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S.A.No.1058 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2023

PRONOUNCED ON : 21.03.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 1058 of 2007

&

M.P.No. 3 of 2007

1.Anjammal

2.Geetha

3.Sangeetha

4.Sarala

5.Minor Suguna

6.Minor Loganathan

... Appellants

Vs.

1.Thilagavathi

2.Suseela



S.A.No.1058 of 2007

3.V.Rajakumari

.... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.07.2005 passed in A.S.No.86 of 2004 on the file of the Principal Sub Court, Cuddalore in confirming the Judgement and Decree dated 08.10.2004 passed in O.S.No.316 of 2002 on the file of the Additional District Munsif Court, Cuddalore.

For Appellants : Mr. P.Mani

For Respondents : No Appearance
1 & 2

For Respondent 3 : Mrs. L.Sweety
for Mr. S.Ramesh Kumar.

JUDGMENT

The defendants are the appellants before this Court challenging the concurrent Judgement and Decree passed against them. The facts in brief are as follows and in order to easily appreciate the narration, the parties are referred to in the same rank as before the Trial Court, namely, the learned Additional District Munsif, Cuddalore in



S.A.No.1058 of 2007

O.S.No.316 of 2002.

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2. The above suit was filed by the plaintiffs for a declaration and injunction in respect of the two items of the property, namely, S.No.57/1 measuring 1 acre 73 cents and S.No.57/2 measuring 1 acre 47 cents, both of which have now been assigned S.No.37/4 of Nathapattu Village, Cuddalore Taluk.

3. It was the case of the plaintiffs that they are daughters of Muthiah Padayachi and the 1st defendant is the wife of their predeceased brother, Jayaraman and 2nd to 6th defendants are his children. The plaintiffs would put forward a case that Muthiah Padayachi did not possess any ancestral property and that he had been taking on lease lands and cultivating them and from out of the income earned from these lands, the 1st item of the suit property was purchased by Muthiah Padayachi under a registered sale deed dated 24.06.1958 from one Rajagopalan. It was their further case that the



2nd item of the property belonged to Muthiah Padayachi's mother, Anjalai Ammal, who settled it on him under a registered settlement deed dated 02.01.1970.

4. The plaintiffs would contend that their deceased brother had independent properties, which he had sold and earned over a sum of Rs.18,00,000/-. The plaintiffs would further contend that the said Jayaraman had died under a mysterious circumstances on 02.03.2002 and that there was no love last between him and his wife, the 1st defendant herein. The plaintiffs would further contend that the said Muthiah Padayachi was over 80 years old and unable to walk on account of his arthritis and his wife was also in the same state. The 1st plaintiff and the other plaintiffs were taking care of both of them.

5. It is the case of the plaintiffs that on 04.06.2000, Muthiah Padayachi had executed a registered settlement deed in which he had settled the suit property and other properties upon the plaintiffs. The plaintiffs would contend that after the demise of Jayaraman, the 1st



defendant started obstructing the plaintiffs' peaceful possession and enjoyment of the suit schedule property though she had no right to the same. Hence, left with no other alternative, they had come forward with the instant suit.

6. The 1st defendant had filed a written statement which was adopted by the other defendants in which at the outset they had denied the contentions of the plaintiffs that Muthiah Padayachi was not possessed of any ancestral property. On the contrary, it was the case of the defendants that Muthiah Padayachi's father Perumal Padayachi was in possession of ancestral property and it was from out of this ancestral property that the suit 1st item of property was purchased in the name of Muthiah Padayachi and the 2nd item in the name of Muthiah Padayachi's mother. Therefore, it was the contention of the defendants that the suit schedule property was not the self acquired property of Muthiah Padayachi and that Jayaraman had a half share in the above lands.



WEB COPY



S.A.No.1058 of 2007

7. The defendants had also contended that the settlement deed was not acted upon since they continued to be in possession of the property and at no point of time was possession given to the plaintiffs. As regards the death of her husband, the 1st defendant would submit that it was by reason of heart attack and allegations to the contrary are absolutely false. Therefore, they sought for the dismissal of the suit.

8. The learned Additional District Munsif, Cuddalore on perusing the pleadings had framed the following issues:

“1. Whether the suit first item of property was purchased by Muthaiya Padayachi by virtue of the sale deed dated 24.06.1958.

