, which is “Sumathy lodge”. There is no dispute with



A.S.Nos.372,749 of 2005 and 749 of 2008

regard to the relationship between the parties. The appellants in A.S.No.372 of 2005 and 749 of 2005, attack the judgment and decree in both the suits on the ground that when the property had been purchased in three individual names, the Court should draw a presumption, in the absence of any material to the contrary in the sale deed, that each of the three purchasers had a 1/3rd undivided right and interest in the subject property. The learned counsel also invited the attention of this Court to the Arbitration award dated 31.03.1989, marked as Ex.B2 and vehemently contended that the Arbitration award has to be compulsorily registered and admittedly, the said Arbitration award having not been registered, the same cannot be filed and relied upon by any of the parties as a legal piece of evidence. Learned counsel also took us through the provisions of the Indian Registration Act, especially Sec.17. The counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ramesh Kumar and another Vs. Furu Ram and another***, reported in ***(2011) 8 SCC 613***, to fortify his contentions that the Arbitration award being unregistered, should not be admitted in evidence, leave alone being considered by the Trial Court for giving any findings in so far as the relief sought for in the suit.



A.S.Nos.372,749 of 2005 and 749 of 2008

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19. In so far as the other Appeal, A.S.No.749 of 2008, learned counsel for the appellant contended that burden of proof was heavily on the plaintiffs to establish that the properties were ancestral in nature and that they were available for partition. According to him, the Trial Court proceeded on mere surmises and conjunctures to hold that all the properties were joint family properties and therefore held that the plaintiffs were entitled to 1/6th share each in the suit properties. He also further contended that some of the properties were infact purchased in individual names of the family members and that being the position, it was incumbent on the plaintiffs to demonstrate before the Court that the said properties were purchased only out of joint family nucleus or funds, before becoming entitled to a decree. The Trial Court, according to the counsel for the appellant, has not given any reasons for holding that the properties are all joint family properties and therefore were available for partition.

20. Learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court in ***Makhan Singh (D) by Lrs Vs. Kulwant Singh***, reported in ***AIR 2007 SC 1808*** and ***Sameer Kumar Pal and another Vs. Sheikh Akbar and Others***, reported in ***(2010) 11 SCC 777***,



A.S.Nos.372,749 of 2005 and 749 of 2008

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regarding his contentions that there can be no presumption of joint family property, merely because a joint Hindu family existed. The burden is always upon the person who asserts that the property is a joint family property to prove there was nucleus available with which the joint family property could have been acquired, thereby resulting in a presumption of the property being joint. Once such presumption was made available to be drawn by the court, then the onus would shift on the persons who claims that it is a self acquired property, to prove that the property was purchased with his own funds and not out of any joint family nucleus.

21. Learned counsel appearing for the respondents 2 and 3 (A.S.No.749 of 2008) and the learned counsel appearing for the respondents 2 and 3 (A.S.No.372 of 2005) supported the findings of the Trial Court and contended that the findings did not warrant any interference in the Appeals and prayed for dismissal of the Appeals.

22. In so far as the subject matter of the suit viz., O.S.No.131 of 2004, with regard to the money decree passed against the 1st defendant, in respect of which A.S.No.749 of 2005 has been preferred, the appellant, Mr.Murali,



A.S.Nos.372,749 of 2005 and 749 of 2008

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chose to file the appeal through a counsel, who subsequently, withdrew his appearance. Thereafter, this Court directed notice to be served in person on the appellant and despite service of notice, the appellant has not chosen to appear and make his submissions in his appeal.

23. In any event, the judgment passed by the Trial Court having been challenged by the plaintiff also in A.S.No.372 of 2005, this Court has gone through the findings of the Trial Court with regard to the money decree passed against the 1st defendant. The fact that the 1st defendant was a lessee and had agreed to pay rents to the plaintiff is evidenced by lease agreement as well as rental receipts.

24. Infact, even in the written statement, the 1st defendant/appellant in A.S.No.749 of 2005 has not denied the existence of the lease agreement. However, he only contended that the lease was only for the purpose of adjustment of monies and there was actually no liability on him to pay rents. The Trial Court has rightly found that the 1st defendant has not established his defence and decreed the suit directing the 1st defendant/appellant to pay a sum of Rs.1,70,000/- being the arrears of rent.



A.S.Nos.372,749 of 2005 and 749 of 2008

25. We have perused the following documents:

(i) Ex.A6-(O.S.No.131 of 2004) Sale deed dated 03.03.1984, under which the lodge property was purchased in three names.

(ii) Ex.B1-(O.S.No.131 of 2004) dated 27.04.1985, which is a partnership deed between the appellant (A.S.Nos.372 and 749 of 2008) and appellant in (A.S.No.749 of 2005) and one Shanmugam.

