



S.A.No.194 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.194 of 2013

1.Valliammal

2.Santha Moorthy

3.Balakrishnan @ Babu

4.Kamala

5.Malarvizhi

.. Appellants

Vs.

1.Pichandi

2.Gandamani @ Mani

3.Rita

4.Srinivasan

5.Minor Chitra (Major)

6.Minor Ranjitha (Major)

.. Respondents



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(R5 and R6 are declared as major by father and next friend Srinivasan discharge from guardianship vide order of Court, dated 07.08.2019 made in C.M.P.Nos.10281 and 10282 of 2019 in S.A.No.194 of 2013 by PTAJ)

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment dated 19.10.2012 in A.S.No.51 of 2011 on the file of the Subordinate Judge, Vellore reversing the decree and judgment, dated 30.03.2011 in O.S.No.1525 of 1993 on the file of the Principal District Munsif, Vellore.

For Appellants : Mr.T.R.Rajaraman
for M/s.V.V.Sairam

For Respondents : M/s.R.T.Sundari
for Mr.M.P.Jayaprakash

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned Subordinate Judge at Vellore in A.S.No.51 of 2011, dated 19.10.2012. By the said judgment and decree, the 1st appellate Court reversed the judgement and decree of the Principal District Munsif Court at Vellore in O.S.No.1525 of 1993, dated 30.03.2011.



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2. O.S.No.1525 of 1993 is a suit for partition and for separate possession. Undisputed facts of the case are, there was one Ganapathi Gounder. He had three sons namely Subramania Gounder, Appakili Gounder and Annamalai Gounder. The joint family consisting of the aforesaid persons possessed and owned several items of property. Some disputes arose between them, which resulted in the matter being referred to a Panchayat. After the Panchayathars mediated, the persons entered into a registered partition deed, dated 06.04.1968. As per the said deed, 'A' Schedule mentioned property fell to the share of Subramania Gounder, 'B' Schedule mentioned property fell to the share of Appakili Gounder and 'C' Shedule mentioned property fell to share of Annamalai Gounder. The present suit properties were also the subject matter of the partition.

3. Insofar as the 1st item of the suit schedule mentioned property is concerned, Subramania Gounder obtained 15 cents out of 30 cents and insofar as the 2nd item of the suit schedule mentioned property is concerned, Subramania Gounder obtained 8 cents out of 16 cents. Subramania Gounder



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died 15 years before and left behind as his legal representatives i.e., the plaintiffs. According to the plaintiffs, since the properties were allotted in an undivided manner, they are entitled to the remaining portions and hence, the suit.

4. On entering appearance, the defendants filed a written statement specifically stating that the purchase was made by the 1st defendant out of his own income. Hence, a partition suit for the properties purchased after the deed, dated 06.04.1968, is not maintainable.

5. On the basis of these pleadings, the Trial Court framed the following issues :

- “ 1. Whether the plaintiff is entitled for partition as prayed for ?
2. Whether the plaintiff is entitled for means profits as prayed for ?
3. To what other relief, the plaintiffs are entitled ? ”

6. During trial, one witness was examined on the side of the plaintiffs and Ex.A1 to Ex.A16 were marked. On the side of the defendants, similarly one witness was examined and Ex.B1 to Ex.B11 were marked. The learned



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Trial Judge came to a conclusion that the acquisition of the property under Ex.B1 by Appakili Gounder/the 1st defendant, was his self acquisition and therefore, did not agree with the plea of the plaintiffs and dismissed the suit.

7. Aggrieved by the same, the plaintiffs preferred a regular appeal in A.S.No.51 of 2011. The learned Subordinate Judge allowed the appeal and granted a decree for partition. Against the said reversal of the judgment and decree, the present Second Appeal had been presented before this Court.

8. On 27.03.2013, this Court issued notice regarding admission. On service of notice, M/s.R.T.Sundari entered appearance on behalf of the respondents.

9. Mr.T.R.Rajaraman representing Mr.V.V.Sairam presented the following substantial questions of law for consideration :

“ 1. Was not the lower appellant court in error in decreeing the suit contrary to the settled principle of law that where the properties have been already partitioned there can not be a decree for 2nd partition in respect of the same property ?



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2. When there is already a partition effected and each brother are enjoying the properties allotted under the partition is the Court below right in holding that the suit as framed maintainable ? ”

10. I heard the appeal on the aforesaid questions of law.

11. It is not in dispute that the joint family had several items including the suit schedule mentioned properties. The suit schedule mentioned properties was purchased by Govindasamy Gounder/father, under Ex.B11 on 01.07.1958 from one Krishna Mandhiri and others. He had purchased half of the suit property and this was the subject matter of partition by document, dated 06.04.1968. Insofar as the shares, which had been purchased by the 1st defendant/Appakili Gounder, namely 12 cents in Survey No.140/3 and 8 cents in Survey No.128/1, it was after the partition deed had been entered into between the family on 15.02.1972. This is clear from the original sale deed that was produced by Appakili Gounder. The alienation was also not made by a member of the family but by a third party, i.e., one Vasudeva Gounder in favour of Appakili Gounder.



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12. The learned Appellate Judge granted a decree for partition on the ground that since the purchase was made in the same survey number by Appakili Gounder, the divided family becomes united and they became co-owners for the purpose of maintaining the partition suit.

13. A joint family, on division, can reunite and thereafter, enjoy the properties again. That is not the case of the plaintiffs in the present situation. What had been purchased by Govindasamy Gounder had already been divided by the partition deed, dated 06.04.1968. Thereafter, whatever acquisition has been made by the 1st defendant/Appakili Gounder can only be treated as self acquisition as reunion, has not been a subject matter of plea.

14. For the mere fact, that the two brothers purchased the property separately in the same survey numbers, they did not become co-owners for the purpose of partition. This error has been committed by the lower Appellate Court. To reiterate, the purchase of the property insofar as the



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division under Ex.A1 is concerned, it is relatable to the document under Ex.A7 and insofar as the suit schedule mentioned property is concerned, it is relatable to the document under Ex.B1. No law bars one brother to purchase properties, out of his self acquisition, in a survey number where an other portion had already been purchased by the joint family.

15. After 06.04.1968, whatever acquisition has been made by the individual brothers become their self acquired properties and cannot be a joint family property. Therefore, the substantial questions of law are answered in favour of the appellants and against the respondents. The findings of the lower Appellate Court is perverse. The findings of the Trial Court that they are separate properties required to be upheld. Consequently, this Second Appeal stands allowed.

16. The judgment and decree of the learned Subordinate judge at Vellore in A.S.No.51 of 2011, dated 19.10.2012 in reversing the judgment and decree of the Court of the learned Principal District Munsif in O.S.No.1525 of 1993, dated 30.03.2011 is set aside. The judgment of the learned Principal District Munsif, Vellore in O.S.No.1525 of 1993 stands



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restored. The suit in O.S.No.1525 of 1993 stands dismissed. Considering the fact that the parties are close relatives, I am not inclined to impose any costs.

22.02.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

- 1.The Subordinate Judge,
Vellore
- 2.The Principal District Munsif,
Vellore.



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V. LAKSHMINARAYANAN, J.

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