



S.A.No.187 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2024

PRONOUNCED ON : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.187 of 2010

1. Buvaaneswari

2. Minor Rajalakshmi

3. Minor Rajasekar

4. Minor Rajasree

5. Minor Raveena

...

Appellants

(Appellants 2 to 5 declared as Major
and their mother and next friend
discharged from the guardianship
vide court order dated 03.03.2023 made
in CMP Nos.12229 & 12256 of 2022
in S.A.No.187 of 2010)

Vs.

1. Palanivel

2. Sundaramurthy

...

Respondents



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Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the the learned Principal Subordinate Judge, Cuddalore dated 14.08.2009 made in A.S.No.14 of 2008 and Cross Appeal No.23 of 2009, reversing the order of the learned Principal District Munsif, Cuddalore dated 19.12.2007 made in O.S.No.281 of 2003.

For Appellants : Mr. G. Sumitra

For Respondents : Mr. T.Saikrishnan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 14.08.2009 passed by the learned Principal Subordinate Judge, Cuddalore in A.S.No.14 of 2008 and Cross Appeal No.23 of 2009, reversing the Judgment and Decree dated 19.12.2007 passed by the learned Principal District Munsiff, Cuddalore in O.S.No.281 of 2003.

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

3. The plaintiffs in O.S.No.281 of 2003 on the file of the Principal District Munsiff , Cuddalore, are the appellants herein.



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4. The fact of the case is that one Kandhavel, who is the husband of first plaintiff and the father of plaintiffs 2 to 5, is the son of the first defendant through his first wife. The first defendant's another son through his first wife, namely Ramakrishnan, died in a road accident. The defendants 2 and 3 are sons of the first defendant through his second wife. The properties inherited by the first defendant from his father were acquired by Neyveli Lignite Corporation and out of the compensation amount, the first defendant had acquired the suit properties and migrated to T.Palayam Village and the same were enjoyed by the first defendant and his son, namely Kandhavelu, who is the husband of the first plaintiff. The first plaintiff's husband Kandhavelu was given employment in Neyveli Lignite Corporation and his salary was also put in the common hatchpet and utilised for the purpose of acquiring the suit properties. Since the first plaintiff's husband and the first defendant alone were co-parceners, the plaintiffs claiming $\frac{3}{4}$ share in the joint family properties. During the life time of his first wife, the first defendant developed illicit intimacy with one Anjalai and the 2nd and 3rd defendants were born to them. Since the defendants ill-treated the plaintiffs, they have come forward claiming a share of $\frac{3}{4}$ share in the joint family properties.



5. The defendants filed written statement and contested the suit. In the written statement, they denied the allegations raised in the plaint. The suit properties are self acquired properties of the first defendant and it has been purchased prior to the acquisition proceedings of Neyveli Lignite Corporation. The first defendant had executed a settlement deed dated 10.11.1992 in favour of the defendants 2 and 3 with regard to the suit properties. Since it is a self acquired properties of the first defendant, he has got a right to execute the settlement deed. The first defendant had married the mother of the defendants 2 and 3 with the consent of his first wife Kalyani Ammal, who is none other than her sister and thus pleaded to dismiss with cost.

6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. *Is it true that the suit property is not a joint family property ?*
2. *Is it true that the suit property is the self acquired property of the first defendant ?*
3. *Whether the settlement deed dated 10.11.1992 executed by the first defendant in favour of the defendants 2 and 3 is genuine and valid ?*



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4. *Whether the plaintiff is entitled for partition of 1/2 share in the suit property ?*
5. *To what reliefs the plaintiff is entitled to?*

7. Before the Trial Court, in support of the plaintiff's case, the first plaintiff examined herself as PW1 and P.W.2 and P.W.3 were examined and two documents were marked as Ex.A.1 & Ex.A.2. On the side of the defendants, the third defendant examined himself as DW1 and 9 documents were marked as Ex.B.1 to Ex.B9.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court, by its Judgment and decree dated 19.12.2007, decreed the suit for the relief of partition and separate possession for 1/3 share in all the suit properties and dismissed in respect of other claims of the plaintiffs.

9. Aggrieved over the same, the defendants filed an appeal in A.S.No.14 of 2008 and the plaintiffs filed Cross Appeal No.23 of 2009 on the file of the Principal Subordinate Court, Cuddalore. The First Appellate Judge, after considering the entire materials, by his Judgment and Decree dated 14.08.2009,



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allowed the appeal in A.S.No14 of 2008 and dismissed the Cross Appeal No.23 of 2009. Now, challenging the same, the present Second Appeal has been filed by the plaintiffs.

