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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.851 of 2017

1.Gowri
2.Dhanalakshmi
3.Saraswathy
4.Arulkumar

...Appellants

Vs.

Pooraniammal (died)

1.Saravanan
2.Revathy
3.Kasiammal

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the reversing judgment dated 22.07.2013 made in A.S.No.45 of 2009 on the file of the Court of Subordinate Judge, Maduranthakam and restore the judgment dated 21.09.2005 made in O.S.No.77 of 2004 on the file of the Court of District Munsiff Court, Maduranthakam and allow the above second appeal.



For Appellants : Mr.M.Arumugam

For Respondents : Mr.N.Nagushan
for R1 to R3

J U D G M E N T

The defendants 2 to 5 are the appellants. The first respondent and his mother Pooraniammal filed a suit for partition claiming 7/18 share in the suit property. The Trial Court granted preliminary decree for partition of 11/36 share in favour of 1st plaintiff Pooraniammal, 6/36 share in favour of 2nd Plaintiff/1st Respondent, 6/36 share in the suit property in favour of defendants 1 and 3, 3/36 in favour of second defendant and 2/36 in favour of defendants 4 and 5. Aggrieved by granting of decree in respect of items 17 to 20, the appellants preferred an appeal. The first Appellate Court reversed the findings of the trial Court insofar as items 17 to 20 are concerned and set aside the decree for partition in respect of items 17 to 20. In other respects, the decree passed by the trial Court was confirmed. Aggrieved by the same, the defendants 2 to 5 have come by way of this second appeal.



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2. According to the plaintiffs, the first plaintiff is the wife of one deceased Kannan and the second plaintiff is the son of Kannan. The defendants are other legal representatives of the said Kannan and suit properties item 1 to 17 are self acquired properties of Kannan. After his death, the plaintiffs and defendants are entitled to share in the said properties left out by Kannan, since they are all sons, daughters and Class I heirs of deceased sons Palani and Harikrishnan. Therefore, the first plaintiff Pooraniammal and 2nd plaintiff Saravanan claimed 4/18 and 3/18 share respectively and laid suit for partition jointly claiming 7/18 share.

3. The defendants filed a written statement contending that there were other properties which had not been included in the plaint, purchased in the name of Pooraniammal by deceased Kannan. It was further contended that Pooraniammal had no independent source of income to purchase the property in her name and those properties were purchased by Kannan out of his own funds. The said properties were described in the written statement of the defendants. Those properties in items 17 to 20 were treated as joint family properties and a preliminary decree for partition was passed by the Court below.



4. Before the trial Court, the 2nd plaintiff Saravanan was examined as PW.1 and the First plaintiff Pooraniammal was examined as PW.2. Four documents were marked on behalf of the plaintiffs as Exs.A1 to A4. On behalf of the defendants, the 4th defendant was examined as DW.1 and three documents were marked as Exs.B1 to B3.

5. The trial Court on appreciation of oral and documentary evidence, came to the conclusion that the first plaintiff Pooraniammal had no exclusive right over items 17 to 20 of the suit properties and the said properties were also available for partition. Accordingly, the trial Court granted preliminary decree for partition as mentioned above in respect of all the 20 items including four items over which the share was claimed by the defendants.

6. Aggrieved by the said judgment and decree, the plaintiffs preferred an appeal in A.S.No.45 of 2009 on the file of the Subordinate Judge, Maduranthakam. Along with the said appeal, the plaintiffs also preferred an application in I.A.No.191 of 2012 for marking two documents namely Ex.A5 dated 27.11.2004 settlement deed executed by the first plaintiff in favour of



Revathy, wife of the second plaintiff and Ex.A6 settlement deed executed by the first plaintiff in favour of second plaintiff. The first plaintiff Pooraniammal executed those two settlement deeds in respect of items 17 to 20 in favour of Revathy and second plaintiff. The First Appellate Court on re-appreciation of evidence and also additional documents as Ex.A5 and A6 filed by the plaintiffs pending the First Appeal, came to the conclusion that items 17 to 20 were separate properties of Pooraniammal and hence the same were not available for partition. Accordingly, the findings of the trial Court with regard to items 17 to 20 were set aside and the first Appeal was allowed by dismissing the suit in respect of items 17 to 20. In other respects, the preliminary decree for partition granted by the trial Court was confirmed. Aggrieved by the same, the defendants 2 to 5 have come by way of this second appeal.

7. The learned counsel appearing for the appellants vehemently submitted that Exs.A5 and A6 settlement deeds marked by the plaintiffs before the First Appellate Court are hit by doctrine of *lis pendens*. The learned counsel further submitted that the first plaintiff Pooraniammal had no independent source of income. Therefore, she could not have purchased items 17 to 20 out of her own income. In such circumstances, the findings rendered



by the trial Court that items 17 to 20 were also available for partition ought not to have been disturbed by the first Appellate Court.

