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S.A.No.174 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.174 of 2018

K.Arjunan

...Appellant

Vs.

K.Sagadevan (died)

1.S.Prakash

2.S.Rajesh

3.Tmt.Malliga

4.Mrs.Vanitha

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside judgment and decree dated 28.07.2017 made in A.S.No.8 of 2013 on the file of the Court of Additional Special Judge, Krishnagiri, confirming the judgment and decree dated 30.11.2012 made in O.S.No.437 of 2008, on the file of the Court of the District Munsif, Krishnagiri by allowing this second appeal.

For Appellant : Mr.R.Agilesh

For Respondents : Mr.G.Vigneshwar
for M/s.V.Nicholas



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JUDGMENT

The Plaintiff in the suit is the appellant. He filed a suit seeking declaration of title and also injunction in respect of suit 'A' schedule property. He further claimed pending suit, the defendants trespassed into the portion of suit 'A' schedule property and the encroached portion was shown as suit 'B' schedule property and relief of recovery of possession was sought for in respect of 'B' schedule property. The suit was dismissed by the trial Court. The First Appeal filed by the appellant/plaintiff was also dismissed. Hence, he is before this Court.

2. According to the appellant/plaintiff, the first respondent/first defendant is his divided brother. The respondents 2 and 3/defendants 2 and 3 are sons of first respondent. He claimed that there was an oral partition in the family on 28.10.1992 between the appellant and the first respondent and their another brother Nagulan and the joint family properties were divided among them. It was also claimed by the appellant that he purchased the present suit property from one Veerammal under registered sale deed dated 14.12.1990. The respondents without having any manner of legal right whatsoever



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attempted to trespass the suit property and hence he filed a suit for declaration of title and permanent injunction. Pending suit, the defendants encroached a portion of the suit property and hence the encroached portion was shown as suit 'B' schedule property and a relief of recovery of possession was sought for in respect of suit 'B' schedule property.

3. The first defendant/first respondent filed a written statement denying the oral partition dated 28.02.1982 pleaded by the appellant. It was the case of the respondent in the written statement that the appellant was the senior most male member of the family and in that capacity he purchased the suit property in his name out of joint family funds. Therefore, the suit property was treated only as a joint family property all along. The respondents also claimed that there was an oral partition in the family during August 1996 and as per the oral partition the suit property was sub-divided into various sub-divisions. The appellant was allotted sub-division Nos.51/2F3, 51/2F7 measuring total extent of 0.19.5 hectares out of 1.3 acres. The first defendant was allotted sub-Division Nos.51/2F2, 51/2F4 and 51/2F6 measuring 0.16.5 hectares. The other brother by name Nagulan was allotted Sub-Division Nos.51/2F1, 51/2F5 measuring 14 hectares. Thus the appellant and



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defendants have been in possession and enjoyment of their respective allotted sub-divisions by cultivating the same. The respondents claimed that the oral partition of the 'A' schedule suit property that had taken place during August 1996 was suppressed by the appellant and he laid the suit taking advantage of the fact that sale deed in respect of the suit property stood in his name.

4. After the amendment of the plaint to include prayer for the recovery of possession, the respondents also filed a additional written statement denying the absolute title of the appellant over the suit property based on the averments already made in the written statement.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove the oral partition dated 28.10.1982. The trial Court also factually found that the suit property was divided among brothers and different sub-division numbers were assigned to the portions allotted to all three brothers and hence dismissed the suit.



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6. Aggrieved by the same, the appellant preferred a First Appeal in A.S.No.8 of 2013, on the file of the Additional Special Judge, Krishnagiri, the First Appellate Judge also concurred the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant has come up by way of this second appeal.

7. The learned counsel appearing for the appellant submitted that he also filed a petition for reception of additional evidence in CMP.No.4484 of 2018 for production of Panchayat Muchaliga dated 28.10.1982 as an additional evidence in the Second Appeal. The learned counsel further submitted that Panchayat Muchaliga dated 28.10.1982 was misplaced by the appellant and the same could not be traced out during trial, therefore the appellant could not produce the same before the Courts below. The learned counsel further submitted that the respondents pleaded oral partition in the year 1996. However, they have not produced any evidence in support of said pleading. The sale deed for the suit property stands in the name of the appellant and therefore it should be presumed that the suit property is the absolute property of the appellant in the absence of any evidence to show that the suit property was purchased out of joint family funds.



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8. It is not in dispute that the appellant/first respondent and one Nagulan were brothers. The appellant has come to the Court with a specific plea, there was a oral partition in the family on 28.10.1982 and the joint family properties were divided. After partition, the suit property was purchased by the appellant in the year 1990 in his own name and therefore, it should be treated as his separate property.

