



A.S.No.395 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

A.S.No.395 of 2015

1.K.Ashok Kumar
2.K.Saravanan
3.K.S.Marudavanan

... Appellants

Vs.

1.R.Kapali
2.Saroja Ammal
3.Bhanumathi
4.Rani
5.Baby
6.Sujatha
7.Radhika
8.R.Rajalakshmi
9.R.Sivaguru

... Respondents

*[Respondents 3 to 7 are not necessary
parties in this Appeal]*

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 10.03.2015 in O.S.No.186 of 2010 on the file of the Principal District Court, Cuddalore.

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For Appellants	:	Mr.R.Gururaj
R1	:	Died
R2	:	Refused
For R3 to R7	:	Dispensed with vide (JR (AS)) order dt. 24.01.2023
For R8 & R9	:	No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

Plaintiffs in the suit in O.S.No.186 of 2010 on the file of the Principal District Court, Cuddalore, are the appellants in the above Appeal.

2.The appellants as plaintiffs filed the suit in O.S.No.186 of 2010 on the file of the Principal District Court, Cuddalore, for partition and separate possession of 3/9 share in suit B-Schedule properties and for consequential reliefs.



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3.It is the case of appellants/plaintiffs in the plaint that the defendants 1 and 2 are their father and mother respectively; defendants 3 to 7 are their sisters; defendants 8 and 9 are the purchasers of property from defendants 1 and 2. In the plaint, it is stated that all the properties except Item No.22 are purchased either by father of 1st defendant, namely Rathinasami Asari, or by defendants 1 and 2. It is the case of plaintiffs in the plaint that plaintiffs and defendants 1 to 7 constitute a joint family. However, it is admitted that the properties were all purchased by Rathinasamy Asari, the father of 1st defendant, on various times, either in the name of Rathinasamy Asari or in the name of 2nd defendant or 1st plaintiff. It is stated in the plaint that suit B-Schedule properties were treated, enjoyed and dealt with as joint family properties and therefore, stating that the plaintiffs are entitled to have 1/9 share each in all the suit properties, the plaintiffs came forward with the suit.

4.Surprisingly, the 1st defendant, in his written statement, has indirectly admitted the case of plaintiff. It is the case of 1st defendant that defendants 8 and 9, by misrepresentation, obtained the sale deeds from



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defendants 1 and 2 under the pretext that it is a mortgage deed. Therefore, a new case is pleaded by 1st defendant that defendants 8 and 9 have fraudulently created the sale deeds.

5.In the written statement filed by defendants 8 and 9, they have specifically taken a stand that the suit is engineered by 1st defendant, who is the father of plaintiffs, to get illegal gratification, after selling the property in favour of defendants 8 and 9. The case of contesting defendants is that the properties are the separate properties of defendants 1 and 2 and that therefore, the plaintiffs are not entitled to any share in any of the properties sold in favour of defendants 8 and 9 by 1st plaintiff, 1st defendant and 2nd defendant. It is stated that 1st plaintiff along with defendants 1 and 2 executed sale deed dated 18.02.2008 and that defendants 1 and 2 executed Exs.B20 and B21 dated 18.02.2008 in favour of 9th defendant. It is further stated that defendants 1 and 2 executed a sale deed in favour of 8th defendant under Ex.B23 dated 18.02.2008.



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6.The trial Court, on the basis of pleadings, framed the following

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- i. *“Whether the suit properties are joint family properties of Rathinasamy Asari, Ashok Kumar (1st plaintiff) and 2nd defendant Saroja Ammal ?*
- ii. *Whether the plaintiffs have got 3/9 shares in the suit B Schedule properties ?*
- iii. *Whether the sale deeds dated 18.02.2008 are valid and binding upon the plaintiffs ?*
- iv. *Whether the 8th and 9th defendants have been in absolute, exclusive possession and enjoyment of the suit properties on and from 18.02.2011 ?*
- v. *Whether the Court fees have to be paid u/s.37(1) of the T.N.C.F.Act over the market value of the properties ?*
- vi. *Whether the suit has been properly valued and correct court fees paid ?*
- vii. *What other reliefs, the plaintiffs are entitled to ?”*

7.Before the trial Court, 3rd plaintiff examined himself as P.W.1.

Exs.A1 to A20 were marked on behalf of plaintiffs. 1st defendant and 9th defendant examined themselves as D.W.1 and D.W.2 respectively. Two others were also examined as D.W.3 and D.W.4. Exs.B1 to B38 were



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marked on the side of defendants.