8. As far as the contention raised by the learned counsel for the appellants that Pooraniammal had no independent source of income is concerned, even assuming the consideration for purchase of items 17 to 20 were paid by husband of Pooraniammal, still as per presumption available under Section 3 (2) of Benami Prohibition Act, the same shall be presumed to be purchased for benefit of Pooraniammal.

9. Section 3 (2) of Benami Prohibition Act, 1988, as it stood prior to 2016 amendment reads as follows:

3. Prohibition of benami transactions- (1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter.

10. A reading of the above provision would make it clear that if a



property is purchased in the name of wife, even assuming the consideration was paid by husband, still law presumes that it was purchased for benefit of wife unless the contrary is proved by the person who asserts the same. In the case on hand under Ex.A1, items 17 to 20 were purchased in the name of Pooraniammal/first plaintiff. The said Pooraniammal in the proof affidavit mentioned that she purchased the said property out of income from sale of milk and rice business. She also averred in her proof affidavit that the jewels and money which were presented to her as Sreedhana were also utilized for purchase of those properties. The learned counsel for the appellants by drawing the attention of this Court to the evidence of PW.1 in his cross examination, wherein, he admitted that Pooraniammal had no independent source of income, submitted the property in her name shall be presumed to be purchased by her husband Kannan. Even assuming Pooraniammal had no independent source of income and the entire sale consideration for purchase of property in her name was paid by her husband still by virtue of Section 3 (2) of Benami Prohibition Act, the property is deemed to be purchased for benefit of Pooraniammal. In the case on hand, the appellants failed to produce any evidence to rebut the legal presumption available under Section 3 (2) of Benami Prohibition Act. Further, whenever a property is acquired in the name



of female Hindu, it shall be treated as her absolute property by virtue of Section 14(1) of Hindu Succession Act. Taking into consideration the legal position, the First Appellate Court rightly came to the conclusion that items 17 to 20 should be treated as a separate property of Pooraniammal and hence those properties were not available for partition. The said findings require no interference by this Court.

11. This Court comes to the conclusion that the suit item 17 to 20 are the separate properties of Pooraniammal and she is entitled to settle the same in favour of anybody as per her own wish. In the case on hand, Pooraniammal executed settlement deed as Exs.A5 and A6, dated 27.11.2004 settling items 17 to 20 of the suit property in favour of second plaintiff and his wife Revathy. Merely because the settlement was executed, when partition suit was pending, it will not get invalidated. The Doctrine of Lis Pendens only makes the document subject to result of the suit. The doctrine does not say the document is invalid. Ultimately if court comes to the conclusion, the property is absolute property of Pooraniammal, Settlement deed executed by her pending litigation will convey good title. If court comes to a conclusion that properties are not properties of Pooraniammal, then she will not have any right to convey



under settlement deeds. The document will become invalid. Hence, doctrine of Lis Pendens only makes the document subject to result of suit. In the case on hand, this court has come to the conclusion that the suit items 17 to 20 are separate properties of Pooraniammal and hence the same is not available for partition. Once Court comes to the conclusion that items 17 to 20 are separate properties of Pooraniammal, the settlements deeds executed by her in respect of those properties are valid. Therefore, the submissions made by the learned counsel for the appellant are rejected and Second Appeal deserves dismissal.

12. The learned counsel appearing for the appellant submitted that time limit may be fixed for passing of final decree. Though this Court is not inclined to fix any time for passing of final decree, as per the decisions of the Apex Court in ***Kattukandi Edathil Krishnan and Another Vs. Kattukandi Edathil Vasan and others*** reported in ***2022 SCC Online SC 737 : 2022 Livelaw (SC) P.549***, the partition suit is deemed to be pending till the final decree is passed and there is no need to file separate final decree proceedings. The relevant observation of Apex Court reads as follows:

“33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for



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drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

Therefore, even without waiting for regular application for passing of final decree, the Court Can *suo motu* take further proceedings and pass final decree. In such circumstances, the Court below is directed to commence the final decree proceedings by issuing notice to both the parties. The date of hearing for commencement of final decree proceedings shall be fixed by the Court below by issuing notice to all the parties to the suit on or before 15.02.2024.

13. As discussed earlier, this court concluded that suit item 17 to 20 are absolute properties of Pooraniammal. Hence the decision of suit will



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not affect validity of settlement deeds executed by her pending suit. Hence submissions made by learned counsel for appellant based on doctrine of Lis Pendens will not give any helping hand to him. In view of the discussions made earlier, conclusions arrived by the First Appellate Court that items 17 to 20 were not available for partition is confirmed. I do not find any substantial questions of law to interfere with the said findings of the First Appellate Court and as a consequence, the Second Appeal stands dismissed. No Costs.

14. In nut shell,

(a) The Second Appeal is dismissed by confirming the judgment and decree passed by the First Appellate Court.

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

30.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To



1. The Subordinate Judge, Maduranthakam
2. The District Munsiff Court, Maduranthakam

S.SOUNTHAR, J.
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