



S.A.No.9 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.9 of 2021
and
C.M.P.No.211 of 2021

Kaliyamoorthy

... Appellant

Vs.

Ramaiya Padayachi (died)

Kaasambu Ammal (died)

1.Kalaiselvi

2.Rani

3.Visalam

4.Karunanidhi @ Raman

5.Banumathi

6.Anandan

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7.Selvaraj

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 28.11.2019 made in A.S.No.133 of 2018 on the file of the Principal Sub Court, Mayiladuthurai confirming the judgement and decree dated 04.10.2018 made in O.S.No.197 of 1999 on the file of the District Munsif Court, Seerkali.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : M/s.H.Kavitha [R.1 to R.4 & R.6]

: Mr.B.Jawahar [R.5 & R.7]



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JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. In the above matter, notice of motion was ordered on 08.01.2021 and the respondents have entered appearance.

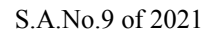
2. The brief facts which are necessary for disposing of the above Second Appeal are herein below set out and the parties are referred to in the same ranking as before the Trial Court. The plaintiff had filed the suit in OS.No.197 of 1999, on the file of the District Munsif, Sirkali for a partition of his 1/4th share in the suit schedule properties.

3. It is the case of the plaintiff that the A schedule properties which are Punja lands and the B schedule properties which are Nanja lands were purchased in the name of the plaintiff's father who has been



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arrayed as the 1st defendant and his mother Subba Ammal. The defendants 2 and 7 are the sisters of the plaintiff and defendants 3 to 6 are the children of the plaintiff's pre-deceased sister Amirthavalli. It is his case that the properties were purchased from out of the income earned from the ancestral properties. It is his case that though the properties were purchased in the name of his mother, Subba Ammal, however, the properties were purchased from and out of the Joint Family income. He would submit that his mother had no independent income and therefore, the properties in question belongs to the joint family. He would submit that the A schedule property belongs to the plaintiff and the B schedule property belongs to the plaintiff and the 1st defendant jointly. Because of certain differences of opinion between the plaintiff and his parents, his parents had left for the 2nd defendant's house and were living there. Taking advantage of that, it appears that they had got a written settlement deed from the mother and a Will from



4. The 1st and the 2nd defendants had filed a written statement denying the contention of the plaintiff that there was a Hindu Family and that the A and B Schedule properties are the Hindu Family properties since it was purchased from out of the joint income of the plaintiff and the 1st defendant. The defendants submit that the suit A and B schedule properties were purchased by the deceased Subba Ammal (wife of the 1st defendant and the mother of the plaintiff and defendants 2 and 7) from out of her savings, and the same belonged to her absolutely. By a registered settlement deed dated 26.04.1979, the said Subba Ammal had settled the properties on her daughters Kasambu Ammal, the 2nd defendant



herein, Banumathi, the 7th defendant herein and Amirthavalli, the mother of defendants 3 to 6. Defendants 2 to 7 are the beneficiaries and absolute owners of the properties comprised in the A and B schedules.

5. The defendants would also submit that the plaintiff who is the son of the deceased Subba Ammal had failed to discharge his duties as a son and on the contrary, had turned inimical towards his father and mother. The plaintiff had endlessly tortured his parents and had even physically abused them. Thereafter, he had driven out his father who is the 1st defendant herein and his mother from their own house in April 1987. Therefore, the parents had disregarded the plaintiff as a son and had executed a Will dated 28.05.1997 setting forth their feelings and bequeathing their properties in favour of the defendants 2, 6 and 7. The Will dated 28.05.1997 clearly stated that the plaintiff should not perform any of the funeral rights to his parents. The ritual obligations



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were thereafter performed by the son of the 2nd defendant as per the terms of the Will.

6. After driving out his parents from the residential house, the plaintiff had filed a suit O.S.No.47 of 1997 on the file of this Court seeking an injunction in respect of the A schedule properties into which the plaintiff had trespassed in the 1st week of May 1997. The plaintiff had cut and removed trees worth over a sum of Rs.500/-. The defendants had thereafter filed a suit O.S.No.74 of 1997 on the file of this Court for recovery of possession of A schedule properties and the suit is still pending. The B schedule properties are in possession of the defendants 2 to 7 and the plaintiff has no right to claim any share in respect of the same.

7. The Trial Court had framed the following issues which translated from the vernacular would read as follows:-

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1). Whether it is true that the suit properties are the Joint Family Properties?

2). Whether the defendants 2 to 7 are the owners of the B schedule property in the light of the settlement deed effected by Subammal?

3). Whether the plaintiff is entitled to the Decree for injunction?

4). To what other relief the plaintiff is entitled to?

8. The plaintiff had examined himself as P.W.1 and marked Ex.A.1. On the side of the defendants, two witnesses were examined and 3 documents were marked.

9. Ultimately, the Trial Court had held that the suit property being the property of the plaintiff's mother, a Hindu female the plaintiff does not have any right to claim a right, title or interest in the



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property by showing it as a Joint Family Property. The Trial Court had upheld the settlement deeds executed by Subba Ammal, the mother of the plaintiff and defendants 2 and 7 and dismissed the suit. Aggrieved by the same, the plaintiff had filed A.S.No.133 of 2018 before the Principal Sub Court Mayiladuthurai. The learned Principal Sub Judge had also confirmed the same. Aggrieved by the same the plaintiff has filed the above Second Appeal.

10. Heard the counsels on both sides and perused the materials available on record.

11. The judgement and decree of the Courts below would clearly show that the property belonged to Subba Ammal, the mother of the plaintiff and defendants 2 and 7. That the property stands in the name of the mother has not been denied by the plaintiff, on the contrary, it is his case that the properties had been purchased in the name of his



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mother from the common Joint Family property funds. However, there is no iota of proof on the side of the plaintiff to show the existence of these properties, where the joint family properties located and that these properties had yielded income and after defraying expenses surplus was available in the hands of the Joint Family. This proof has not been forthcoming from the plaintiff. Therefore, the Courts below have clearly held that the property being the property of the Hindu female, it is her absolute property and she is entitled to deal with it in any manner she deems fit. The mother of the plaintiff and the defendants 2 and 7 had executed Ex.B.1, settlement deed in and by which she had bequeathed the suit property on her 3 daughters i.e; defendants 2 and 7 and the mother of defendants 3 to 6. The settlees have also taken possession of the property.

12. Therefore, I see no reason to upset this concurrent judgement and decree particularly when the plaintiff who has come forward with a



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case that the properties were purchased from Joint Family funds has failed to prove the existence of the joint family property and the fact that the joint family property was earning a surplus after expenses. No substantial question of law arises for consideration in the above Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13.10.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Sub Court, Mayiladuthurai
2. The District Munsif Court, Seerkali
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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