(iii) Arbitration award Ex.B2 and Ex.B17.

(iv) Order in Arbitration Petition No. 1 of 1991 dated 16.04.1991 Ex.B18.

(v) Ex.B1-(O.S.No.52 of 2007) partition deed 04.06.1981 dated between Munusamy Mudaliar and Kandasamy Mudaliar.

26. On going through the partnership deed, the following admitted position come to light:

(i) Even before the partnership deed came into existence on 22.02.1981, the parties were already doing business under an arrangement dated 14.04.1980 and the firm was formed only for continuing the business in future.



A.S.Nos.372,749 of 2005 and 749 of 2008

(ii) the partners agreed that the profits and losses will be shared/borne equally.

(iii) the firm was duly registered on 03.03.1981.

27. On a perusal of the Arbitration award and the order in Arbitration Petition No.1 of 1991, what emerges is that the partners submitted their disputes to be resolved by Arbitration and an award came to be passed to the effect that the appellant in A.S.No.372 of 2005 and 749 of 2008 was entitled only to 25% share and the appellant in A.S.No.749 of 2005 was entitled to 25% share and the remaining 50% belong to the third partner, Shanmugam. The award was duly presented before the competent Court for ratification in Arbitration Petition No.1 of 1991 and there being no contest, the Court also allowed the said petition. Now, coming back to the argument of the learned counsel for the appellant, we find that it is two fold. Firstly, the award being unregistered, the Court ought not to give any credence to the same and secondly, the property having been purchased in three names jointly and there being no indication in the said sale deed with regard to the proportion in which the three purchasers had purchased/contributed, it can only be presumed that each of them was



A.S.Nos.372,749 of 2005 and 749 of 2008

entitled to an equal 1/3rd share.

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28. In so far as the first contention, this Court finds that though the argument appears to be attractive at first blush, it does not merit any consideration from the reasons assigned below:

(i) Admittedly, the Arbitration Petition was filed before the Sub Court, Dharmapuri seeking for a decree to be passed in terms of the award. It is to be noted that Mr.Munusamy Mudaliar, the father of the appellant in A.S.No.372 of 2005 and 749 of 2008 was one of the Arbitrator. The appellant in A.S.No.372 of 2005 and 749 of 2008, Mr.Elangovan was the 2nd respondent in the said Arbitration Original Petition proceedings before the Sub Court. Despite service of notice, neither he nor the other respondents chose to appear to contest the proceedings and ultimately the Sub Court granted a decree as prayed for and thus a decree came to be passed in terms of the award. This Court has also gone through the arbitration award which has also become a decree of a competent court. Sec. 17 of the Registration Act deals with documents which are required to be compulsorily registered. Sec.17(2) are exceptions to Sec.17(1). There is no quarrel with regard to the settled position of law that any document that



A.S.Nos.372,749 of 2005 and 749 of 2008

purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property or in value equal to Rs.100/- and upwards has to be compulsorily registered in terms of the Registration Act, 1908.

29. Sec. 17(1) (e) requires non-testamentary instruments transferring or assigning any decree or order of a Court or any award where, such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property or in value equal to Rs.100/- and upwards has to be compulsorily registered in terms of the Registration Act, 1908.

30. In this regard, the counsel for the appellant placed emphasis on these provisions to buttress his argument that the award was not admissible in evidence for want of registration. The judgment of the Hon'ble Supreme Court that was relied on for this purpose viz., ***Ramesh Kumar and another Vs. Furu Ram and another*** reported in ***2011 8 SCC 613*** was a



A.S.Nos.372,749 of 2005 and 749 of 2008

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case where the Hon'ble Supreme Court found that Clause 4 of Sub-Section 2 of Sec.17 of the Registration Act, 1908 excludes only decrees or orders of Court and did not exclude awards of Arbitrator purported or operated to create, declare any right title or interest in any immovable property of the value of more than Rs.100/- and finally held that such awards had to be compulsorily registered.

31. On the facts of the said case, the Hon'ble Supreme Court held that an unregistered award could neither be admitted in evidence nor could there be a decree passed in terms of the said award, finding that the award passed in that case had declared rights of the parties and therefore for want of registration was fatal in the said case.

32. The Hon'ble Supreme Court in the case of *N.Khosla Vs. Rjalakshmi (dead) and Ors*, reported in *AIR 2006 SC 1249*, relating to the requirement of an award to be registered, held that when the award simply recognized the existing rights of the parties and declared a pre-existing right, it would not amount to creating any right or extinguishing any right in present or in future and held that such an award does not require to be



A.S.Nos.372,749 of 2005 and 749 of 2008

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registered. The award in the present case is also one similar award, where no new right has been declared and the only existing arrangement with regard to the sharing of the properties based on the capital invested in the partnership firm was confirmed by way of the award. The award was also duly presented before the competent court and a decree was also passed in terms of the said award.

