



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.538 of 2012 and
M.P.No.1 of 2012

- 1.Kandasamy
- 2.Karthikeyan (deceased)
- 3.Balachandran
- 4.Devasena
- 5.Nagavani
- 6.Gowri
- 7.Dhanasekaran
- 8.Rajasekaran
- 9.Minor Bhargavi
- 10.Minor Vaishnavi
- (Appellants 9 & 10 are represented by their
father Balachandran, the third appellant)
- 11.Valliammai
- 12.Tmt.Jayalakshmi

(Appellants 11 and 12 are brought on record as
legal heirs of the deceased A2 vide order dated
29.02.2024 made in M.P.No.1 of 2013)

... Appellants / Defendants

Vs.

- 1.Ilango
- 2.The District Collector,
Villupuram District,
Villupuram.

... First Respondent / plaintiff



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3.The Additional Educational Officer,
Kalakurichi,
Villupuram District.

4.The District Elementary Educational Office,
Villupuram.

5.The Director of Elementary Education,
Chennai.

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree rendered in A.S.No.14 of 2011 dated 25.01.2012 on the file of the learned Sub Court, Kallakurichi, confirming the judgment and decree rendered in O.S.No.864 of 2006 dated 06.12.2010 by the learned Principal District Munsif, Kallakurichi.

For Appellants : Mr.M.Muruganantham for A1

For Respondents : Mr.P.Valliappan, Senior Counsel for
M/s.S.M.S.Shriram Narayanan for R1
Dr.S.Suriya, AGP for R2 to R5

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree rendered in A.S.No.14 of 2011 dated 25.01.2012 on the file of the learned Sub Court, Kallakurichi, confirming the judgment and decree rendered in O.S.No.864 of 2006 dated 06.12.2010 by the learned Principal District Munsif, Kallakurichi.



2. Heard Mr.M.Muruganantham, learned counsel for the first appellant, Mr.P.Valliappan, learned Senior Counsel for R1 and Dr.S.Suriya, learned Additional Government Pleader for R2 to R5 and perused the materials available on record.

3. The brief facts of the plaint runs as under:

The Appeal has been filed by the defendants against the plaintiff / first respondent who have filed a suit for partition by claiming 1/4 share in the suit items 1 to 11 and a scheme decree for the Management of the School in the suit items 12 to 14 for a periodical rotation among the sharers and it has been decreed as prayed by the Trial Court. The Appeal preferred by the defendants before the First Appellate Court was also dismissed confirming the preliminary decree passed by the Trial Court. The appellants / defendants have filed this Appeal by raising the following substantial questions of law:

"1. Whether the Courts below are right in shifting the burden of proof on the appellants by observing that it is for them to prove that the properties in the hands of the first appellant are the self acquired properties and they were purchased out of the first appellant's income even when the



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first respondent / plaintiff has not discharged his burden of proving his entitlement to partition by establishing that the properties in the hands of the appellants are the joint family properties.

2. Whether the Courts below are right in ignoring the well considered findings of the lower court in O.S.No.114 of 2003 dated 21.09.2004 which are not set aside by the lower appellate court?

3. Whether the permission given in I.A.No.147/06 in A.S.No.166/04 to the plaintiff / 1st respondent to file a fresh suit for the same cause of action has liscenced him to file a fresh suit by ignoring the well considered findings given against him in O.S.No.114 of 2003.

4. Whether the Courts below are right in rejecting the plea of the appellants that the present suit is barred by res judicata and constructive res judicata?

5. Whether the Courts below are right in granting the decree for partition after 25 years though it is barred by law of limitation?"

4. Even according to the defendants, they have raised the dispute only in respect of item Nos.12 to 14 before the Trial Court. But, the draft substantial question of law is inclusive of all the suit items which is not correct. Even for the sake of argument, if it is to be seen whether the Courts



below have shifted the burden on the part of the defendants to prove that the suit property are the self-acquired property of the defendants, it has to be noted first that the defendants did not claim that all the suit properties are self-acquired properties of the first appellant / first defendant.

5. The Trial Court after having made an exhaustive analysis on the evidence adduced on the side of the plaintiff, has arrived at a conclusion that there are documents produced to show that the suit items are the joint family properties, more specifically, suit items 1 to 11. The appellants / defendants have raised the contention before the Trial Court stating that there is already an oral partition. When the initial burden upon the plaintiff is discharged by proving that the suit properties are the joint family properties, the burden would naturally shift upon the defendants to prove that there is an oral partition in which the partition has already taken place or that certain suit items are the self-acquired properties of the first defendant. So, I do not find any error in understanding the burden of proof on the parties. Hence, the first substantial question of law will not arise.



6. The substantial questions of law raised in question Nos.2 to 4 are one and the same. As regards the fourth question of law whether the defendants raise the plea of *res judicata* on the allegation that an earlier suit has been filed on the same cause of action, the burden would be on the defendants to show that the cause of action that has arisen in the earlier suit, the relief sought in the earlier suit and the parties to the earlier suit and the subject matter of the earlier suit are one and the same.

7. The appellants who are the defendants before the Trial Court have filed documents Ex.B1 to B36. None of the documents are seen to be the pleadings and judgments in respect of the earlier suit which the defendants claim would act as a *res judicata* for the present suit for partition. Hence, I do not find any basis to raise the point on *res judicata*.

8. The fifth question of law is on limitation. This point is being raised for the first time before the Second Appellate Court. The point on limitation being both question of law and facts, the appellants / defendants ought to have raised it before the Trial Court itself. By not raising the said question before the Trial Court and the First Appellate Court, the appellants appeared



to have invited the said question for the purpose of Second Appeal, without any basis. Hence, the fifth question of law also does not arise.

9. In view of the above stated reasons, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order / Non-speaking order

05.11.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Sub Court,
Kallakurichi.

2.The Principal District Munsif,
Kallakurichi.

3.The District Collector,
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Kalakurichi,
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R.N.MANJULA, J.

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