



S.A.No.96 of 2004

WEB COPY 2BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.96 of 2004

Murthy

... Appellant

-Vs-

- 1.Sumathi
- 2.Duraisingam
- 3.Balakrishnan (died)
- 4.Mohandass
- 5.Vasanth
- 6.Kumaravelu (died)
- 7.Gomathi
- 8.Santhi
- 9.K.Dhanalakshmi
- 10.Chandra Arul
- 11.Sangeetha Vinoth Anand
- 12.Saranya Vallavan

respondents 9 to 12 are brought on record as
LRs of the deceased 6th respondent vide Court
order dated 27.07.2023 made in C.M.P.(MD)
Nos.9253, 9256 and 9257 of 2023 in
S.A.No.96 of 2004.



S.A.No.96 of 2004

WEB COPY

13.B.Banumathy

14.B.Saravanakumar

15.B.Padmapriya Karthikesan

respondents 13 to 15 are brought on record as LR's.

of the deceased 3rd respondent vide Court order

dated 27.07.2023 made in C.M.P.(MD).Nos.9200, 9201

and 9203 of 2023 in S.A.No.96 of 2004.

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 12.03.2003 made in A.S.No.75 of 2002 on the file of Additional District Court, Fast Tract Court No.II, Pattukottai, confirming the judgment and decree dated 10.10.2001 made in O.S.No.140 of 1997 on the file of Sub Court, Pattukottai.

For Appellant : Mr.P.Thiagarajan

For R1, 4, 5,

7 to 15 : No appearance

For R2 : Mr.S.Prabhu

J U D G M E N T

Murthy, one of the son of Govindarajulu Pillai (defendant No.6), being aggrieved by the concurrent finding of the trial Court as well as the first appellate Court, preferred the second appeal (O.S.No.140 of 1997 on the file of Sub Court, Pattukottai, A.S.No.75 of 2002 on the file of Additional District Court (Fast Track - II), Pattukottai.



S.A.No.96 of 2004

WEB COPY

2. Parties are indicated as per their litigative status referred to before the trial Court.

3. According to the plaintiff, the plaintiff and the 8th defendant are the children of Govindarajulu Pillai and Chandrabai Ammal. The suit property was purchased by their mother Chandrabai Ammal and she was in possession and enjoyment of the suit property till her life time. After her death, the suit property was enjoyed as a joint family property. She died in the year 1968. Thereafter, their father also died. The plaintiff further claimed that as he is not interested to enjoy the suit property jointly, he demanded the defendants for partition and caused to issue a legal notice to them. As it was not proceeded further, he filed the suit for partition of 1/9th share in the suit property.

4. Despite service of summons, the first defendant remained absent.

5. According to the respondents 2 to 5 and 8, after the death of their mother, his father was enjoying the suit property and died on 11.04.1992. They would further claim that the old hut was dismantled and with the income of the defendants 1, 2 and 4 and their father, the present tiled house was constructed. Their father died intestate and they have also stated that all the children of



S.A.No.96 of 2004

Govindarajulu Pillai have got 1/9th share in the suit property.

6. Whereas the defendants 6 and 7 have claimed that their father purchased the suit property in the name of their mother Chandrabai Ammal by a sale deed dated 07.05.1960 and the sale consideration was paid by their father. They would further claim that their mother did not have wherewithal to purchase the suit property. It is the further claim of the defendants 6 and 7 that since the date of sale, their father was in possession and enjoyment of the suit property as his property. It is their father, who demolished and removed the thatched house by obtaining approval from the Municipality in the year 1972. The 6th defendant was helping his father all along and considerable amount was spent for the marriage of 8th defendant by the 6th defendant. Their father Govindarajulu Pillai executed a registered Will on 19.04.1986, in favour of the 6th defendant in respect of the suit property with the condition that if the plaintiff fails to comply with the terms of the 6th defendant, the 6th defendant has to give Rs.5,000/- to the plaintiff. As their father died on 11.04.1992, the Will came into force and the 6th defendant is in possession and enjoyment of the suit property by residing there and as per the terms of the Will, he gave an amount of Rs.5,000/- to the plaintiff and obtained a receipt dated 01.05.1992. The tax assessment stands in the name of the 6th defendant. He has improved the suit property by spending



S.A.No.96 of 2004

huge amount and the other defendants have relinquished their right in the suit property.