2. Whether the said Anjalai Ammal settled the second item of suit property in favour Muthaiya Padayachi by settlement deed dated 02.01.1978.

3. Whether Muthaiya Padayachi settled the suit



properties in favour of plaintiffs by settlement deed dated 04.06.2000.

4.Whether the suit first item of property was purchased out of surplus income from the ancestral properties?

5.Whether the suit properties were enjoyed as joint family properties?

6.Whether the plaintiffs are entitled to the relief of declaration of title?

7.Whether the plaintiffs are entitled to the relief of permanent injunction?

8.To what relief the plaintiffs are entitled to?"

9. The plaintiffs had examined three witnesses in support of their case with the 1st plaintiff adducing evidence as P.W.1, Muthiah Padayachi, settlor as P.W.2 and one Chinnathambi as P.W.3. The plaintiffs had marked Ex.A.1 to Ex.A.9 in support of their case. The



1st defendant had examined herself as D.W.1 and one Appasamy as D.W.2.

10. On evaluating the evidence on record, the learned Additional District Munsif, Cuddalore proceeded to decree the suit. The evidence that had propelled the learned Additional District Munsif, Cuddalore to decree the suit was the fact that on the execution of Ex.B.1 in favour of Muthiah Padayachi, Muthiah Padayachi became the absolute owner of the property and was therefore capable of dealing with the same.

11. The learned Additional District Munsif, Cuddalore further held that Ex.A.2 is a valid document since the property belongs to a Hindu Woman and under Section 14 of the Hindu Succession Act, it would become her absolute property. The learned Additional District Munsif, Cuddalore therefore decreed the suit as prayed for. To grant the decree of injunction, the learned Additional District Munsif,



Cuddalore observed that though Ex.A.7 to Ex.A.9 are post the filing of the suit, however, it can be taken as a collateral probability that the plaintiffs are in possession of the suit properties since the revenue authorities would grant patta only to the person who is in possession of the property. The learned Additional District Munsif, Cuddalore observed that the documents put forward on the side of the defendants, namely, Ex.B.3 to Ex.B.6 does not connect the payment of kist to the suit property.

12. Aggrieved by the said Judgement and Decree, the defendants had filed A.S.No.86 of 2004 on the file of the Principal Sub Court, Cuddalore. The learned Principal Subordinate Judge, Cuddalore, also confirmed the Judgement and Decree of the Trial Court by dismissing the appeal. Aggrieved by the same, the defendants are before this Court.

13. The above Second Appeal was admitted on the following



Substantial Question of Law:

“When acceptable evidence are available to show the existence of ancestral properties and joint family nucleus to purchase Items. No. 1 of the scheduled property under Ex.A1 sale deed, whether the Courts below are correct in holding that the suit property were the self acquired property of the plaintiff's father”

14. Mr.P.Mani, learned counsel appearing on behalf of the appellants / defendants would contend that the plaintiffs who come forward with a case that the properties were purchased from out of the self acquired funds of Muthiah Padayachi has failed to establish the same, more particularly, when the defendants have let in proof to show that there was an extent of 7 acres and 85 cents of agricultural land besides house sites which were ancestral and which would go to show that these lands would have yielded income which would have been the source for the purchase of the suit 1st and 2nd item of the



property.

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15. The learned counsel would draw the attention of the Court to the recital in Ex.A.3, settlement deed, wherein, Muthiah Padayachi himself has admitted that the properties are his ancestral properties. As regards the 2nd item of the property, he would submit that the plaintiffs have not let in any evidence to show that Anjalai Ammal had her own income to purchase the property. He would rely upon the Judgement of the Hon'ble Supreme Court reported in *AIR 1967 SC 1153 – Valliammai Achi Vs. Nagappa Chettiar and another*, to support of his argument that Perumal Padayachi, the father of Muthiah Padayachi had no right to execute the Will and bequeath the entire property in favour of his son, Muthiah Padayachi particularly when his grandson, Jayaraman, was very much alive at that relevant point of time.

16. The learned counsel would also rely upon the Judgement of



the Hon'ble Supreme Court reported in ***AIR 1967 SC 569*** –

Ammathayee alias Perumalakkal and another Vs. Kumaresan alias

Balakrishnan and others, to state that under the Hindu Succession

Law, gifting an ancestral immovable property is more circumscribed

than gifting movable property.

