



SA(MD)No.13 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.13 of 2019
and
C.M.P.(MD)No.889 of 2019

- 1.Bagampriyal (Died)
- 2.Thondiraj (Died) ... Appellants/ Respondents /Defendants
- 3.Ponkumar
- 4.Pondevi

(A3& A4 are bring on record as LR's of
the deceased 1st and 2nd appellants vide
Court order, dated 13.07.2023, made in
CMP(MD)Nos.4302&4303/2023.)

Vs.

C.Suseela ... Respondent / Appellant /Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.6 of 2016, dated 23.12.2016, on the file of the District Court, Sivagangai, confirming the judgment and decree passed in O.S.No.77 of 2007, dated 01.02.2016, on the file of the Subordinate Court, Sivagangai.



SA(MD)No.13 of 2019

For Appellants : Mr.S.Madhavan
for Mr.Karthikeyavenkatachalapathy

For Respondents : Mr.P.Rajagopalan
for Mr.R.Devaraj

JUDGMENT

The appellants 1 & 2 herein are the respondents/ defendants and the respondent herein is the appellant / plaintiff before the trial Court. The appellants 3 & 4 are the legal heirs of the deceased appellants 1 & 2.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The brief averments of the plaint is as follows:-

The suit schedule property was originally purchased by the plaintiff's father-in-law – Chellam Nadar, vide sale deed, dated 17.02.2003 from one Senthil. Ever since the date of sale deed, he has been in actual physical possession and enjoyment of the property and has also put up construction there on. While being so, through the sale deed, dated 24.09.2007, the plaintiff purchased the suit property from her father-in-law, for due sale consideration. Ever since the date of purchase, the plaintiffs



SA(MD)No.13 of 2019

have been in actual physical possession and enjoyment of the same. In such circumstances, the defendant attempted to interfere with the possession by contending that the suit property was the joint family property and has been allotted to him by way of oral partition. Therefore, the plaintiffs filed a suit for injunction for the relief of declaration and injunction and in the alternative for the relief of possession.

4. The brief averments of the written statement is as follows:-

The suit property is not the absolute property of the Chellam Nadar and that he being the Kartha of the joint family, he purchased the suit property by using the joint family nucleus and that there was an oral partition during June 2006. According to the defendant, in the said oral partition, the said property was allotted to him. The defendant submits that he has been doing business such as telephone booth as well as the Chicken meat shop in the suit property. In the meanwhile, he executed a settlement deed in favour of his wife, who is the first respondent herein, vide document dated 21.01.2007. It is the submission of the defendant that the plaintiff has fabricated the tax receipts and other revenue records. Hence, the defendants prayed to dismiss the suit.



SA(MD)No.13 of 2019

WEB COPY

5. Before the trial Court, the plaintiff has examined 3 witnesses as P.W.1 to P.W.3 and has marked 24 documents as Ex.A1 to Ex.A24. On behalf of the defendant, 5 witnesses were examined as D.W.1 to D.W.5 and 71 documents were marked as Ex.B1 to Ex.B71. As a Court documents, 20 documents were marked as Ex.C1 to Ex.C20 and as a third party documents, 2 documents were marked as Ex.X1 and Ex.X2.

6. After considering the oral and documentary evidence, and arguments submitted on either side, the trial Court has disbelieved the case of joint family nucleus and the alleged oral partition. Hence, based upon the sale deed, stands in the name of the plaintiff and also based upon the revenue records, the trial Court has declared the rights of the plaintiff. However, considering the fact that the defendant is in possession of the property, the trial Court has granted the alterative relief, directing the defendant to deliver the vacant possession of the property.

7. Aggrieved with the order, the defendant has filed an Appeal in A.S.No.6 of 2016. However, the first appellate Court, after considering the various aspect and re-appreciation of the fact and law, has confirmed the



SA(MD)No.13 of 2019

finding of the trial Court and dismissed the appeal on 23.12.2016.

8. Against the concurrent findings of the trial Court as well as the first Appellate Court, the appellants / defendants have come forward with the instant Second Appeal.

9. While filing the Second Appeal, the appellants have proposed following substantial questions of law:-

(a) Whether the Courts below are right in decreeing the suit by holding that the defendants has not proved their case?

(b) Whether the Courts below are right in the relying the Ex.B2, sale deed stands in the name of the first defendant and holding that there is no joint family arrangement?

(c) Whether the Courts below are right in not considering the issue that the suit property was purchased from the joint family income in the name of Chellam Nadar?

(d) Whether the decree can be passed on presumption of suit property is self acquired property by Chellam Nadar?



SA(MD)No.13 of 2019

WEB COPY

10. The learned counsel for the defendants / appellants would contend that there exist a joint family. Therefore, the purchase made by Mr.Chellam Nadar, by using the joint family nucleus,becomes the joint family property. The learned counsel for the defendants / appellants would further contend that since the suit property is the joint family property, Chellam Nadar has no right to execute the sale deed in favour of the plaintiff in Ex.A7. The learned counsel would further submit that the trial Court as well as the first Appellate Court has not considered the defence in respect of the oral partition, therefore, prayed to interfere with the concurrent finding and prayed to allow this Second Appeal. The learned counsel for the defendants / appellants would rely upon the judgment of this Court reported in **2018-1-LW-221 (M.Subramaniam @ M.S.Mani V. S.Ravichandran)**.