9. The oral partition pleaded by the appellant dated 28.10.1982 was specifically disputed by the respondents in the written statement and they further pleaded that the suit property was purchased in the name of the appellant in his capacity as a senior most male member of the family.

10. It is settled law, if the property is purchased in the name of senior most male member of the family, the presumption is it was purchased out of joint family funds. In this regard, it would be appropriate to refer to the decision in ***Mallesappa Bandeppa Desai and Ors. Vs. Desai Mallappa and Ors*** reported in ***AIR 1961 SC 1268***. In the said case law Apex Court observed as follows:

“We do not know what the income of the said properties was; obviously it could not be of any significant order; but, in our



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opinion, there is no doubt that where a manager claims that any immovable property has been acquired by him with his own separated funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separated fund. The onus of proof must in such a case be placed on the manager and not on his coparceners.”

Therefore, unless the appellant succeeds in proving that there was a partition in the family in the year 1982 and the jointness of the family was disturbed, the general presumption available to the acquisitions made by the senior most male member of the family can very well be pressed into service in this case.

11. Both the Courts below, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant/plaintiff failed to prove the oral partition pleaded by him. In Ex.A6 release deed executed by the first defendant in respect of some other properties purchased in the year 1974, no reference was made with regard to the oral partition of the year 1982. Further, there is no evidence available on record to



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show that in pursuance of oral partition in the year 1982, revenue records were mutated. In such circumstances, both the Courts below, correctly came to the conclusion that the appellant failed to prove the oral partition pleaded by him.

12. As far as the petition to raise the additional evidence filed by the appellant is concerned, the appellant in his affidavit had stated that the document was misplaced in his house and he retrieved the same while cleaning store room. The said averments made by the appellant in the affidavit filed in support of petition to receive additional document is not acceptable to this Court. The Panchayat Muchaliga dated 28.10.1982 was very well available in the hands of the appellant when the trial went on. Had he exercised due diligence, he could have produced the said document before the trial Court itself. His failure to retrieve the document from the store room points to a clear negligence on his part. Therefore, the appellant has not stated any convincing reasons for his failure to produce the said Panchayat Muchaliga before the trial Court. Further, the document now produced by the appellant is the photo copy of the alleged Panchayat Muchaliga dated 28.10.1982. A reading of the same would suggest as per the terms of the said Panchayat Muchaliga, the appellant has to pay some amount



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to his brother said Nagulan and get a registered document executed within six months. There is no evidence to show that as per the terms of said Panchayat muchaliga, the appellant paid amount to Nagulan and any registered document was executed in pursuance of the same.

13. Even the other brother Nagulan is not impleaded in the suit. In such circumstances, reception of Panchayat Muchaliga dated 28.10.1982 will not be helpful to this Court to decide the appeal in a more satisfactory way. Therefore, CMP.No.4484 of 2018 is dismissed.

14. Once this Court comes to a conclusion that the oral partition pleaded by the appellant dated 28.10.1982 has not been proved the family is presumed to be joint family. In such circumstances, any acquisition made in the name of senior most male member shall be presumed to be out of joint family funds. Therefore, merely because the sale deed of the suit property stands in the name of the appellant, who is admittedly the senior most male member of the family, we cannot come to a conclusion that the property was acquired by appellant out of his own funds.



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15. Further based on Exs.B1 and B2 Power of Attorney executed by the appellant and first respondent in favour of one Saravanan and also revenue documents evidencing sub division of the suit property under Exs.B5 to B9, both the Courts below came to the factual conclusion that the suit property was divided among the appellant, the first respondent and other brother Nagulan and separate sub-division numbers were assigned in the name of three brothers. If the suit property was not treated as a joint family property and divided thereafter, there is no necessity to effect sub division and obtain revenue documents in the name of three brothers. Therefore, the conclusion reached by the Courts below that the suit property was treated as a joint family property and the same was divided among three brothers is also based on evidence available on record. Therefore, the appellant failed to prove that the suit property is his exclusive property. As a necessary consequence, the Courts below negatived claim for declaration of title and other consequential reliefs.

16. I do not find any substantial question of law arising for consideration in this second appeal to interfere with the said factual findings rendered by the Court below.



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17. In nutshell,

(a) The Second Appeal is dismissed;

(b) In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No

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S.SOUNTHAR, J.

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To

- 1.The Additional Special Judge, Krishnagiri.
- 2.The District Munsif, Krishnagiri.

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