17. With reference to the onus of the proof, the learned counsel would rely upon the Judgement of this Court reported in ***2012 (1)***

CTC 128 – Malla Naicker @ Singari and others Vs. Jeeva (minor)

and others.

18. The learned counsel for the respondents / plaintiffs on the other hand would submit that with reference to the 2nd item of the property even if it is purchased from out of the own funds of the Hindu Joint Family funds and she was only a name lender it would not constitute a joint family property, as she gets absolute title to any kind of property standing to her name. The Hindu Woman is free to deal



with the property as the property held by the Hindu Woman under Section 14 of the Hindu Succession Act is her absolute property.

19. The learned counsel would submit that from a recital of Ex.A.3, it is clearly evident that the property is the absolute property of Muthiah Padayachi. The defendants having failed to prove that there were ancestral property which yielded income and that too surplus income for the purchase of the properties it does not lie in the mouth of the appellants to submit that the properties were purchased from joint family funds.

20. Heard the learned counsels on the either side and perused the records.

21. The specific pleadings of the plaintiffs in their plaint is that Muthiah Padayachi did not own any ancestral property and that he had



been cultivating the lands as a lessee and had earned income from such cultivation and the income derived there from was the basis for the purchase of the suit 1st time of property. That Muthiah Padayachi's father was possessed of ancestral property is clearly evidenced from Ex.A.1, Will and the evidence of P.W.2, Muthiah Padayachi himself. The existence of an ancestral property is reiterated by Muthiah Padayachi in Ex.A.3, settlement deed. Though Ex.B.1 has not been proved in the manner known to law, however since neither the plaintiffs nor the defendants are making their claim on the basis of this Will, a reading of the recitals, all of which has been admitted by P.W.2, would clearly indicate that the family of Muthiah Padayachi had an extent of 7 acres and 85 cents of agricultural land besides 4 house sites. When the family was possessed of agricultural land, the plaintiffs' case that Muthiah Padayachi had taken property on lease for cultivation is false particularly when the allegation of a lease is not supported by evidence.



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22. The plaint does not contain details about the properties which were taken on lease and the extent that was taken on lease.

Therefore, since the plaintiffs have themselves stated that Muthiah Padayachi was cultivating the lands and from out of the income earned by cultivating these lands, the 1st item of property was purchased it necessarily follows that the lands that were being cultivated was an extent of 7.85 acres of ancestral lands. The defendants have discharged their duty to show proof that there existed agricultural property and that the fact that these properties yielded sufficient income to purchase property after offsetting the expenses. Therefore, the only conclusion that can be drawn is that the 1st item has been purchased by Muthiah Padayachi only from out of the joint family funds. The plaintiffs, who have pleaded that they are in possession of the 1st item of property, have not proved the same. The Courts below have granted injunction on the basis of a “collateral probability ” totally overlooking the basic principle that in order to obtain the discretionary decree for injunction, the plaintiffs have to be prove



their possession on the date of the suit and prior to it. Therefore, the Judgement and Decree of the Courts below in decreeing the suit and the Lower Appellate Court confirming it insofar as it relates to the 1st item of property is per se erroneous and liable to be dismissed.

23. As regards the 2nd item, the same stands in the name of Muthiah Padayachi's mother. Therefore, in the light of Section 14 of the Hindu Succession Act, which is herein below extracted the findings of both the Courts below that it is the absolute property of Anjalai Ammal has to necessarily be upheld:

“14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or



WEB COPY



S.A.No.1058 of 2007

arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

24. In the result, the Second Appeal is partly allowed. The Judgement and Decree of the Courts below in so far as it relates to the 1st item of the suit property is set aside and the decree is confirmed with reference to the 2nd item of the property. Consequently, connected Miscellaneous Petition is closed. No costs.



S.A.No.1058 of 2022

Index : Yes/No
Internet : Yes/No
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21.03.2023

To

1.The Principal Sub Court,
Cuddalore.

2.The Additional District Munsif Court,
Cuddalore.



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S.A.No.1058 of 2007

P.T. ASHA, J,

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Pre-Delivery Judgment in
S.A.No.1058 of 2007

21.03.2023