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8.The trial Court found that defendants 8 and 9 and other alienees are in possession of the properties and the plaintiffs and defendants are not in possession of the properties and therefore, the suit paying fixed Court Fees under Section 37(2) of Tamil Nadu Court Fees and Suits Valuation Act, 1965, is not maintainable. On the issue whether the suit properties are joint family properties, the trial Court, after considering the evidence in extenso, found that the properties are not joint family properties, but self-acquired properties of defendants 1 and 2. It is admitted that the properties are either purchased by Rathinasamy Asari or by 1st defendant either in the name of 1st defendant or in the name of his wife, the 2nd defendant or 1st plaintiff. Since the documents are standing in the name of defendants 1 and 2, the trial Court held that the properties are self-acquired properties of defendants 1 and 2 and that therefore, the plaintiffs are not entitled to any share during the lifetime of defendants 1 and 2. The case of plaintiffs that the properties were treated as joint family properties by defendants 1 and 2, was disbelieved by the trial Court and the trial Court held that defendants 8 and



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9 are the owners who are in exclusive possession and enjoyment of the properties after 18.02.2008. The sale deeds in favour of defendants 8 and 9 dated 18.02.2008 are held to be valid and binding on the plaintiffs.

9. Aggrieved by the judgment and decree of the trial Court, the plaintiffs have preferred the above Appeal.

10. Learned counsel appearing for the appellants/plaintiffs submitted that the trial Court failed to see that all the properties were held, treated and enjoyed as joint family properties and that the sale deeds executed by defendants 1 and 2 in favour of defendants 8 and 9 are not for legal necessity or for valid consideration. Learned counsel further stated that the sale deeds executed by defendants 1 and 2 are not valid, as the properties are joint family properties.

11. This Court, having regard to the arguments of learned counsel appearing for the appellants and the issues framed before the trial Court, finds that the following points arise for consideration in this Appeal :



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- i. *Whether the suit properties are joint family properties of plaintiffs and defendants 1 to 7 ?*
- ii. *Whether the plaintiffs are entitled to any share in any of the properties?*

12.It is seen from the plaint that only one item of property, namely, Item No.22 is the property stated to have been purchased by the 1st defendant in the name of 1st plaintiff by a document dated 16.07.1969. However, in the plaint, there is no reference to the sale of Item No.22 by 1st plaintiff along with defendants 1 and 2. However, this Court finds that the 1st plaintiff has joined with defendants 1 and 2 to sell the property purchased in the name of 1st plaintiff.

13.All other items were, admittedly, properties purchased by Rathinasamy Asari, the father of 1st defendant in his name or in the name of 2nd defendant. Absolutely, there is no pleading in the plaint to the effect that the suit properties were ancestral properties in the hands of Rathinasamy Asari. In the absence of any specific plea that Rathinasamy Asari had joint family assets in his hands, the properties purchased by Rathinasamy Asari



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cannot be presumed to be the properties of joint family. Even assuming the existence of joint family, it cannot be presumed that the properties are all ancestral. After the advent of Hindu Succession Act, 1956, the self-acquired property of a male will devolve only on his Class-1 heirs according to Section 8 of Hindu Succession Act, 1956. In the absence of a clue either from pleading or evidence about existence of any joint family nucleus in the hands of Rathinasamy Asari at the time of commencement of Hindu Succession Act, 1956, this Court cannot presume existence of joint family or ancestral properties in the hands of father Rathinasamy Asari. The father Rathinasamy Asari died only after 1956. All the acquisitions of Rathinasamy Asari or the properties held by him as self-acquired will go to his Class-1 heirs according to Section 8 of Hindu Succession Act, 1956. The 1st defendant, being the only son, will get the properties absolutely. Therefore, the plaintiffs are not entitled to any right in any of the suit properties. The same will be the position in respect of any property acquired in the name of 2nd defendant. During lifetime of defendants 1 and 2, plaintiffs cannot claim any right in any of the properties.



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14.The case of plaintiffs, even as per the plaint averments, would indicate that the plaintiffs have admitted the character of suit properties as self-acquired either by Rathinasamy Asari or by defendants 1 and 2. The details of acquisition given in the plaint would also indicate that the properties were acquired either by Rathinasamy Asari or by defendants 1 and 2. Even in the plaint, it is stated that the 1st defendant purchased the properties not only in his name, but also in the name of his wife, the 2nd defendant. In such circumstances, this Court is unable to find a scrap of paper to support the case of plaintiffs regarding the character of suit properties as joint family.

