



S.A.No.57 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

Coram:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

S.A.No.57 of 2008

and

M.P.No.1 of 2008

1.K.S.Subramani (died)
2.S.Radhamani
3.A.S.Senthil Kumar
4.A.S.Elango
5.A.S.Kanimozhi ... Appellants
(Appellants 2 to 5 brought on record as LR's of the
deceased first appellant vide order dated 27.02.2014
in M.P.Nos.1 to 3 of 2012)

Vs.

1.Saradhambal
2.Chandra
3.K.S.Sekar
4.K.S.Sampath (died)
5.K.S.Shanmugam
6.K.S.Annapoorani
7.K.S.Dhinesh ... Respondents
(Respondents 6 & 7 brought on record as LR's of the
deceased 4th respondent vide order dated 21.09.2021 in
C.M.P.Nos.10747, 10742 & 10753 of 2021)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 24.07.2007 in A.S.No.34 of 2006 passed by the learned Principal Sub Judge,



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Gobichettipalayam, confirming the judgment and decree dated 12.09.2006 in O.S.No.289 of 2000 passed by the learned District Munsif, Gobichettipalayam.

For appellants : Mrs.R.Meenal

For R1 & R2 : Mr.S.Kaithamalai Kumaran

For R3 : Notice dispensed with vide Court
order dated 05.06.2020

For R4 : Died

For R5 to R7 : No appearance

J U D G M E N T

The first defendant in the suit is before this Court in this Second Appeal. Pending the Second Appeal, the sole appellant died and his legal heirs were substituted as appellants 2 to 5. The plaintiffs are the respondents 1 and 2 and defendants 4 and 5 are the respondents 3 and 4 and the second defendant is the 5th respondent in this Second Appeal.

2. This Second Appeal has been filed challenging the judgment and decree dated 24.07.2007 in A.S.No.34 of 2006, on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 12.09.2006 in O.S.No.289 of 2000 on the file of the District



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Munsif Court, Gobichettipalayam.

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3. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, as per the averments in the plaint, are as under:

4. The suit property belonged to one K.S.Samiyappan. The first and second defendants are the sons of K.S.Samiyappan through his first wife Lakshmi. After the marriage with Lakshmi was divorced, K.S.Samiyappan married the 3rd defendant/Saroja. The plaintiffs and the defendants 4 and 5 are the children, born to Samiyappan and the 3rd defendant.

5. It is the case of the plaintiffs that K.S.Samiyappan died intestate on 21.11.1989 leaving behind the plaintiffs and the defendants 1 to 5 as his legal heirs to succeed his estate, as per the Hindu Succession Act.

6. According to the plaintiffs, the suit properties are the self acquired properties of K.S.Samiyappan. Since K.S.Samiyappan died



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intestate, the plaintiffs and the defendants each are entitled to 1/7 share of the suit properties. Since the defendants attempted to encumber the suit properties, the plaintiffs are forced to cause a paper publication in Dinamalar on 01.04.1990 and also issued a legal notice on 07.04.1990 seeking for partition in the suit properties. Since the defendants were evading them, the plaintiffs have filed the suit for partition and separate possession.

7. The defendants 1 and 2 resisted the suit by filing written statement that it is true that Samiyappan died intestate. But, it was contended that the suit properties are not the separate properties of Samiyappan and they were treated as joint family properties.

8. It is the case of the defendants 1 and 2 that on 17.05.1948, when the defendants 1 and 2 were minors, Samiyappan sold their ancestral house at Kallipatti, for a sum of Rs.500/-. Out of the said sale consideration, Rs.250/- was used to discharge his debts and with the help of the balance of Rs.250/-, he started a soda factory at Athani, styled as 'Rama Vilas Soda Factory'.

9. It is the further case that with the help of the money got by



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the sale of ancestral properties, Samiyappan started the soda factory and got good business and after some years, the defendants 1 and 2 also joined in the business. Out of the joint earnings from the joint family business, the properties were acquired by the family and Samiyappan. Being the eldest member of the family, the sale deed was registered in the name of Samiyappan, as the joint family manager. Therefore, according to the defendants 1 and 2, the suit properties are not the separate properties of Samiyappan, but the suit properties were purchased out of joint family nucleus and were treated as joint family properties. Therefore, the plaintiffs are only entitled to 1/35 share in the suit properties and not entitled to 1/7 share.

Evidence and documents:

10. During trial, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and marked Exs.A1 to A14. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Exs.B1 to B6.

Findings of the Courts below:



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11. After considering the evidences and documents, the Trial Court by judgment and decree dated 12.09.2006, decreed the suit and passed preliminary decree allotting 5/28 share to each of the plaintiffs. The Trial Court found that the defendants 1 and 2 failed to establish that sufficient joint family nucleus was left for the defendants' father to purchase the suit properties and they have failed to prove that the suit properties were purchased from the joint family nucleus.

12. Aggrieved by the same, the defendants 1 and 2 filed an appeal in A.S.No.34 of 2006. The Lower Appellate Court, after reappreciating the evidences, by judgment and decree dated 24.07.2007, dismissed the appeal. Aggrieved by the same, the first defendant in the suit is before this Court in this Second Appeal.