7. The 6th defendant claimed that the extent of the suit property is 25 x 40 feet. Hence, it cannot be divided. If at all the suit property is ordered to be partitioned as per the Partition Act, a decree may be passed.

8. After evaluating the evidence, the trial Court concluded that the property was purchased by Chandrabai Ammal and Govindarajulu Pillai as a benami of his wife do not have any right to execute a Will in the name of the 6th defendant and the Will dated 19.04.1986, was held to be not a valid document and granted 1/9th share to the plaintiff.

9. Aggrieved, the 6th defendant Murthy and the 7th defendant Sumathi preferred an appeal before the Additional District Court of Pattukottai in A.S.No. 75 of 2002 and the first appellate Court, after hearing both sides arguments, concluded that the stand taken by the 6th defendant to the effect that after the death of their mother, the suit property was enjoyed by their father and by virtue of Will, the suit property belongs to 6th defendant cannot be accepted and finally concluded that after the death of their father, the suit property belongs to the



S.A.No.96 of 2004

sixth defendant, by virtue of Will, was not accepted and chosen to dismiss the first appeal, by confirming the judgment and decree of trial Court.

10. At trial, the plaintiff has examined himself as P.W.1 and one Balachandran was examined as P.W.2 and Exs.A1 to A12 were marked. Certified copy of sale deed in respect of the suit property executed in favour of Chandrabai Ammal dated 07.05.1960, is Ex.A1 (original sale deed, Ex.B18). On the defendants side, 8th defendant Santhi and 6th defendant Murthy were examined as D.Ws.1 and 2. Attesting witnesses in Ex.B7 / Will viz., Stephen is examined as D.W.3 and one Anbazhagan is examined as D.W.4. Exs.B1 to B29 were marked. Registered Will dated 19.04.1986, executed by Govindarajulu Pillai in favour of the 6th defendant Murthy is Ex.B7.

11. The learned counsel appearing for the appellant/6th defendant would strenuously argue that the suit property was purchased in the name of Chandrabai Ammal on 07.05.1960. After the death of his mother, his father treated it as his property and executed a Will in favour of the appellant / 6th defendant on 19.04.1986. He has complied with the conditions given under the Will by making payment of Rs.5,000/- to the plaintiff on 01.05.1992 (Ex.B11 / receipt). He would further contend that after the death of their father, Ex.B7 / Will



S.A.No.96 of 2004

came into force and the appellant has been in possession and enjoyment of the suit property. It is his further argument that D.W.3 Stephen has spoken about the payment of Rs.5,000/- to the plaintiff. He would further contend that in respect of the Will, one witness Anbazhagan was examined as D.W.4. Before the first appellate Court, in order to prove the execution, another attesting witness Kumar was examined as D.W.5. Therefore, as the due execution of the Will is proved, the plaintiff has no right in the suit property.

12. Per contra, the learned counsel appearing for the second respondent/plaintiff would vehemently contend that as per Section 14 of the Hindu Women's Rights to Property Act, 1937, it is the absolute property of their mother and the father has no right to execute the Will. The learned counsel would further argue that despite the examination of attesting witness to the Will / Ex.B7, as he was not spoken anything about the Will, in compliance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, Will has to be taken as not proved. Therefore, the trial Court granted 1/9th share to the plaintiff and the same has to be confirmed and prayed for dismissal of this appeal.

13. To buttress his argument, the following judgments were referred to:



S.A.No.96 of 2004

WEB COPY

(i) ***K.V.Ramasamy and another vs. K.V.Rahgavan and others***

reported in **(2010) 1 MLJ 1019** was referred to in order to contend that the property acquired or standing in the name of a female member of a Hindu joint family cannot be treated as a joint family property.

(ii) ***Om Prakash Sharma @ O.P.Joshi vs. Rajendra Prasad Shewda***

and others reported in **(2015) 15 SCC 556** was referred to in order to contend that the suit property was purchased by the husband in the name of wife and the Supreme Court held that the practice prevailing in a Hindu family where the husband normally looks after and manages the property of the wife, is also a relevant circumstance to be taken note of.

