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SA.No.980 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.980 of 2010

1. S.R. Kanagasivam

2. Sumathi

... Appellants

- Vs -

1. Paramasivam(died)

2. Rukumani

3. Chandrasekar

4. Sasikala

5. Mani

... Respondents

(R2 to R5 brought on record
as legal heirs of the deceased R1 vide Court
Order dated 24.07.2023 made in
C.M.P.Nos.13124,13127 and
13128 of 2023 by TVTSJ)

Second Appeal filed under Section 100 of the Civil Procedure Code
against the Judgment and decree dated 10.02.2010 in A.S.No.19 of 2009 on
the file of the Subordinate Court, Mettur, confirming the Judgment and



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decree dated 08.08.2009 made in O.S.No.105 of 2003 on the file of the District Munsif Court, Mettur.

For Appellant : Mr P. Jagadeesan

Respondent -1 : Died

For Respondents 2, 3
and 5 : Ms. G. Arul selvi

Respondent - 4 : Notice served and No appearance

JUDGMENT

The instant second appeal has been filed at the instance of the defendants. The respondents 2 to 5 are the legal heirs of the first respondent/plaintiff, who died during the pendency of this second appeal.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that the suit property absolutely belonged to the plaintiff and he was in possession and enjoyment of the suit property. He was also regularly paying kists. As a matter of fact, the suit property was originally belonged to



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Mr.Chinnathambi Gounder who was the father of the plaintiff. The said Mr.Chinnathambi Gounder purchased the suit property by virtue of a registered sale deed dated 01.05.1930. There was an oral partition among the children of the said Mr.Chinnathambi Gounder namely the plaintiff and one Mr. Sambasivam, and one Mr.Marimuthu. In such oral partition, the suit property fell to the share of the plaintiff. Ever since such oral partition, the plaintiff has been in possession and enjoyment of the suit property. However, the defendants were attempting to create some document in respect the suit property. Hence, the plaintiff came forward with the suit seeking a decree for declaration, declaring his title over the suit property situated in Panapuram Village in S.F.No.65/7 and for permanent injunction.

4. The said suit was resisted by the defendants by contending that the suit property belongs to the first defendant by way of a family partition through the registered partition deed dated 13.07.1979, and that by virtue of the said partition deed, the first defendant was allotted “C” schedule property, and that ever since such partition, he has been in physical possession and enjoyment of the property. Hence the defendants prayed to dismiss the suit.



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Evidence & documents and Findings of the Court below:-

5. Before the Trial Court, on behalf of the plaintiff, three witness were examined as P.W.1 to P.W.3 and 21 documents were marked as Ex.A1 to Ex.A21. On behalf of the defendants two witnesses were examined as D.W.1 and D.W.2 and 17 documents were marked as Ex.B1 to Ex.B17.

6. After having considered the oral and documentary evidence the Trial Court decreed the suit on the ground that the suit property absolutely belonged to the plaintiff. Aggrieved by the Judgment of the Trial Court, the defendants approached the First Appellate Court, which concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the Judgment of the First Appellate Court, the defendants are before this Court by way of this second appeal.

Submissions of either side counsel:-

7. The learned counsel for the appellants would vehemently submit that though the suit property was purchased in the name of the said



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Mr.Chinnathambi Gounder, who was the father of the plaintiff, it was the joint family property of the children of one Mr.Arya Gounder who was the grand father of the plaintiff and the first defendant. He would further contend that there were so many purchases in the joint names of the said Mr.Chinnathambi Gounder, and his brother one Mr.Ramasamy Gounder, and that the suit property originally belonged to the joint family, and that by virtue of the oral partition, the suit property devolved upon the father of the first defendant namely one Mr.Ramasamy Gounder, and that in pursuance thereof, between the first defendant and his brother, property was divided by virtue of Ex.B.1/partition deed. Therefore, the suit property belongs to the defendant. Hence he prayed to allow the second appeal.

