



AS. No.373 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02 .2024

CORAM:

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

AS. No. 373 of 2018

Subramania Gounder(Died)

1.K.S.Manokaran

2.S.Karuppayammal

...Appellant

Vs.

1.P.Rukmani

2.C.Arivalagan

3.K.M.kesavamoorthy

4.A.B.Subramani

5.The Sub Registrar

office of SRO

Chenniamalai

Perundurai Taluk.

...Respondent

PRAYER : This first appeal is filed under Section 96 of CPC r/w Order 41 Rule 2 of CPC, to set aside the judgment and decree dated 25.10.2017 made in O.S No. 201 of 2012 on the file of the II Additional District Court, Erode.

For Appellant : Mr.M.V.Venkateseshan, Senior counsel.

For Respondents : Mr.V.S.Kesavan



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JUDGMENT

WEB COPY This first appeal has been filed to set aside the judgment and decree dated 25.10.2017 made in O.S No. 201 of 2012 on the file of the II Additional District Court, Erode.

2. For the sake of convenience, the parties are denoted as per the suit.

3. The plaintiff and the second defendant are daughter and son of the first defendant. The plaintiff claiming share in the suit properties as described in the plaint schedule stating that it is their joint family property, as a daughter she is also having equal share along with son, when she demanded for partition they refused, hence she approached the Court for division of property. The first and second defendants denied the plaintiff claim, stating that item No.1 and 2 was allotted to them as per the partition held in their family on 04.08.1994 with other co-sharers. In which B schedule property was allotted to them and the same is item No. 1 and 2 of the suit property herein. After said partition they enjoyed the said properties as their separate properties and there is no such joint family nucleus as



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claimed by the plaintiff. Further he also contend that item item 3 of the suit properties was purchased by the first defendant out of his own income not from ancestral nucleus. During the pendency of the proceedings D1 sold the property to D3 to D4.

4. Now the issue to be decided is whether item No. 3 of the suit properties is joint family properties or item No. 1 and 2 are separate properties of D1 and D2.

5. Whether item No. 3 of the suit properties was purchased by D1 from his income of the ancestral properties or his self acquired property.

6. It is an admitted fact that item No. 1 and 2 of the property was allotted to D1 and D2 as per the Ex.A2/ partition deed dated 04.08.1984. Those properties are shown as B schedule property in that document, admittedly the said partition was held between Son of late Rama Gounder, Kaliappa Gounder, Kumarasamy, Thangavelu, Subramania Gounder, Manokara. The above documents clearly reveals that the ancestral property of their family along with other properties which was purchased out of nucleus from the said ancestral property in the year 1971 and also taken into consideration of the released deed executed by the wife of the deceased one of the share holder. In the presence of the Panchayatars entire ancestral



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property was divided. Accordingly, B schedule item was allotted to D1 and D2 jointly. So as per the partition deed item No. 1 and 2 of the suit properties were allotted to D1 and D2 jointly. But, on seeing the evidence on the side of the D1 and D2 thereafter they divided the property among themselves thereby D1 and D2 not proved that they enjoyed the properties 1 and 2 treated as per the property after the said partition. Admittedly, D1 was a kartha of the property till his demise he managed the family and properties along with D2 therefore all the owners of property in joint possession of the property including daughters/plaintiff as such the plaintiff deemed to be joint possession of the property. Therefore she is entitle to share in item No. 1 and 2 of the suit properties . Further there is no evidence on the side of the defendants that she was ousted from the suit property therefore the plaintiff is entitled to share in the suit property.

7. In respect of item No. 3 of the suit property the plaintiff contend that it was purchased in the year 1965 by her father out joint family income but D1 resisted her claim stated that item No.3 of the suit property was purchased through his own income by doing cable business not from joint family nucleus. Initially burden is on the defendant to prove that it was purchased out of own income, though there is no direct evidence on the side



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of the defendant to prove the said property was purchased in the year 1965.

To support their contention the learned counsel for the defendants by relying the partition deed. Ex.A2. argued that property which was purchased by all the co-sharers out of joint family income was included in the said partition but item No.3 of the suit property was self acquired property of the first defendant so it was not included by all the sharers thereby he contended that it is a self acquired property of the first defendants.

On perusal of Ex.A2 it clearly reveals that ancestral properties was purchased by other co-sharers from the joint family nucleus in the year 1971 which was included in the said partition but the third item purchased in the year 1965 was not included. Even assuming that item No.3 was purchased from joint family nucleus it ought to have included by the co-sharers in partition deed but the said item was not included which itself shows that said property was not purchased out of joint family income. The above conduct of the co-sharers clearly implies that item No.3 was not treated as joint family property. They claimed that said property was purchased from family nucleus. Moreover, while conducting Panchayat held in the presence of pachayatars in respect of dividing the entire ancestral family property and all the co-sharers not raised any objections for not



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including the third item of the suit property in the partition as such is clearly reveals that said property is self acquired property of the first defendant. Besides, the plaintiff also claimed that share in item No. 1 and 2 based on the partition deed by her own evidence why she admits recitals of the documents which would bind her thereby she is not entitle to adjudicate against the terms of the partition deed by including this third item. Therefore, ancestral joint family property of the co-sharers was divided in the year 1994 even at that time third item was stands in the name of the first defendant and it was not included for division. Thereby appellants able to establish that third item of the property is self acquired property of first defendant so that only it was not included in the earlier partition but the Trial Court erroneously held that third item was purchased out of joint family nucleus and held that first defendant not proved the separate income as such is totally perverse and liable to be set aside. When there is no proof that the said property was purchased from joint family nucleus then the third item of the property is deemed to be self acquired property of D1 accordingly findings with regard to third item of the property is set aside. Though the property was purchased by D1 thereafter it was settled to the D3 to D5 during the pendency of the proceedings. As discussed above, D1 is



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entitled for 3rd item of the suit property since it is self acquired property.

Therefore, the findings rendered by the Trial court in respect of purchase made by the D3 to D5 is set aside. The plaintiff is entitled for the partition after the death of first defendant/her father, Accordingly. the plaintiff is entitle to 4/9 share and her brother/2nd defendant entitled to 4/9 share and D7 is entitled to 1/9 share in the first two item of the suit property. Accordingly preliminary decree is passed and issues are answered. Against 3rd item suit is dismissed as it self acquired property of 1st defendant. Thus, suit is partly allowed.

8. Accordingly, this appeal is partly allowed. No Cost

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T.V.THAMILSELVI,J.

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To

1. The II Additional District Court, Erode.
2. The Section Officer,
V.R Section.

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