



S.A.No.416 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.416 of 2018

D.Purushothaman

... Appellant

Vs.

1. D.Kuppabai

2. Seetharaman

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.11.2017 passed in A.S. No.2 of 2011 on the file of the Additional Subordinate Court, Chengalpattu, upholding the decree and judgment dated 23.09.2010 passed in O.S.No.6 of 2000, on the file of the District Munsif Court, Chengalpattu.

For Appellant	: Mr.S.Natana Rajan
For R1	: Mr.G.Magesh Kumar
For R2	: No appearance

JUDGMENT

The appellant is the first defendant in O.S.No.6 of 2000, on the file of the District Munsif Court, Chengalpattu. The first respondent /



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plaintiff filed the suit for declaration of her title to the suit properties and for a consequential relief of permanent injunction restraining the defendants, their men and agents from interfering with her peaceful possession and enjoyment of the suit properties. She further sought a relief of mandatory injunction directing the defendants to cancel the encumbrance created over the suit properties and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The suit properties were originally owned by one Dhanraj Sowcar. He executed a sale deed in favour of Mannar Naidu. Mannar Naidu died intestate leaving behind his wife Chinnammal as his sole legal heir. Chinnammal sold the properties to the plaintiff through two registered sale deeds dated 23.09.1994 (Ex.A11) and 26.09.1994 (Ex.A12) and ever since the date of purchase, the plaintiff has been in



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possession and enjoyment of the suit properties. Prior to that, the first defendant (appellant herein) had fraudulently obtained patta in his name in respect of the suit properties. Therefore, Chinnammal filed a petition before the Sub Collector, Chengalpattu, for cancellation of patta issued in favour of the first defendant. After conducting an enquiry, the Sub Collector, Chengalpattu, vide his orders dated 06.01.1988 (Ex.A4), cancelled the patta issued in favour of the first defendant (appellant herein) and patta was issued in favour of Chinnammal. Thereafter, the first defendant preferred an appeal before the District Revenue Officer, Chengalpattu. The District Revenue Officer, Chengalpattu confirmed the orders passed by the Sub Collector, Chengalpattu, vide his proceedings dated 03.08.1995 (Ex.A10). The appellant herein did not prefer any revision before the Commissioner of Board of Revenue and therefore, the orders passed by the District Revenue Officer, Chengalpattu, has become final. However, the first defendant colluded with his co-brother, the second defendant (second respondent in the present appeal) and executed a mortgage deed in his favour, in respect of the suit properties. This mortgage deed was executed only after the disposal of the appeal by



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the District Revenue Officer, Chengalpattu. The plaintiff issued a notice to the defendants dated 28.03.1999 (Ex.A21). The defendants received the said notice as is evidenced by the postal acknowledgment cards (Ex.A22 and Ex.A23) and sent a reply notice dated 19.05.1999 (Ex.A24) which according to the plaintiff contained false allegations. Hence, the suit.

4. The second defendant remained absent before the trial court and was set *ex parte*. The suit was resisted by the first defendant on the following grounds:

- i. The suit properties are not the absolute properties of Mannar Naidu. They are the ancestral properties of the defendants and Mannar Naidu.
- ii. After the death of Mannar Naidu, Chinnammal was living with Devaraj Naidu, brother of Mannar Naidu.
- iii. Devaraj Naidu executed a maintenance deed dated 02.07.1945 (Ex.B24) in favour of Chinnammal in and by which a life estate was created.



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- iv. The revenue authorities had issued a patta in favour of Chinnammal without conducting proper enquiry.
- v. The first defendant is the son of Devaraj Naidu and he has every right over the suit properties.
- vi. Even in the sale deeds executed in favour of the plaintiff by Chinnammal, it is categorically admitted that she derived title to the suit properties under the maintenance deed (Ex.B24) executed by Devaraj Naidu.
- vii. Actually the suit properties originally belonged to one Kuppusamy Naidu. Munusamy Naidu and Ayyaravu Naidu are his sons.
- viii. The properties of Ayyaravu Naidu were brought under court auction sale in I.P.No.7/1929 on the file of the District Munsif Court, Chengalpattu, and a sale deed was also executed in respect of the shares of Ayyaravu Naidu by the Official Receiver in favour of Dhanraj Sowcar. Dhanraj Sowcar had subsequently sold the said properties in favour of Mannar Naidu.



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ix. Devaraj Naidu purchased the properties from out of the income derived from the joint family properties and therefore, Chinnammal who had limited rights over the suit properties cannot sell the same in favour of the plaintiff.