8. Per contra, the learned counsel for the contesting respondents vehemently submits that the very case of the defendants rest upon the contention that the suit property belonged to a joint family. Whereas, they had not proved the existence of the joint family, by adducing the proper evidence. According to her, the plaintiff was in possession and enjoyment of the suit property by virtue of Ex.A1/Sale deed, which stood in the name of his father and the existence of the revenue records for a long period would



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also exemplify the title over the suit property. Therefore, it is her submission that the suit property was the absolute property of the said Mr.Chinnathambi Gounder and after his demise, it devolved upon the plaintiff. Therefore, she would submit that the plaintiff is entitled for a declaration. She further submitted that the Trial Court as well as the First Appellate Court rightly arrived at the conclusion and that there are no grounds to interfere with such well considered finding.

9.This Court has given its anxious consideration to either side submissions.

Analysis of the submission:-

10. Admittedly, the plaintiff's father Mr.Chinnathambi Gounder and the first defendant's father Mr.Ramasamy were the children of the said Mr.Arya Gounder. Apart from Mr.Chinnathambi Gounder and Mr.Ramasamy Gounder, the said Mr.Arya Gounder had three more sons. It is the specific case of the appellants that though the suit property stood in the name of the said Mr.Chinna Thambi Goudner by virtue of the Ex.A1/Sale deed, there was an oral partition between the children of the said Mr.Arya Gounder, and in such oral partition, the suit property devolved upon the first



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defendant's father.

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11. Therefore, now, this Court has to see whether the suit property is a joint family property and such property devolved upon the first defendant's father.

12. It is a settled principle of law that whenever any property stands in the name of an individual, then the person, who asserts the property as a joint family property, has to prove the same. In this case, in order to prove the said stand, the defendants relied upon certain documents jointly executed by Mr.Chinna Thambi Gounder and Mr.Ramasamy Gounder namely Ex.B10 to Ex.B14. Through these documents, the defendants tried to impress upon this Court that there exist a joint family property. But, this Court is not persuaded with the submissions made by the learned counsel for the appellants. Since, because there were some joint purchases between two brothers and this by itself would not be a substantial proof to show the existence of the joint family property.

13. At this juncture, the learned counsel for the contesting respondents would invite the attention of this Court that if at all there is any joint family



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property, there would not have been any sale deed between the said Mr.Chinnathambi Gounder and the said Mr.Ramasamy Gounder. Whereas the said Mr.Chinnathambi Gounder had executed a sale deed under Ex.A.19 dated 10.07.1951. Therefore, the very execution of Ex.A19/sale deed in favour of the said Mr.Ramasamy Gounder would only exemplify the suit property is the absolute property of the said Mr. Chinnathambi Gounder.

14. The submissions made by the learned counsel for the contesting respondents are well considered and liable to be accepted. Therefore, this Court is of the view that the defendants had not proved the existence of the joint family between the said Mr.Chinnathambi Gounder and Mr.Ramasamy Gounder. Apart from that, she would also invite the attention of this Court about Ex.A1/sale deed, which is of the year 1930 and the revenue records namely Ex.A2 to Ex.A14.

15. However, it is the submission of the learned counsel for the appellants that the revenue records are not documents of title and that the Trial Court as well as the First Appellate Court rightly considered the submissions made by the appellants. However, in view of the existence of Ex.A1/sale deed standing in the name of the said Mr.Chinnathambi



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Gounder, both the Courts below concluded that the revenue records coupled with the sale deed/Ex.A1 are an ample proof to show that the suit property is the absolute property of the plaintiff.

16. At this juncture, it is also the contention of the contesting respondents that the appellants have not taken any initiative to challenge the patta standing in the name of the plaintiff. Therefore, this Court is of the view that both the Courts below have considered the oral and documentary evidence and arrived at a right conclusion. It is a well settled principle of law that under Section 100 of C.P.C, unless there exists a substantial question of law, there is no possibility for a different view than the view expressed by both the Trial Court as well as the First Appellate Court unless it is perverse.

17. On a harmonious reading of the Judgments passed by both the Court below, which are based on materials on record this Court does not find any perversity over the same. Further, there are no substantial questions of law arising for consideration in this second appeal.

18. In the result, this second appeal is dismissed by confirming the



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Judgment and decree passed by the First Appellate Court. No order as to costs.

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Index: yes / no

Neutral citation

Speaking / Non speaking order

To

- 1.The Subordinate Judge, Mettur,
2. The District Munsif Court, Mettur.



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C.KUMARAPPAN, J

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