



S.A.No.731 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.731 of 2023
and
C.M.P.No.23241 of 2023

C.Vadivel

... Appellant

Vs.

Chinnakannan @ Chinnakannu (died)

1.Vellaiyan @ Muniappan

2.Adhilakshmi

3.Porkodi

4.Krishnan

5.Ponniammal

. . . Respondents



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Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 20.06.2023 made in the A.S. No.40 of 2022 on the file of the Ld. Additional District Court, Dharmapuri by partly modifying the judgement and decree dated 04.07.2022 made in O.S.No.173 of 2014 on the file of the Ld. Principal Sub Court, Dharmapuri.

For Appellant : Mr.N.Manoharan

JUDGEMENT

The plaintiff has challenged the Judgement and Decree passed in A.S.No.40 of 2022 on the file of the Additional District Court, Dharmapuri, in and by which the learned Additional District Judge, Dharmapuri, partly modified the Judgement and Decree passed by the Principal Sub Court, Dharmapuri in O.S.No.173 of 2014. The facts are briefly set out herein below and for the ease of understanding the parties are referred to in the same array as before the Trial Court.



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2. The plaintiff had filed suit O.S.No.173 of 2014 on the file of the Principal Sub Judge, Dharmapuri against his parents and his siblings. It is the case of the plaintiff that the suit properties are ancestral properties of the plaintiff and the defendants 1 to 5. Some of the properties were ancestral while others were purchased from out of the ancestral property nucleus. It is also the case of the plaintiff that 30 years prior to the filing of the suit i.e., in or about the year 1984, there was an oral partition in the family.

3. The plaintiff would submit that the properties were being jointly enjoyed by both the plaintiff as well as the defendants and the revenue records in respect of some properties stand in the name of the family ancestors and others in the name of the 1st defendant. Certain properties have also been purchased in the name of the 1st and the 6th defendants but the properties were enjoyed as joint family properties.



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4. It is also the case of the plaintiff that the 5th defendant had been working against the interest of the joint family and he had influenced defendants 1 and 6 into not managing the joint family properties properly. He had also abused and assaulted the plaintiff's wife. Considering the relationship, the plaintiff had not precipitated the matter. Once again, in the year 2012, the 1st defendant had attacked the plaintiff's wife and she had sustained grievous injuries as a result of which she said to be admitted into the Dharmapuri Government Hospital and the Krishnapuram Police station had lodged a criminal case against the 5th defendant and the case is pending before the learned Judicial Magistrate No.II, Dharmapuri. The plaintiff attempted to set up a Panchayat, however, on the instigation of the 5th defendant, the 1st defendant refused to co-operate in the partition of the property. Therefore, the suit has been filed for partition and for permanent injunction.



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5. The 1st defendant had filed a written statement which was adopted by defendants 2, 5 and 6 in which they would submit that items 1 to 4, 6, 7, 9, 10 and 12 are the separate properties of the 1st defendant. The 1st defendant's father, Chinnasamy Gounder had purchased the same under the following sale deeds dated 19.03.1943, 02.05.1958, 17.02.1962 and 20.06.1962. These properties devolved on the 1st defendant as legal heir of Chinnasamy Gounder. The 5th item of the suit property was purchased by the 1st defendant under a sale deed dated 23.03.1972. Items 13 and 14 of the suit properties were purchased under a sale deed dated 08.07.1999. Items 16 and 17 of the suit properties are the wells for the lands. Items 18 is a residential property and it is a separate property of the 1st defendant. Items 19 and 20 of the suit properties are Gramanatham Land. Item 11 of the suit property is the separate property of the 6th defendant, she having



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purchased it by way of a sale deed dated 11.09.1973 by selling her jewels and Sridhana properties. Items 1 to 10, 12 to 20 are the separate properties of the 1st defendant.

6. It is their further case that the 1st and 6th defendants had executed settlements deeds in favour of the 2nd and the 5th defendant. The 1st defendant had executed a Will in favour of the plaintiff. The suit properties are the separate properties of the 1st defendant and therefore the plaintiff is not entitled to a decree for partition.

7. The 4th defendant had filed a written statement concurring with the contents of the plaint and seeking for an allotment of her share in the property.