13. This Court, by order dated 21.01.2008, only ordered notice regarding admission and this Second Appeal was not admitted.

Submissions on both sides:

14. The learned counsel for the first defendant/appellants vehemently submitted that the defendants have filed the document in



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Ex.B1/sale deed and established that the ancestral property was sold by their father Samiyappan for a valuable consideration of Rs.500/-. Out of the same, only a sum of Rs.250/- was used to discharge his debts and balance of Rs.250/- was used to start the joint family business as 'Rama Vilas Soda Factory'. The defendants 1 and 2 later joined in the joint family business and then from the income derived by the family business, the suit properties were purchased. Therefore, the suit properties are not the separate properties of Samiyappan, but, they are always treated as joint family properties.

15. Further, the learned counsel contended that they have already filed documents in Ex.B4, in which, it is mentioned that the suit properties are joint family properties and therefore, contended that the defendants 1 and 2 have submitted the document to establish that the suit properties are the joint family properties and contended that the Courts below failed to consider this document and the judgment and decree, allotting 5/28 share in favour of the plaintiffs, are perverse and sought for allowing this Second Appeal.

16. The learned counsel for the plaintiffs/respondents 1 & 2



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contended that the plaintiffs have filed documents in Exs.A1 to A6, which are all the sale deeds executed in favour of the plaintiffs' father Samiyappan, through which, the plaintiffs' father purchased the suit properties for a valuable consideration. The learned counsel further contended that since according to them, it was purchased from and out of the joint family nucleus, the defendants 1 and 2 have come up with the case that the suit properties are joint family properties. It is the bounden duty of the defendants 1 and 2 to claim and prove that through the sale of the ancestral property, there was sufficient nucleus left by, through which, the business was started and the joint family nucleus available was sufficient enough to purchase the suit properties. Admittedly, the documents filed in Ex.B1 is only the sale, for a consideration of Rs.500/- and the plaintiffs' father had purchased the suit properties through Exs.A1 to A6. Therefore, the learned counsel contended that when the defendants have failed to establish that the suit properties were purchased from the joint family nucleus, it is evident that the said Samiyappan purchased the properties in Exs.A1 to A6 and therefore, they are the self acquired properties. The Courts below have rightly decreed the suit and submitted that there is no substantial question of law involved in this Second Appeal for the intervention of this Court.



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Analysis on the submissions made on both sides:

17. The relationship between the parties is not disputed. Admittedly, Samiyappan had two wives viz., Lakshmi and Saroja/3rd defendant. After Lakshmi was divorced, Samiyappan married the 3rd defendant/Saroja. The defendants 1 and 2 are the children born through the first wife Lakshmi and the plaintiffs and defendants 4 and 5 are the children born through Saroja/3rd defendant.

18. It is the admitted case that the suit properties were purchased in the name of the plaintiffs' father Samiyappan, through registered sale deeds in Exs.A1 to A6. The suit properties were purchased from the year 1959 to 1986. The plaintiffs' father Samiyappan, admittedly, purchased the property on 12.03.1986 in Ex.A5 alone, for a valuable consideration of Rs.45,000/- and the other properties under sale deeds in Exs.A1 to A4 and A6 have been purchased for different considerations. When Samiyappan has purchased the suit properties and the sale deeds stand in his name, from the documents, it could be seen that he purchased the properties for a valuable consideration and the same should be treated as self acquired/separate properties.



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19. It is the case of the defendants 1 and 2 that their father Samiyappan sold the ancestral property in Ex.B1 on 17.05.1948 for a sale consideration of Rs.500/-. Out of the same, a sum of Rs.250/- was used for repaying the debts and with the help of the sum of Rs.250/-, he started a business and with the help of the same, he purchased the suit properties. When admittedly, the properties were sold on 17.05.1948 in Ex.B1 for a sum of Rs.500/- and admittedly, Rs.250/- was the balance available after repaying the debts and the property in Ex.A5 alone was purchased for a sum of Rs.45,000/-, it cannot be taken that there was sufficient amount available to be treated as the joint family nucleus for the purpose of purchasing the suit properties.

20. The defendants 1 and 2 did not file any other document or let in evidence to establish that the suit properties were purchased from and out of the joint family nucleus. When the onus was on the defendants 1 and 2 to prove that the suit properties are joint family properties, since according to them the same were purchased through joint family nucleus, the onus is on them to prove that by the sale of an ancestral property, there was a residue available and the joint family business derived



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income and that was sufficient enough to purchase the suit properties.

When the defendants failed to establish the same, the Courts below have rightly arrived at a finding of fact that the suit properties are the separate properties of Samiyappan and have passed the preliminary decree of partition granting 5/28 share each to the plaintiffs. When the finding of fact arrived at by the Courts below is based on materials available on record, this Court does not find any illegality or perversity with the finding of the Courts below.

21. There is no substantial question of law that arises for consideration of this Court to interfere with the preliminary decree passed by the Trial Court.

22. In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

05.02.2024

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd



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G.ARUL MURUGAN.,J.
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To

1. The Additional District Judge, Fast Tract Court No.1, Tindivanam.
2. The Principal District Munsif, Tindivanam.
3. The Section Officer, V.R.Section, High Court, Madras.

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