15.Recently, we have considered the issue and distinguished the properties which are described as ancestral, joint family or coparcenery, in the case of *Shanthalakshmi v. Muthusami Gounder (died) & others* [A.S.No.13 of 2009, dated 21.03.2023]. The relevant portion of the judgment is extracted hereunder :

“12.Before going into the issues this Court finds that the



parties have some difficulty in understanding the character of properties. The specific averments in the plaint as well as in the written statement filed on behalf and defendants 1 and 2 indicate that the parties as well as the counsels appearing for them before the Trial Court have some confusion in understanding the character of suit properties even on the admitted facts. Hence, this Court is inclined to discuss position prior to Hindu Succession Act, 1956 and post 1956 Act. Before Hindu Succession Act, 1956, when a male member dies, his property will devolve on his son, grandson and great grandson and they acquire an interest in coparcenary property from the moment of their birth. On the death of a coparcener his interest in the coparcenary property pass on to other coparceners by survivorship.

13. After 1956, section 6 deals with the devolution of property of a male Hindu having undivided interest in a coparcenary [joint family]. Section 8 deals with devolution of interest in respect of properties of a male Hindu who die after 1956 Act. As per section 6, the undivided interest of coparcenary of a male Hindu devolves on other coparceners by survivorship if he has no female heirs.



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14.Going by Law Lexicon by P.Ramanatha Aiyar, the term 'ancestral' is derived from the word 'ancestor'. One who has preceded another in a direct line of descent or a lineal ascendant is normally called an ancestor. It is well accepted that the term 'ancestor' differs from the term predecessor. It has been judicially interpreted that the term ancestor in its ordinary and natural meaning connotes a progenitor. In Hindu Law, all properties which a man inherits from a direct male ancestor, not exceeding third degree higher than himself is ancestral property. Therefore, the term ancestral property would also mean that the property derived from a father or a grandfather or great grandfather. In other words, a property inherited from a direct male ancestor is also an ancestral property. However, a coparcenary is a property shared by male members of joint family where there is unity of title, possession and interest. A coparcenary property can also be called as ancestral property. However, every ancestral property need not be a coparcenary property after the advent of Hindu Succession Act, 1956. Under section 8 of Hindu Succession Act, the self acquired property of a male Hindu after his death devolves on his class I heirs namely widow, son, daughter and mother. The property devolved on a son under section 8 may also be called as ancestral but it will be



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his absolute property. A Hindu Joint family is a larger body than a Hindu Coparcenery because a Joint Family consists of all persons lineally descended from a common ancestor and includes female heirs namely wife and daughter [before 1956 unmarried daughters] of the common ancestor.

15.A Full Bench of this Court in the case of Commissioner of Income Tax Vs. P.L.Karuppan Chettiar reported in AIR 1979 Mad 1, has considered the character of the properties inherited by a son from his divided father. The Hon'ble Full Bench of this Court that in a case where the joint family properties were divided between the father and his son in 1954 before the commencement of Hindu Succession Act, 1956, considered the character of separate properties of father who died after 1956. After the death of father, the separate properties which were allotted to the father in the 1954 partition, was held to be separate properties of son by virtue of Section 8 of the Hindu Succession Act. The view taken by the Full Bench of this Court was also upheld by the Hon'ble Supreme Court and was reiterated by the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. P.L.Karuppan Chettiar reported in 1993 Supp [1] SCC 580."



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16. In the absence of any document or evidence to show that the family was possessed of any ancestral nucleus, this Court is unable to accept the case of plaintiffs that the properties are joint family properties. Having regard to the nature of pleadings and the stand taken by the 1st defendant in the written statement, it appears that the suit has been engineered by the 1st defendant. Therefore, this Court finds that the plaintiffs are not entitled to any share in any of the suit properties. Accordingly, both the points raised in this Appeal are answered against the plaintiffs.

17. As a result, **this Appeal is dismissed with costs.**

(S.S.S.R., J.) (C.K., J.)
14.06.2023

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Internet : Yes

Index : Yes / No



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To

1. The Principal District Judge,
Cuddalore.

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

| *with a direction to return*
| *the records to the Court below,*
| *if any, forthwith*



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S.S. SUNDAR, J.
and
C.KUMARAPPAN, J.

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