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8. On the basis of the pleadings, the Trial Court had framed the following issues:-

1) Whether the plaintiff is entitled for 1/6 share and separate possession in the schedule property?

2) Whether the plaintiff is entitled for permanent injunction against the defendant from encumbering the suit property in favour of defendants or anybody?

3) Whether it is true that partition already took place as stated in written statement?

4) Whether it is true that the suit properties item 1 to 10, 12 to 20 belongs to D.1 as separate property?

5) Whether the suit property is in joint possession?

6) What are the reliefs the plaintiff is entitled to?



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9. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.8 were marked. On the side of the defendants, two witnesses were examined and Ex.B.1 to Ex.B.23 were marked.

10. After hearing the arguments, the Trial Court had dismissed the suit holding that item Nos.1 to 10, 12 to 20 are the separate properties of the 1st defendant and item No.11 is the separate property of the 6th defendant. Aggrieved by this judgement and decree, the plaintiff had preferred an appeal. Along with the appeal he had also taken out two applications in I.A.No.1 of 2022 and I.A.No.2 of 2023, for receiving additional documents.

11. The Lower Appellate Court, after hearing the arguments and considering the materials available on record had partly allowed the appeal and set aside the judgement and decree passed by the Trial



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Court. The Lower Appellate Court had passed the following

Judgements:-

"1) That suit is decreed partly holding that plaintiff is entitled to 1/6th share in Item Nos.19 and 20 of suit properties alone and preliminary decree is passed accordingly.

2) That the plaintiff is entitled to permanent injunction restraining the defendants from creating any encumbrance in respect of the plaintiff's undivided 1/6 share in Item Nos.19 and 20 of suit properties alone, until partition is affected by metes and bounds in accordance with law.

3.) That suit is dismissed in respect of Item No.1 to 18 of suit properties.

4) I.A.No.1/2022 to receive document is dismissed.



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5) *I.A.No..2/2023 to receive document is dismissed."*

Aggrieved by the above judgement and decree of the Lower Appellate Court, the plaintiff is before this Court.

12. The learned counsel appearing on behalf of the appellant/plaintiff would contend that the Lower Appellate Court had committed a grave error in dismissing the applications for receiving additional documents which are vital for proving the defendant's contention that there was an ancestral nucleus which has provided the surplus income for purchasing the other properties, as a result of which, the other properties have also been clothed with a character of an ancestral property. He would further submit that with reference to item Nos.3, 4, 6, 7 and 9, it has been observed by the Courts below that there were no title documents filed by the defendants or the plaintiff and the plaintiff had produced Ex.A.1, patta No.254 in respect of these

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items. He would therefore submit that from the above, it is very clear that the properties continued to be in joint possession of the plaintiff and the defendants. He would further submit that once the ancestral nucleus is proved, the Courts below ought to have held that the properties in question are ancestral and the purchase in the name of the 1st defendant does not prove that these are his individual properties.

13. The plaintiff has contended that the parties had partitioned their properties 30 years prior to the filing of this suit however, there is no clarity in the pleadings of the plaintiff as to whether the purchase in the name of the 1st defendant and the 6th defendant had been made prior to the partition or after the partition. In case, the properties were purchased prior to the partition, there is no explanation as to why these properties have not been included for partition. Likewise, if it the properties were purchased after the partition, then the properties that



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had been individually purchased would automatically be the property of each of the sharers.

14. Heard the counsel.

15. The plaintiff has not let in any evidence whatsoever to detail the ancestral properties and the income that was earned from these properties which provided the necessary income for purchasing the other properties. All the revenue records stand in the name of the respective owners. The plaintiff who has come to Court with a pleading that the properties in question are ancestral properties but the properties stand in the individual name though they are purchased from out of the income earned from the ancestral properties. However, the plaintiff has failed to let in any evidence to prove the same. That apart, the plaintiff has not sought to set aside or cancel the documents which according to the plaintiff has been created for the purpose of the suit.

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16. Therefore, the Lower Appellate Court has rightly rejected the contention of the plaintiff and I see no reason to re-consider this well-considered judgement and decree of the Lower Appellate Court. Further, the plaintiff/appellant has not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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

1. The Additional District Court, Dharmapuri
2. The Principal Sub Court, Dharmapuri.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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