



SA.No.1334 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30-10-2024

PRONOUNCED ON : 07-11-2024

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

SA.No.1334 of 2007

1. Anusuya Ammal (died)

2. Sivagami Ammal

(2nd appellant LRS of the deceased as per memo dated 14.09.2011
(SR.No.80050) vide dated 23.07.2021 made in SA.No.1334 of 2007

... Appellants / plaintiffs

V.

1.Krishnan

Varatha Ammal (died)

Gopal (died)

Dhanapal (died)

Chinakulandai (died)

2.Karapayi Ammal

3.D.Raja Manickam



SA.No.1334 of 2007

4.Dhanabaggiam

5.D.Kasi

6.Andal

7.D.Sekar

8.Rohini Ammal

9.Ravi

10.Mohan

11.Kannagi

12.Mani

13.Ramamurthy

14.Chinnaponnu

15.Yesoda

... Respondents / defendants

Prayer : This Second Appeal is filed under Section 100 of the Code of Civil Procedure 1908 against the judgment and decree dated 11.01.2007 made in AS.No.69 of 2006 on the file of Principal District Court, Vellore confirming the judgment and decree dated 28.10.2005 made in OS.No.1579 of 2004 on the file of the Principal District Munsif, Vellore.

For appellant : M/s.A.S.Manisha
for Mr.T.R.Rajaraman



SA.No.1334 of 2007

WEB COPY For Respondents : Mr.B.Harish
for La Law

J U D G M E N T

The instant second appeal is filed at the instance of the plaintiffs. The respondent herein are the defendants before the trial Court. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

The plaintiff case is in brief :-

2. The first plaintiff is the widow and the 2nd plaintiff is the daughter of Arjuna Gounder, who is the son of one Parama Gounder. The first defendant is the son and the 2nd defendant is the widow of one Kuppuswamy Gounder and defendants 3 to 5 are brothers, all being sons of Parama Gounder. Parama Gounder died intestate leaving the above said five sons and ancestral properties viz., S.No.22/2 – 0.16 cents, S.No.22/1 – 0.75 cents and S.No.22/4 – 0.85 cents and a Thatched house.



SA.No.1334 of 2007

WEB COPY

2(i) After the death of Parama Gounder his elder son Kuppusamy Gounder was in enjoyment of the property and affairs of the joint family. The Kuppuswamy Gounder sold the above said properties for himself and on behalf of his family members to one Molavu Gounder on 17.12.1934. On the same day, purchased the suit properties from and out of the sale proceeds and with joint family funds under two sale deeds. The suit properties are treated as joint family properties of all five brothers. The first plaintiff's husband died leaving behind the first plaintiff and the second plaintiff to succeed his share of the property. The defendants 1 to 5 celebrated the marriage of the 2nd plaintiff in the year 1979. The suit properties were not divided, Kuppusamy Gounder died in the year 1966, leaving behind the defendants 1 and 2 as his heirs. The plaintiffs have issued legal notice dated 05.03.1985 for claiming partition.

The case of the defendants in brief :-

3. The lands in S.No.22/2 – 0.16 cents, S.No.22/1 – 0.75 cents and S.No.22/4 – 0.85 cents and a Thatched house in Killpallipattu village are the separate properties of Kuppusamy Gounder in the year 1934, he



SA.No.1334 of 2007

sold the properties to Molavu Gounder and purported to execute the sale deed as Guardian of younger brothers. On 17.12.1934, Kuppusamy Gounder purchased items 1 to 3 of the suit properties under two sale deeds, but no part of consideration for this acquisition was paid from and out of the sale proceeds of the said Mulavu Gounder and consideration for purchase was made out of executing promissory deed, mortgage deed and by undertaking to pay debt due of the vendor Lakshmana Gounder to Palani Kuppu Chettiar. Item 4 and 5 of the suit properties were purchased by Kuppusamy Gounder from exclusive funds earned by him. The brothers were not living together and they were living separately and there is no joint family nucleus. The defendants 2 to 5 are in possession of the suit property of the defendants, all the defendants have made improvements in the suit properties and they have all perfected title for open, continuous and adverse possession.