33. We do not find any infirmity with regard to the Court recognizing the award and passing a decree. The ratio laid down in ***Khosla's*** case would squarely apply to the facts of the present case and the award which is the subject matter of these appeals, not declaring any new right or interest of the parties concerned, does not require registration and for want of registration, the award cannot be termed as inadmissible in evidence.

34. The next contention raised by the learned counsel for the appellant that the sale deed having been purchased in the joint names of three individual persons, the presumption can only be that each of them was entitled to 1/3rd share. We have seen Exs.A14 and A.15, two sale deeds dated 03.03.1984 and 10.03.1984. Even in the said sale deeds, the



A.S.Nos.372,749 of 2005 and 749 of 2008

purchasers have been only described specifically as partners of M/s. Sumathi Textiles. The sale deeds do not indicate the proportion in which the sale consideration was paid by the purchasers. However, it is seen from the partnership deed, the conduct of the parties that both the lodges were treated only as properties of the firm. Only in that connection disputes arose and the same was referred to Arbitration. The Arbitrators also found that the three parties concerned decide to dissolve the firm, M/s. Sumathi Textiles and also redress their grievances with regard to their respective shares and accordingly had entered into an Arbitration agreement dated 01.02.1989 in furtherance of which the three Arbitrators enquired into the matter, visited the properties personally, inspected the books of accounts and in and by an oral award dated 30.03.1989 had found that Mr.Shanmugam one of the partners was entitled to 50% and Mr.Elangovan(appellant in A.S.Nos.372 of 2005 and 749 of 2008) and Mr.Murali (Appellant in A.S.749 of 2005) were entitled to remaining 50% with each of them being entitled to 25%.

35. The award, infact was also passed taking into account the terms of the partnership business between the parties. The appellant had ample



A.S.Nos.372,749 of 2005 and 749 of 2008

opportunity to question the award if he really had any grievances.

However, despite service of notice on him, he did not even choose to contest Arbitration O.P.No.1 of 1991 before the Sub Court, Dharmapuri. Thereafter, it was not open to the appellant to put forth a different case altogether, falling back on the purchase made vide Exs.A14 and A15 and claim that he is entitled to 1/3rd share and not 25%.

36. The judgment of the Honble Supreme Court in ***Makhan Singh (D) by Lrs Vs. Kulwant Singh***, reported in ***AIR 2007 SC 1808***, has no relevance to the facts of the present case.

37. We have already found that the sale deed was in the names of three individual persons. The parties had disputes which they submitted to resolution by way of Arbitration and an award came to be passed declaring their respective rights in terms of their capital investment in the firm. The parties have also acknowledged the fact that they have been doing business jointly for several years.



A.S.Nos.372,749 of 2005 and 749 of 2008

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38. The Court below has rightly found that the appellant is not entitled to seek for the relief of partition and rightly dismissed the suit in so far as the relief of partition is concerned, while granting the relief of recovery of Rs.1,70,000/- in his favour on account of arrears of rent receivable from the appellant in A.S.No. 749 of 2005.

39. Coming to the other Appeal in A.S.No.749 of 2008, the arguments of the counsel for the appellant with regard to the Trial Court holding that all the properties are joint family properties and thereby the plaintiffs being entitled to equal 1/6th share, in the absence of any iota of evidence produced by the plaintiffs, appears to be well founded.

40. The appellant as 1st defendant has filed the partition deed dated 04.06.1981 under Ex.B1 under which his father, Munusamy Mudaliar became entitled to certain properties. The plaintiffs themselves have filed sale deeds in the name of the 1st and the 2nd defendant. Except the *ipse dixit* of the plaintiff, by way of oral evidence, there is absolutely no credible evidence let in by the plaintiffs to show that all the suit properties were purchased out of joint family nucleus and thereby were available for



A.S.Nos.372,749 of 2005 and 749 of 2008

partition amongst the plaintiffs and defendants 1 to 3.