5. On the basis of the above pleadings, the trial Court framed the following issues and additional issue :

- "i. Whether the plaintiff is entitled for declaration ?*
- ii. Whether the plaintiff is entitled for injunction ?*
- iii. Whether the plaintiff is entitled for mandatory injunction?*
- iv. To what relief ?"*

Additional issue :

"Whether the restricted clause imposed in the alleged maintenance deed dated 20.07.1945 executed by Devaraj Naidu in favour of his brother's wife Chinnammal incorporating the suit properties enlarged into as her absolute property after the commencement of Hindu Succession Act 1956 thereby, whether the sale by Chinnammal to the plaintiff valid as contended by plaintiff ?"



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6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A26. The first defendant examined himself and one another witness and marked Ex.B1 to Ex.B41.

7. The learned trial court judge on considering the evidence on record decreed the suit in favour of the plaintiff vide his decree and judgment dated 23.09.2010, as against which, the first defendant filed an appeal in A.S. No.2 of 2011 before the Additional Subordinate Court, Chengalpattu. The learned Additional Subordinate Judge, Chengalpattu, after analysing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial court judge vide her decree and judgment dated 09.11.2017. Now the present second appeal is filed by the first defendant.



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8. At the time of admission the following substantial question of law was framed :

“Whether the Courts below were right in concluding that limited estate conferred upon Chinnammal by her brother-in-law Devarajalu Naidu under Ex.B24 would blossom into an absolute estate by virtue of Section 14(1) of the Hindu Succession Act, 1956”

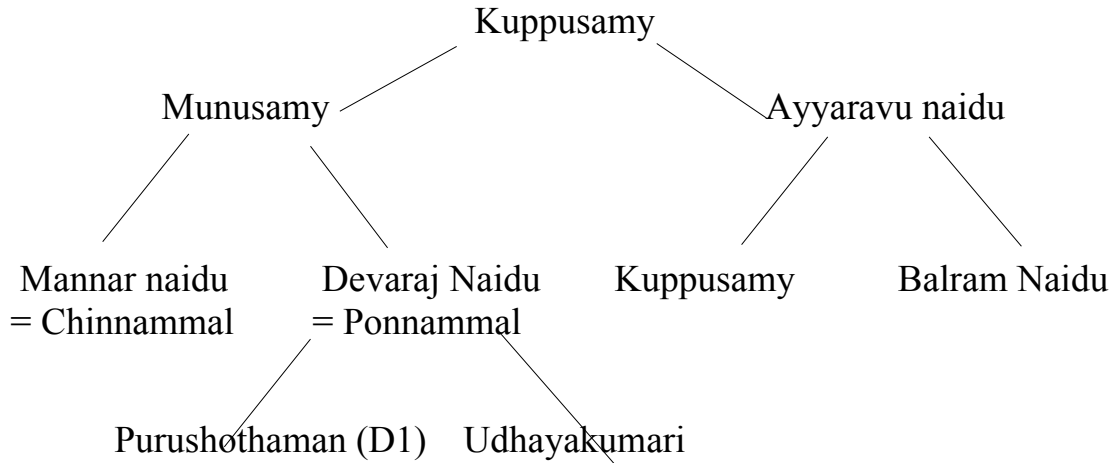
9. Heard Mr.S.Natana Rajan, learned counsel for the appellant and Mr.G.Magesh Kumar learned counsel for the first respondent.

10. Munusamy Naidu and Ayyaravu Naidu are the sons of Kuppusamy Naidu. Mannar Naidu and Devaraj Naidu are the sons of Munusamy Naidu. The first defendant (appellant herein) is the son of Devaraj Naidu. For better understanding the genealogy table is shown hereunder :



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There was a partition between the two brothers Munusamy Naidu and Ayyaravu Naidu and they were allotted 1/2 share each in respect of their family properties. Ayyaravu Naidu had borrowed loan from one Gulabchand Sowcar. He did not discharge the loan amount and in the insolvency petition in I.P.No.7/1929, he was adjudged an insolvent by the District Munsif, Chengalpattu. The properties of Ayyaravu Naidu were brought under court auction sale and one Dhanraj Sowcar purchased the properties of Ayyaravu Naidu through a sale deed dated 12.04.1932 (Ex.B38). The properties covered under Ex.B38 are the present suit properties. Subsequently, Dhanraj Sowcar sold the suit properties in



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favour of Mannar Naidu through a registered sale deed dated 07.09.1934
(Ex.A1).