4. Based on the pleadings, the trial Court has framed the following issues :-

(i) Whether the plaintiff is entitled for preliminary decree for partition as prayed for?



WEB COPY



SA.No.1334 of 2007

(ii) Whether the suit properties are the separate properties of Kuppusamy Gounder?

(iii) Whether the defendants have perfected to their title to the suit properties by adverse possession?

(iv) Whether the suit is not valid properly?

(v) Whether the suit is not properly valued and the Court fee paid is incorrect?

(vi) To what relief the plaintiff is entitled?

5. Before the trial Court on the side of the plaintiff, the first plaintiff herself examined as PW1 and Ex.A1 to 12 were marked. On the side of the defendants, the first defendant himself examined as DW1 and Ex.B1 to B68 were marked.

Findings of both Courts below :-

6. The trial Court after having considered the oral and documentary evidences and the submissions on either side has finding that it is evident from Ex.A11 sale deed that it has been mentioned the



SA.No.1334 of 2007

WEB COPY

father name of Parama Gounder as Uthandi Gounder and in Ex.A12 sale deed the father name of Parama Gounder is shown as Chinnaiya Gounder. Thus, the father name of Parama Gounder as mentioned in Ex.A11 and Ex.A12 are different persons and no persons connected with the sale deed have been examined by the plaintiff side. From Ex.B16 to B45, it is evident that the father of the Parama Gounder name is Chinnaiya Gounder. The plaintiffs have failed to prove that S.Nos.22/1 and 22/2 are joint family properties and also failed to prove the income derived from S.No.22/4 and the same cannot be considered as joint family properties. It is also finding that the defendant have not filed any documents to prove that they are in possession of the suit properties and in the absence of the any documentary evidence, it is not safe to decide whether the defendants have perfected title on suit properties and dismissed the suit. Being not satisfied with the decree and judgment of the trial Court, the plaintiffs have preferred the first appeal. The first appellate Court on reappraising of evidences and documents comes to a conclusion that there is no infirmity in the findings rendered by the trial Court and dismissed the appeal. Aggrieved with the concurrent findings of the Courts below, the plaintiffs are before this Court by way of this



SA.No.1334 of 2007

Second Appeal.

WEB COPY

7. At the time of admission, this Court has formulated the following substantial question of law :-

“(i) Whether the Courts below right in non-suit the plaintiffs especially when the existence of joint family properties have been established and no plea of ouster is made by the defendant?”

8. The learned counsel appearing for the plaintiffs/appellants would submit that the first appellate Court failed to consider that the evidence of the plaintiffs, which clearly proves that the plaintiffs predecessor in title viz., Parama Gounder had ancestral property and the eldest son of Parama Gounder viz., Kuppusamy Gounder looked after the properties, after the demise of Parama Gounder. It is also failed to consider that the first defendant as DW1 categorically admitted the existence of the joint family property and in the said circumstances unless a plea of ouster is made on the side of the defendants, the plaintiff cannot be non suited. In the absence of any evidence on the side of the



SA.No.1334 of 2007

WEB COPY

defendants to establish that the properties were purchased out of self earning of deceased Kuppusamy Gounder, it cannot be held that the properties are self acquired properties of deceased Kuppusamy Gounder therefore the findings are erroneous and unsustainable. It was also contended that when the defendants 1 and 2 have executed three settlement deeds in favour of the defendants 3 to 5, clearly go to show that the properties are the joint family properties, when the defendants admitted the existences of joint family properties and further purchase of the property immediately after selling one of the joint family properties, no other conclusions can be arrived at except that the properties purchased are joint family properties. To strengthen her contention, the learned counsel for the appellant has relied on the judgment of the Hon'ble Apex Court reported in **2015 (11) SCC 269 – Shasidhar and others V. Ashwini Uma Mathod and another**, wherein it has been held that *“in a suit filed by cosharer, coparcener, coowner or joint owner as the case may be, for partition and separate possession of his/her share, it is necessary for the Court to examine in the first instance, the nature and character of the properties in suit such as who was the original owner of the suit properties, how and by which source acquired such*



SA.No.1334 of 2007

properties. Secondly, how the devolution of interest in the property took place.”