(iii) ***M.L.Abdul Jabbar Sahib vs. H.Venkata Sastri and sons and***

others etc. reported in **AIR 1969 SC 1147** (FB) was referred to in order to contend that it is essential that the witness must have put his signature with an intention to attest and if a person put his signature on the document for some other purpose, for example, if he is a scribe or an identifier or a registering officer, he cannot be considered as an attesting witness.

14. The following substantial question of law arise for consideration:

When the evidence let in by the appellant coupled with the documentary evidence and also the admissions made by P.W.1



S.A.No.96 of 2004

WEB COPY

prove beyond doubt that the suit property is that of Govindarajalu and the appellant is entitled to the same by virtue of a Will dated 19.04.1986, is the learned Judge of the Fast Track Court right in granting a decree for partition?

15. Govindarajulu Pillai and Chandrabai Ammal had 9 children viz., the plaintiff and the defendants 1 to 8 herein. It is not in dispute that the property was purchased in the name of Chandrabai Ammal through a registered sale deed dated 07.05.1960. But the defendants 6 and 7 have taken a strong stand that in fact sale consideration was paid by Govindarajulu Pillai and after her death also their father treated the suit property as his property and executed a Will in favour of the 6th defendant on 19.04.1986, Ex.B7.

16. What is the nature of property purchased in the name of Chandrabai Ammal is the moot question. Ex.A1 / Ex.B18 is the sale deed dated 07.05.1960 stands in the name of Chandrabai Ammal. On behalf of the defendants 6 and 7, it was contended that their father purchased the suit property in the name of their mother. The law is well settled that the property, which is acquired in the name of female member, it need not be proved as to how she acquired the said property and it is the property of female in whose name it stands. Therefore, when the property is acquired or standing in the name



S.A.No.96 of 2004

of female, as per Section 14 of the Hindu Women's Rights to Property Act, 1937, it is the absolute property of female member. To fortify the same, it is useful to refer to the decision of Hon'ble Supreme Court. The Hon'ble Supreme Court in **Om Prakash Sharma @ O.P.Joshi vs. Rajendra Prasad Shewda and others** reported in **(2015) 15 SCC 556**, it has been observed that the purchase of property by a husband in the name of his wife is a specie of benami purchase that had been prevalent in India since ancient times. Such a practice appears to have been prevalent on account of the position of Hindu women to succession until the enactment of the Hindu Succession Act and the amendments made thereto from time to time. In a situation where a Hindu widow had a limited right to the estate of the deceased husband under the Hindu Women's Rights to Property Act, 1937, the purchase of immovable property by a husband in the name of the wife in order to provide the wife with a secured life in the event of the death of the husband was an acknowledgement and accepted feature of Indian life which even finds recognition in the explanation clause to Section 3 of the Benami Transactions (Prohibition) Act, 1988.

17. Admittedly, the suit property was purchased in the name of Chandrabai Ammal (Ex.A1 / Ex.B18). Therefore, the suit property has to be held as a separate property of their mother. When that be the settled law, it should not



S.A.No.96 of 2004

lie in the mouth of the 6th defendant that the sale consideration was paid by their father and after the death of his mother, he enjoyed the suit property as his property and he disposed of the said property by way of Will in his name. As the suit property is the separate property of a Hindu Women, Govindarajulu Pillai, the father of the plaintiff and the defendants will not have any semblance of right to deal with the property.

18. In view of the settled legal position, as the suit property is the separate property of Chandrabai Ammal, 1/9th share granted to the plaintiff by the trial Court, which needs no interference and the substantial question of law is answered against the appellant.

19. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the trial Court as well as the first appellate Court. However, considering the relationship between the parties, there shall be no order as to costs.

29.11.2023

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



S.A.No.96 of 2004

WEB COPY

To

- 1.The Sub Court,
Pattukottai.
- 2.The Additional District Court
(Fast Track No.II),
Pattukottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.96 of 2004

R.KALAIMATHI,J.

akv

S.A.No.96 of 2004

29.11.2023