



S.A.No.363 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.363 of 2009

Shanmugam

... Appellant

Vs

- 1.Thillaikandasamy
- 2.Prathiba
- 3.Sabana
- 4.Venkatesh
- 5.Arumugham
- 6.Kandasamy
- 7.Murugan
- 8.Sivakamasundari
- 9.Neelavathi
- 10.Jayanthi
- 11.Anandan
- 12.Amudha
- 13.Kumutha
- 14.Aravindan
- 15.Manickam
- 16.Sundaram
- 17.Sathyanarayanan
- 18.Singaram
- 19.Ramayee Achi Firm
by its partner

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Annamalai Chettiar
Sengalaneer Pillaiyar Koil St.,
Chidambaram,
Cuddalore District.

21.Darmambal
22.Indira
23.D.T.Kaliaperumal
24.Palaniammal

... Respondents

(Respondents 1 to 22 are not necessary parties as they remained exparte.
Notice need not to be sent.)

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed by the learned Principal District Judge, Cuddalore, in A.S.No.57 of 2006, order dated 13.08.2008 dismissing the appeal. Confirming the judgement and decree on the file of the Subordinate Court, Chidambaram in O.S.No.71 of 1997, dated 22.04.2003.

For Appellant : Mr.R.Gururaj

For Respondents : Mr. J. Antony Jesus



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JUDGMENT

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The appellant has filed this Second Appeals to set aside the Judgment and decree of the learned Principal District Judge, Cuddalore, in A.S.No.57 of 2006, order dated 13.08.2008 dismissing the appeal. Confirming the judgement and decree on the file of the Subordinate Court, Chidambaram in O.S.No.71 of 1997, dated 22.04.2003.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. The appellant herein is the 1st plaintiff in O.S.No.71 of 1997, which was filed along with his sister, the 2nd plaintiff, against 24 defendants. The suit sought a declaration, partition, and other consequential relief regarding 48.48 cents of land and a building located at Door No.9, Chunnambukarar Street, Chidambaram, described in T.S.Nos. 806, 807 & 808.



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4. The plaintiffs, the 1st defendant, and others named Saravanan, Chandramohan, Mohanaselvi, and the widow of the 2nd defendant, are legal heirs of one S.K. Subramanian, who passed away in 1999. The plaintiffs claim that there was a Hindu joint family consisting of Kandasamy Padayachi and his four sons, namely S.K. Subramanian, Maheswaran, Rajendiran, and Arumugam. According to the plaintiffs, properties, including the suit property, were purchased using income from joint family businesses and were enjoyed by all family members.

5. A partition took place on 25.04.1960 among the sons of Kandasamy Padayachi, but the plaintiffs allege that not all properties were divided. Subsequently, Kandasamy Padayachi executed a registered settlement deed on 09.10.1961, granting the suit property to his eldest son, S.K. Subramanian. The plaintiffs argue that Kandasamy Padayachi only had a 1/5th share in the property and, therefore, had no right to convey the entire property. After the death of their father, S.K. Subramanian, the plaintiffs claimed their share in the property, leading to the filing of the suit. Notably, all the defendants remained ex-parte before the trial court.



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6. The 24th defendant, an auction purchaser of the suit property, contested the case, stating that S.K. Subramanian had enjoyed the property as the absolute owner under the 1961 settlement deed. Due to a failure to repay a loan, the suit property was auctioned by the court, and the 24th defendant purchased it, subsequently taking possession of the property through court processes. The 24th defendant also pointed out that no objections were raised by other legal heirs of Kandasamy Padayachi regarding the settlement deed executed by Kandasamy during his lifetime.

7. Both parties presented oral and documentary evidence before the trial court. After considering the evidence, the trial judge concluded that the suit property was not a joint family property but rather a self-acquired property of Kandasamy Padayachi. The court held that Kandasamy had the right to execute the settlement deed in favor of S.K. Subramanian in 1961. Consequently, when Subramanian failed to repay the loan, the property was rightfully auctioned and purchased by the 24th defendant. The plaintiffs were deemed to have no rights over the property, and the 24th defendant was declared the lawful owner.



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8. The plaintiffs appealed this decision (A.S.No.57 of 2006), but the first appellate judge independently analyzed the facts and evidence, framing separate issues, including whether the suit property was self-acquired or ancestral. Considering the evidence, including Exs.A1 and A2 and the court auction proceedings (Ex.B1 and B2), the appellate court upheld the trial court's findings that the suit property was self-acquired by Kandasamy Padayachi and that the plaintiffs had no claim to it. After the partition held within the family in 1960, this particular property was not included in the partition. In 1961, Kandasamy Padayachi executed a settlement deed in favour of Subramaniam through the plaintiff's father, as evidenced by the settlement deed (Ex.A1). At that time, the plaintiff was a minor, but he later claimed that he acquired rights to the property by birth. However, he did not raise any such claim concerning other properties of Kandasamy. The learned trial Judge observed that the property purchased through Ex.A1 was separately allotted to the children of Kandasamy Padayachi, including the plaintiff's father, in the partition deed. During Kandasamy's life time, his sons did not object to the settlement deed. As per the gift deed, the plaintiff's father exercised ownership right over the property and created a



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charge on the property for a loan he borrowed. Later, the property was brought to Court action, where D24 purchased it, and the sale was upheld by Subramani in 1975. Subsequently, the present suit was filed, which was viewed as an abuse of the legal process, and the appeal was dismissed. Challenging these concurrent findings, the plaintiffs have preferred this appeal.