11. Mr.S.Natana Rajan, learned counsel for the appellant contended that Mannar Naidu purchased the suit properties covered under Ex.A1 from out of the income derived from the joint family properties and that after the death of Mannar Naidu in the year 1942 his brother Devaraj Naidu executed a maintenance deed dated 02.07.1945 (Ex.B24) in favour of Chinnammal, wife of Mannar Naidu. Since limited right was given to Chinnammal through Ex.B24, she cannot alienate the properties in favour of the plaintiff. His further contention is that after the death of Chinnammal, Dhanraj Naidu and his son Purushothaman (appellant herein) became entitled to the suit properties. Moreover, Chinnammal accepted the maintenance deed (Ex.B24) and therefore, she has been ousted. According to him, both the courts below had not adverted their attention to these aspects of the case and therefore, the present appeal has to be allowed.



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12. Per contra Mr.G.Magesh Kumar learned counsel for the first respondent / plaintiff would contend that the appellant herein did not adduce any evidence to show that the suit properties were purchased by Mannar Naidu from out of the income derived from the joint family properties. His further contention is that after the death of Mannar Naidu, Chinnammal is his sole legal heir and therefore, Devaraj Naidu has no right to execute the maintenance deed (Ex.B24) in her favour. In any event, as per Sections 14(1) and 14(2) of the Hindu Succession Act, 1956, the limited right vested in Chinnammal blossomed into an absolute right. He therefore, prayed for dismissal of the present appeal.

13. It is seen from the records that Mannar Naidu purchased the suit properties from Dhanraj Sowcar through a registered sale deed dated 07.09.1934 (Ex.A1). Though it is contended by the appellant that the suit properties were purchased from out of the joint family nucleus, the same has not been established by way of adducing acceptable evidence. There is a presumption that every Hindu family which is joint



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in food and worship is a Hindu joint family but there is no presumption that the estate is joint or the property is the Hindu joint family property. The party who asserts that the property is Hindu joint family property has to prove it.

14. As already observed, the appellant did not prove the existence of the surplus joint family nucleus for the purchase of the suit properties in the name of Mannar Naidu. Though the first defendant in his written statement had admitted the execution of the sale deed by Dhanraj Sowcar in favour of Mannar Naidu, had denied the execution of such a document during the course of cross examination. A careful analysis of the evidence on record clearly shows that Mannar Naidu purchased the suit properties from out of his income and it is his self acquired property. Mannar Naidu died in the year 1942 and on his death his wife Chinnammal gets a limited right under Sections 3(2) and 3(3) of the Hindu Women's Rights to Property Act, 1937. However, since Chinnammal, wife of Mannar Naidu, was living in the same family, Devaraj Naidu had executed the maintenance deed (Ex.B24) in favour of



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Chinnammal giving her life estate in respect of the suit properties. When it is the self acquired properties of Mannar Naidu, Devaraj Naidu had no right to execute the maintenance deed in favour of Chinnammal. Sections 3(2) and 3(3) of the Hindu Women's Rights to Property Act, 1937 stipulate that a right would be created in favour of a widow on the death of her husband. This right got enlarged as per Section 14(1) of the Hindu Succession Act, 1956. Thus Chinnammal had become the absolute owner of the suit properties. The plaintiff has purchased the suit properties from Chinnammal through two registered sale deeds dated 23.09.1994 (Ex.A11) and 26.09.1994 (Ex.A12). The plaintiff also obtained pattas (Ex.A13 and Ex.A14) in respect of the suit properties. She is also in enjoyment of the suit properties as is seen from the kist receipts (Ex.A15 to Ex.A18) paid by her to the Government. Though it was argued by the learned counsel for the appellant that Chinnammal was ousted out of the suit properties, the same cannot be accepted in the absence of a specific pleading in the written statement. Ouster has to be pleaded and proved.



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15. Both the Courts below by well reasoned judgments had analysed each and every aspect of this case and had given a finding that the plaintiff is entitled for all the reliefs prayed for by her. Therefore, the substantial question of law is answered accordingly.

16. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 09.11.2017 passed in A.S. No.2 of 2011 on the file of the Additional Subordinate Court, Chengalpattu and the decree and judgment dated 23.09.2010 passed in O.S.No.6 of 2000, on the file of the District Munsif Court, Chengalpattu, are upheld.

12.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Additional Subordinate Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
mtl

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