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41. The Trial Court has proceeded to presume that all the properties are joint family properties despite the plaintiffs not letting in any documentary evidence to establish the factum of purchase of the properties from joint family nucleus or funds that were available, inspite of a specific defence raised by the 1st defendant that the properties viz., items 2,4 and 8 were belonging only to him and they were not acquired out of any joint family funds or nucleus. The relevant sale deeds have also been exhibited with regard to the properties standing in the names of the individual members of the family. The Trial Court has clearly fell in error in holding that all the suit properties are available for partition, disregarding concrete documentary evidence let in by the appellant as 1st defendant with regard to items 1,2 4 and 8. No doubt, suit item No.3 was purchased in the name of the 2nd plaintiff-Sivaraj and suit item No.7 was purchased in the name of the 2nd defendant-Murali. However, both the 2nd plaintiff and 2nd defendant have not filed any appeal against the decree passed in O.S.No.52 of 2007. Only the appellant, the 1st defendant in the suit has filed the appeal in so far as the items 1,2,4 and 8. The counsel for the appellant also fairly conceded



A.S.Nos.372,749 of 2005 and 749 of 2008

that in respect of other properties, the appellant does not have any issue and the decree of 1/6th each as granted by the Trial Court can be confirmed.

42. Under the partition deed dated 04.06.1981, Late Mr.Munusamy Mudaliar became entitled to suit items No.5,6 and 9.

43. In so far as the 1st item of the suit property, it is specific case of the 1st defendant that the property was purchased in the joint names of the father, Munusamy Mudaliar and defendants 1 and 2 and therefore the property available for partition was only the 1/3rd share of their father Munusamy Mudaliar and not the entire property. The Trial Court, clearly misdirected itself and assuming that the property would have been purchased out of joint family funds, in the absence of any evidence adduced by the plaintiffs, proceeded to grant a decree of 1/6th each to the plaintiffs. The plaintiffs would be entitled to a 1/6th share in 1/3rd of item 1 and not the entirety of item 1 suit property.



A.S.Nos.372,749 of 2005 and 749 of 2008

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44. Coming to second item of suit property, this property has been the subject matter of the dispute in the other two Appeals. Item two of the suit schedule property was purchased in three individual names who were even described as partners of a partnership firm, M/s. Sumathi Textiles. By no stretch of imagination, this property can be held to be a joint family property. The Trial Court has again fell in error granting a decree for partition in respect of item two of the suit schedule property. Similarly, items 4 and 8 of the suit schedule properties are properties that have been purchased in the name of the 1st defendant, the appellant in A.S.No.372 of 2005 and 749 of 2008. The sale deeds have been exhibited before the Court and there is absolutely no evidence adduced on the side of the plaintiffs to show that these two items of the properties were purchased only out of joint family funds. In the absence of such evidence, there is absolutely nothing to warrant an inference that these two items of properties belong to the joint family and were consequently available for partition. The Trial Court has again erred in granting a decree for partition in respect of these two items as well.



A.S.Nos.372,749 of 2005 and 749 of 2008

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45. The fact that the 1st plaintiff in O.S.No.13 of 2008 on the file of the Additional District Judge, Dharmapuri died pending the above appeal, her share would enure to the benefit of her children viz., four sons and daughter, who are all parties in the present appeal. In view of the findings and discussions herein above, the decree for partition in respect of items 3,5,6,7 and 9 is modified to include the share of Late Unnamalai Ammal, thereby enlarging the share of her legal heirs viz., the appellant and respondents 2 to 5 to a $\frac{1}{5}$ th share each; modifying the decree in respect of item 1 to $\frac{1}{6}$ th share in $\frac{1}{3}$ rd share and factoring the demise of Late Unnamalai Ammal, the plaintiffs 2 and 3 would be entitled to a $\frac{6}{90}$ th share $(\frac{1}{6} * \frac{1}{3}) + (\frac{1}{5} * \frac{1}{18})$. Similarly, the 3rd defendant would be entitled to a $\frac{6}{90}$ th share. Defendants 1 and 2 would each be entitled to a $\frac{36}{90}$ th ($\frac{7}{8} + \frac{1}{5}$ th of $\frac{1}{18}$); In so far as items 2,4 and 8, the decree of the Trial Court is required to be set aside.

46. In fine, the Appeal in A.S.No.749 of 2008 is partly allowed setting aside the decree in respect of items 2,4 and 8, modifying the decree in so far as items 3,5,6,7 and 9, granting a $\frac{1}{5}$ th share to each of the plaintiffs and modifying the decree in so far as suit item 1 granting a $\frac{6}{90}$ th



A.S.Nos.372,749 of 2005 and 749 of 2008

share to each of the plaintiffs. A.S.No.372 of 2005 and 749 of 2005 are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J) & (P.B.B.J)
18.04.2023

Internet : Yes
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1.The Additional District Judge,
Dharmapuri

2.The Section Officer
VR Section, High Court, Madras



WEB COPY



A.S.Nos.372,749 of 2005 and 749 of 2008

S.S.SUNDAR, J.,
and
P.B.BALAJI, J
kpr

Pre-delivery judgment in
A.S.Nos.372 of 2005, 749 of 2005 and
749 of 2008

18.04.2023