9. The learned counsel for the appellant argues that the Court below failed to recognize the existence of a joint family and a joint family business. It is contended that the property in question was purchased from the income of the joint family, which can be corroborated by Ex.A1. Both Courts below did not properly appreciate the evidence, which necessitates interference. The learned counsel further contends that the burden of proof was erroneously placed on the wrong party. The plaintiff had already proved their case through Ex.A1 documents. The Court also failed to consider that there is no warranty of title in the court auction purchase. Hence, the counsel prayed for setting aside the findings of the Court below.



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10. The Second Appeal was admitted on the following Substantial

Questions of Law.

"i. Were not the lower courts wrong in failing to see that as laid down in AIR 1971 SC 1202, there was no warranty of title in a Court-auction purchase?

ii. Were not the lower courts wrong in failing to see that Ex.A1. Partition deed itself is proof of the joint family nature of properties by treatment?

iii. Were not the lower Courts wrong in failing to see that settlement deed in respect of joint family property was void?

iv. Did not the lower courts erred in failing to see that the suit was filed in a different capacity and therefore the earlier decision in execution proceedings will not constitute res-judicata, especially when special leave petition was dismissed ad admission stage.

v. Were not the lower courts wrong in placing the burden of proof on the plaintiff wrongly when it is the 24th defendant who claims rights independently?"



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11. The contesting defendant, D24, who is the auction purchaser, raised objections to the appellant's claim. He argued that the suit property is the individual property of Kandasamy Padayachi, who had given the property to his elder son, S.K. Subramani, the father of the plaintiff/appellant, in 1961. Thereafter, Subramani created a charge over the property, borrowed a loan, and failed to repay it. The creditor filed a suit (O.S.No.652 of 1966), and due to non-payment of the loan, the property was auctioned in E.P.No.859 of 1985. The respondent (D24) purchased the property in the court auction. He produced Ex.B1 and B2 to substantiate this claim, and the same was rightly appreciated by the Courts below. Furthermore, the said auction was challenged by the legal heirs of Kandasamy Padayachi in the Hon'ble Supreme Court, and the claim was dismissed in 1995. Following this, a second round of litigation ensued, with the suit being filed by the son of Subramani, which the defendant argues is a vexatious claim. The Court below rightly dismissed it, requiring no interference.



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12. Considering both sides' submissions, the plaintiff claims a share in the suit property through a declaration and partition, asserting that it is joint family property of Kandasamy Padayachi, who had a joint family business with his four sons. They claim that the suit property and other properties were purchased from the joint family income, and although a partition occurred in 1960, the suit property was not included. The plaintiff argues that his father is entitled to a 1/5th share, but Kandasamy Padayachi had only a 1/5th share and had executed a settlement deed in favour of his eldest son. Consequently, Subramani also had only a 1/5th share, not the entire property. Therefore, the court auction of the entire suit property is not maintainable. During Kandasamy's lifetime, no objections were raised regarding the settlement deed by Kandasamy or his sons.

13. Moreover, Ex.A1 (the partition deed) was also relied upon. Therefore, based on the settlement deed, Subramani exercised ownership over the property, and due to his failure to repay the loan, the property was brought to court auction, where D24 purchased it as an auction purchaser.



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14. The legal heirs of Subramani and Kandasamy Padayachi challenged this, but their claim was dismissed by the Subordinate Judge in 1995. Subsequently, the present litigation arose. The plaintiffs have no proof that the property is a joint family property, and this was rightly observed by the Court below, requiring no interference. There is no evidence of the existence of a joint family or income from joint family property. Therefore, the plaintiff is not entitled to the relief of partition in the suit property, as it belongs absolutely to his father through the settlement deed.

15. As a result, there is no substantial question of law involved, and the plaintiffs have no right to claim a share in the property or to object to the court auction purchase made by D24. Accordingly, question of law 1 is answered. The Court below rightly observed that there is no proof of joint family income or that the property was settled in favour of the plaintiffs by their grandfather, Kandasamy Padayachi. The Court below rightly observed, accordingly questions of law 2 and 3 are answered. When the plaintiff approached the Court claiming that the property was a joint family



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property, the trial Court rightly observed the facts, which require no interference.

16. Accordingly, this Second Appeal is dismissed as no merits.

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Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Principal District Judge, Cuddalore.
2. The Subordinate Judge, Chidambaram.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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