9. Per contra, the learned counsel appearing for the defendants/respondents would submit that suit properties are not ancestral properties. All the properties were acquired by Kuppusamy Gounder on his own earnings or by borrowing and no part of the purchase money was provided by any family fund. The deceased Kuppusamy Gounder had cherished to desire to give some properties to defendants 3 to 5. But as he could not himself execute and register a document, he directed his wife and son should give exgratia a share in these properties to his surviving brothers. He would submit that in pursuance of the said directions of the deceased Kuppusamy Gounder, out of love and affection and as a provision for them, defendants 1 and 2 conveyed a share in the properties to defendants 3 to 5 by three separate registered settlement deed in the year 1970 viz., Ex.B61 to Ex.B63. Concurrent factual findings rendered by both the Courts below cannot be interfered by this Court by invoking Section 100 of C.P.C.



SA.No.1334 of 2007

WEB COPY

10. This Court has given anxious consideration on the submissions made by either side and perused the materials available on record.

11. According to the plaintiffs that Parama Gounder is the owner of the lands in S.Nos.22/1, 22/2, 22/4 and thatched house as ancestral property and his elder son Kuppusamy Gounder sold these items on 17.12.1934 to Molavu Gounder and purchased the item Nos.1 to 3 of the suit properties on the same day. In order to prove the fact that suit properties are ancestral properties, the plaintiffs have relied upon Ex.A11 sale deed dated 19.02.1923 and Ex.A12 sale deed dated 30.04.1920. In Ex.A11, the father of Parama Gounder is mentioned as Uthandi Gounder, whereas in Ex.A12, father of Parama Gounder is mentioned as Chinnaiya Gounder. Admittedly, no persons connected with sale deeds have been examined by the plaintiffs side.

12. PW1 in her cross examination has deposed that she does not know the father's name of the Parama Gounder. Ex.B16 to Ex.B45 are pronotes which shows that father of Parama Gounder name is Chinnaiya Gounder. It is seen from Ex.A12 alone mentioned father of Parama



SA.No.1334 of 2007

WEB COPY

Gounder is Chinnaiya Gounder, it relates to S.No.22/2. Admittedly, under Ex.A4 sale deed dated 17.12.1934 the properties in S.Nos.22/1, 22/2 and 22/4 have been sold.

13. Ex.B1 sale deed recitals shows that the consideration of the sale was paid on the debts due of vendors to one Palani Kuppu Chettiar and no amount was received in cash. Though sale deed had been executed on 17.12.1934 and the same has been registered only on 19.02.1935. A perusal of Ex.B3 sale deed dated 17.12.1934 shows that Kuppusamy Gounder has purchased a part of items 1 to 3 of suit properties from Chinnaiya Gounder for Rs.620/- and the same was paid in cash and by execution of pronotes in favour of the vendor for Rs.100/-. Ex.B3 executed on 17.12.1934 has been registered only on 23.02.1935. Ex.B1 and Ex.B3 though executed on 17.12.1934 and they have been registered only in the month of February 1935 and the consideration amount have not though actually paid by Kuppusamy Gounder. A perusal of Ex.B3 and Ex.B4, shows that Parama Gounder had debts and Kuppusamy Gounder discharged the same. When a property stands in the name of a member of the joint family and if the family possess joint



SA.No.1334 of 2007

family property, the plaintiff must prove that the joint family properties were yielding income to acquire more properties. The plaintiffs have not produced any documents to prove that S.Nos.22/2 lands have fetched certain amount of income.