10. The second appeal has been admitted on the following substantial question of law:

1. Whether the Lower Appellate Court is right in holding that the plaintiffs have not discharged the burden of proving that the suit properties are joint family properties, more so when it is an admitted case of the parties that Chinnasami had possessed ancestral properties and he did not have any other avocaion except the cultivation of the said ancestral properties ?

2. Whether the Lower Appellate Court is right in upholding the truth and validity of the Ex.B.9 namely Settlement Deed, dated 10.11.1992 when the same had not been proved in accordance with the requirements under Section 68 of the Indian Evidence Act more so when the same has been denied in the plaint ?



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11. The contention of the learned counsel for the appellants/plaintiffs is that the appellants/plaintiffs had filed the suit against the defendants for a preliminary decree of partition of plaint schedule properties claiming 3/4 share in the plaint schedule properties, but, the Trial Court granted 1/3rd share in the suit properties. The First Appellate Court, without considering the evidence, allowed the appeal filed by the defendants and dismissed the Cross Appeal filed by the appellants. The First Appellate Court erred in holding that the properties are not joint family properties of the deceased Chinnasami and his son Kandavelu. Further, the First Appellate Court also erred in holding that the properties are not purchased from the amount of compensation given by the Neyveli Lignite Corporation to the Chinnasami. The learned counsel further submitted that Chinnasami/first defendant was having ancestral properties, which were acquired by Neyveli Lignite Corporation and they gave compensation for the acquired properties and from that compensation, the suit properties have been purchased by the Chinnsami. In the reply notice, Ex.A3, it was admitted by the defendants that the suit properties were purchased from and out of the compensation amount, but, they denied the same in their written statement. The learned First Appellate Judge erred in not accepting the reply notice Ex.A3. Further, the alleged settlement deed Ex.B.9 has not been proved



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in accordance with law. The Trial Court failed to appreciate the fact and allowed the appeal. Further, the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the Second Appeal.

12. The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and submitted that the plaintiffs failed to prove that the first defendant/Chinnasami was having ancestral properties. Further, the plaintiffs failed to prove that the suit properties were purchased from and out of the compensation amount given by Neyveli Lignite Corporation. As per the Sale deeds Ex.B.1 to Ex.B.3, the suit properties were purchased in the year 1978 and 1980. The Neyveli Lignite Corporation acquired the lands only in the year 1980. The compensation was given in the year 1996. It is sufficiently proved by the defendants that the suit properties are not purchased from and out of the compensation amount. Further, though in the reply notice Ex.A.3, the defendant admitted that the properties were purchased using the compensation, it was stated mistakenly. In the written statement itself, the defendants clearly mentioned about the mistake and also clearly stated that the properties were purchased even before the acquisition of the lands. Further, as per the settlement deed Ex.B.9, they are entitled to the entire suit properties since it is the self acquired property of the



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first defendant and the plaintiffs are not entitled for any share in the suit properties. Therefore, there is no error in the findings of the First Appellate Court. No ground for interference and thus , seeking to dismiss the second appeal as there is no substantial question of law involved in this Second Appeal. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *Manu/SC/1307/2019 (Govindbhai Chhotabhai Patel & otrs /vs/ Patel Ramanbhai Mathurbhai)* and the judgment of this Court in *A.S.No.547 of 2016 dated 12.10.2023(Batmavady & otrs /vs/ Sarala & otrs)*

13. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

14. Admittedly, there is no dispute with regard to the relationship of the parties. One Kandavelu, who is the husband of the first plaintiff and the father of the plaintiffs 2 to 5, was born to the first defendant through his first wife and the defendants 2 and 3 were born to the first defendant through his second wife.

15. Considered the matter in the light of the submission made by the



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learned counsel on both sides, and on perusal of the records, it is seen that in

the suit, the plaintiffs claimed 3/4 share in the suit schedule properties on the ground that the suit properties are joint family properties. The first defendant have ancestral properties, which were acquired by Neyveli Lignite Corporation and out of the compensation amount received by the first defendant, he purchased the suit schedule properties. Therefore, the plaintiffs are entitled for 3/4 share in the joint family properties.