11. Per contra, the learned counsel for the plaintiff / respondent would vehemently submit that there was no joint family at all and that the defendants did not prove the existence of the joint family nucleus and further they miserably failed to prove the alleged family partition and the same was disbelieved by both the Courts below, hence, prayed to confirm



SA(MD)No.13 of 2019

the concurrent findings. The learned counsel for the plaintiff / respondent would reply upon the judgment of the High Court of Calcutta reported in ***2018-4-CalT-428 (Gispati Alias Gurudas Bhattacharya V.Hrishikesh Santra)*** and another judgment of this Court reported in ***2022-SCC-Online- Mad -1053 (P.Jayanthi V. C.Hemathiri)***.

12. I have given my anxious consideration to the either side submissions.

13. The first and foremost submission on behalf of the appellants / defendants is in respect of the existence of the joint family and joint family nucleus. No doubt, while the plaintiff was cross examined during the cross examination, the existence of a joint family until 2005 was admitted. But, the point here is that mere existence of the joint family is not sufficient to hold the property, held by the Kartha, is the joint family property. In order to bring the property within the purview of the joint family property, it is the duty of the person, who alleges the joint family property has to discharge his burden by proving the existence of surplus in the joint family nucleus to purchase the property in question.



SA(MD)No.13 of 2019

WEB COPY

14. In this regard, in all fairness, the learned counsel for the appellants / defendants have relied upon the judgment reported in **2018-1-LW-221 (M.Subramaniam @ M.S.Mani V. S.Ravichandran)**. Wherein after the considering various judgment, this Court in paragraph 23 has held as follows:-

“23.On the basis of the factual aspect of these cases and also the decisions referred supra in compendium, the Court can very well deduce the following legal aspects:

(1)Every Hindu family is a joint family. But it does not mean that every acquisition of immovable property is for the benefit of joint family, by utilising joint family income. There must be a common hotchpot and the same should contain sufficient nucleus so as to enable further acquisition.

*(2)Kartha or manager or father of a joint family can acquire immovable property in his name **without** using surplus income of joint family. In the absence of proof of separate income or funds of Kartha or manager or father; the well established presumption is that such acquisition of immovable property has been made by utilising surplus income of the joint family for its benefit.*



SA(MD)No.13 of 2019

(3)Every member, including junior member of a joint family, is having unfettered right of acquiring immovable properties by using his separate income without using joint family nucleus. If that aspect is proved, the acquisition is nothing but his self-acquisition.

(4)If a member alleges that a particular property is a joint family property, the initial burden lies upon him and then burden shifts on the person who alleges that it is his self-acquisition without utilising joint family income.”

(Emphasis supplied by this Court)

15. As per the above ratio, if a member alleges that the property is a joint family property, the initial burden lies upon him in order to bring the property within the fold of joint family property. The member, who alleges the existence of the joint family property has to prove the existence of the sufficient joint family nucleus. Here, admittedly the defendants, except the pleading of joint family property, has not filed any material, so as to prove the existence of the sufficient joint family nucleus. Therefore, unless the existence of the sufficient joint family nucleus is shown, the natural presumption would be that the property stands in the name of the Kartha cannot be construed as the joint family property. Once the property is not



SA(MD)No.13 of 2019

the joint family property, then the plaintiff is entitled to have decree for declaration.

16. It is pertinent to mention here that the first Appellate Court as well as the trial Court have disbelieved the case of existence of the joint family property. In order to substantiate the above finding, it is relevant to refer about the observation of the First Appellate Court. The first Appellate Court while disbelieving the existence of joint family has relied upon the Registration certificate pertains to the mini van. According to the second defendant, though the mini Van bearing Registration No.TN-63-F-0437 was also the joint family property, the same was also allotted to the plaintiff's husband. However, the first appellate Court found that the vehicle was purchased by the plaintiff's husband by borrowing loan from the private financier which clearly manifest the falsity of the defendant's case. Therefore, this Court is of the firm view that the findings of the trial Court as well as the first Appellate Court is based on sound reasoning and by proper appreciation of law.

17. From the submission of the appellants / defendants, this Court could not find any substantial question of law.



WEB COPY



SA(MD)No.13 of 2019

18. In the result, the instant **Second Appeal stands dismissed**, by confirming the judgment and orders of both the Courts below. There shall be no order as cost.

14.09.2023

NCC :Yes/No
Index :Yes / No
Internet :Yes / No
Ls

To

- 1.The District Court,
Sivagangai.
2. The Subordinate Court,
Sivagangai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD)No.13 of 2019

C.KUMARAPPAN.,J.

Ls

Judgment made in
S.A.(MD)No.13 of 2019

14.09.2023