14. PW1 admits in her cross examination that her husband purchased properties in his name and all the brothers have purchased properties in their own names. According to the plaintiff, all the brothers constituted joint family.

15. The fact that the plaintiff's husband purchased properties in his own name, but the plaintiff's have not included the same in the schedule of property and non inclusion of other properties purchased by his brothers in the Schedule of properties raises serious question whether there was joint family as claimed by the plaintiff. If there has been joint family property as alleged by the plaintiff, there cannot be purchase of separate properties by the brothers in their own names. Ex.B61 to Ex.B63 are the settlement deeds of the year 1970, executed in favour of Dhanapal Gounder, Gopal Gounder and Chinnakulandai Gounder



SA.No.1334 of 2007

respectively, in those documents it has been stated that the suit properties absolutely belong to Kuppusamy Gounder and he had told his wife and sons to settle the properties to his brothers out of love and affection.

16. A perusal of Ex.B64 mortgaged deed dated 16.02.1974 and Ex.B65 sale deed dated 27.09.1981 shows that one Dhanapal Gounder and Chinnkulandai Gounder have been dealt with the properties, which have been settled to them by settlement deeds by mortgaging the properties and sale proceeds were used for purchase of suit properties.

17. When property is purchased from and out of the joint family nucleus in the name of a member of coparcener, such property should be treated to be the joint family property. In this case, there is no evidence relating to any joint family nucleus.

18. The first plaintiff has been married in the year 1995 and she has no personal knowledge as to what was happened or that there was any surplus income for the joint family or there was any debt of the joint family. Except for the mere production of the sale deeds, the plaintiffs



SA.No.1334 of 2007

have not let in proper evidence to prove that the suit properties were purchased out of joint family nucleus.

19. It is well settled law that concurrent findings of the Courts below cannot be interfered by the High Court in exercise of its jurisdiction under Section 100 of C.P.C. The power of the High Court to interfere in second appeal under section 100 C.P.C. is limited solely to decide a substantial question of law.

20. It is relevant to refer to the judgment reported in **C.Doddanarayana Reddy (Dead) by LRs & Ors. v. C Jayarama Reddy (Dead) by LRs & Ors. AIR 2020 SC 1912** has held as under:

*"25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as **Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan - (1999) 6 SCC 343**, it was held that findings of the fact could not have been interfered within the second appeal. This Court held*



SA.No.1334 of 2007

as under:

12. This Court had repeatedly held that the power of the High Court to interfere in second appeal Under Section 100 Code of Civil Procedure is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. In Ramanuja Naidu v. V. Kanniah Naidu - 1996 3 SCC 392), this Court held:

It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction Under Section 100 of Code of Civil Procedure. The Single Judge of the



WEB COPY



SA.No.1334 of 2007

High Court totally misconceived his jurisdiction in deciding the second appeal Under Section 100 of the Code in the way he did.

*14. In **Navaneethammal v. Arjuna Chetty** – 1996 6 SCC 166), this Court held: Interference with the concurrent findings of the courts below by the High Court Under Section 100 Code of Civil Procedure must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."*

21. Therefore, viewing from any angle, the entire arguments advanced by the learned counsel appearing for the plaintiff / appellant is not having substance at all. The ruling relied by the learned Counsel for



SA.No.1334 of 2007

WEB COPY

the appellant is also not supported, as the facts are not similar. All the substantial questions of law formulated in the present second appeal are answered in favour of the defendants/respondents and altogether the present second appeal deserves dismissal.

22. In the result, the second appeal is dismissed. The judgment and decree passed in OS.No.1579 of 2004 by the Principal District Munsif, Vellore, upheld in AS.No.69 of 2006 by the Principal District Court, Vellore are confirmed. No costs.

07.11.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

tsh

To

1.The Principal District Court, Vellore

2.The Principal District Munsif, Vellore.



WEB COPY



SA.No.1334 of 2007

M. JOTHIRAMAN, J.

tsh

Pre Delivery Judgment in
SA.No.1334 of 2007

07.11.2024