16. The defendants contested the suit on the ground that the suit properties are self acquired properties of the first defendant and by way of Settlement Deed Ex.B.9, 10.11.1992, the first defendant settled the suit properties in favour of the defendants 2 and 3. The suit properties were purchased by the first defendant by way of sale deeds Ex.B.1 to Ex.B.3 in the year 1978 and 1980. The Neyveli Lignite Corporation acquired the land in the year 1980 and awarded compensation in the year 1996 and hence, the suit properties were not purchased from the compensation amount. Since the first defendant had no ancestral properties, the suit properties are not joint family properties and it is only self acquired properties of the first defendant. In view of the settlement deed Ex.B.9, the defendants are entitled to the entire suit properties and sought for dismissal of the suit.



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17. On perusal of the oral and documentary evidence, it is evidenced that the plaint schedule properties were purchased in the name of the first defendant by way of sale deeds Ex.B.1 to Ex.B.3 in the year 1978 and 1980. Further, the documents reveals that the Neyveli Lignite Corporation had acquired the land in the year 1980 and compensation amount was given in the year 1996, which is evidenced by the documents Ex.B.5 and Ex.B.6, the proceedings of the Tahsildar, Neyveli. Hence, it is established from the documents produced by the defendants, i.e., Ex.B.1 to ExB.3, and Ex.B.5 & Ex.B.6, that the suit properties were purchased in the year 1978 and 1980 even before the compensation amount was given by the Neyveli Lignite Corporation, i.e., in the year 1996. Therefore, the contention of the plaintiffs that the properties were purchased from and out of the compensation amount awarded by the Neyveli Lignite Corporation for the acquired land, i.e. ancestral properties of the first defendant, is not an acceptable one.

18. Further, on perusal of the evidence and documents the contention of the plaintiffs that the first plaintiff's husband gave money for purchasing the suit properties is also not an acceptable one since the plaintiff's husband got employment only in the year 1990, which is proved by documents Ex.B.7 &



ExB.8. But, the suit properties were purchased in the year 1978 and 1980, i.e. prior to the appointment of the plaintiff's husband employment at Neyveli Lignite Corporation. Therefore, the contention of the plaintiffs that the first plaintiff's husband has given amount for purchasing the suit schedule properties is also not an acceptable one.

19. Though in the reply notice Ex.A.2, the defendants stated that the properties were purchased from the compensation amount, in the written statement, they denied the said fact and stated that the said contention in Ex.A2 reply notice is not correct one, and it is established by sufficient documentary evidence. Therefore, the contention in the reply notice Ex.A.2 is not enough to hold that the properties were purchased from and out of the compensation amount given by the Neyveli Lignite Corporation. Further, it is evidenced that the first defendant had executed a Settlement Deed, Ex.B.9, dated 10.11.1992 in favour of the defendants 2 and 3. Since the suit properties being a self acquired property of the first defendant, he executed the settlement deed in favour of the defendants 2 and 3, which is proved by the defendants and there is no evidence to disbelieve Ex.B.9 Settlement Deed. Therefore, the First Appellate Court has rightly held that the plaintiffs are not entitled to any share in the suit properties.



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20. The plaintiffs failed to establish that the properties are joint family properties and they are entitled for partition as claimed by them. The findings of the First Appellate Court is based on the evidence on record and there is no perversity in it. The First Appellate Court has rightly held that the plaintiffs have not discharged the burden of proving that the suit properties are joint family properties. No evidence was let in by the plaintiffs to show that the first defendant possessed ancestral properties. Further, the First Appellate Court is right in holding that Ex.B.9 Settlement Deed, dated 10.11.1992 is sufficiently proved in accordance with the requirements of law. Section 68 of the Indian Evidence Act makes it mandatory to examine one of the attesting witnesses for the purpose of proving the execution of Will, but such limitation is not applicable in respect of proving of execution of any document, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless the execution is specifically denied. The principles laid down in the decision of the Hon'ble Supreme Court in *Govindbhai Chhotabhai Patel and otrs /vvs/ Patel Ramanbhai Mathurbhai reported in Manu/SC/1305/2019* is applicable to this case. Therefore, the findings of the First Appellate Court is not perverse or against law and there is no ground for interference. There is no merit in the Second Appeal. No substantial question of law is involved in



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this case and the second appeal is not maintainable and the substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiffs.

21. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

30.07.2024

mrp

To

- 1.The Principal Subordinate Court,
Cuddalore.
2. The Principal District Munsif Court,
Cuddalore.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.187 of 2010

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