



S.A.No.985 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2024

Coram

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

**S.A.No.985 of 2022
and C.M.P.No.21121 of 2022**

1.Jayapal

2.Rasu

3.Settu

4.Kalaivanan

...Appellants

Versus

1.Ravi

2.Durai

3.Renganathan

...Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 09.12.2019 passed in A.S.No.09 of 2019 on the file of the Sub Court, Jayankondam confirming the judgment and decree dated 29.01.2018 passed in O.S.No.307 of 2010 on the file of the District Munsif Court, Jayankondam.

For Appellants : Mr.S.Nagarajan



WEB COPY



S.A.No.985 of 20__

JUDGMENT

The present Second Appeal has been filed against the judgment and decree dated 09.12.2019 passed in A.S.No.09 of 2019 by the learned Subordinate Judge, Jayankondam, confirming the judgment and decree dated 29.01.2018 passed in O.S.No.307 of 2010 by the learned District Munsif, Jayankondam, thereby, the suit filed by the appellants herein for declaratory relief was dismissed.

2. The plaintiffs are the appellants herein and the defendants are the respondents herein.

3. The brief facts pleaded in the plaint are as under:

The plaintiffs and the 2nd defendant are sons of the 3rd defendant. On 02.09.1986, while the 2nd defendant was minor, the 3rd defendant purchased the suit property in the name of the 2nd defendant. The suit property was purchased from the income of the joint family. Subsequently, the 2nd defendant sold the suit property in favour of the 1st defendant with a motive



WEB COPY

to snatch away the rights of the plaintiffs over the suit property. Hence, the plaintiffs issued a Legal Notice dated 05.08.2010 to the defendants, calling upon them to cancel the Sale Deed dated 08.11.2006. Even after the receipt of said legal notice, there was no response from the defendants. Since the suit property is not in possession of the plaintiffs, the defendants attempted to take the possession of same. Therefore, the plaintiffs filed a suit for declaration to declare the suit property as joint family property and the Sale Deed executed in favour of 1st defendant is not valid and binding on the plaintiffs.

4. The brief averments in the written statement of the 1st defendant are as follows:

The suit property purchased by the 3rd defendant in the name of the 2nd defendant, is not an ancestral property. The 3rd defendant had purchased the same from his own income. The 2nd defendant was in possession and enjoyment of the suit property. Subsequently, the 2nd defendant had transferred the right of suit property and handed over the possession of the same to the 1st defendant vide Sale Deed dated 08.11.2006. The plaintiffs have no manner of right to claim share in the suit property and the Revenue



Records were already mutated in the name of the 1st defendant. Hence, the suit is liable to be dismissed.

5. Before the trial Court, the defendants 2 & 3 have not contested the suit and they remained *ex-parte*.

6. Based on the above pleadings, the trial Court has framed the following issues:

(i) Whether the suit property is an ancestral property as stated by the plaintiffs?

(ii) Whether the Sale Deed dated 08.11.2006 is valid and binding on the plaintiffs?

(iii) Whether the suit is based on the vexatious claim?

(iv) Whether the suit property has been properly valued and Whether the Court Fee has been properly paid?

(v) Whether cost to be ordered under Section 35(A) of C.P.C?

(vi) Whether the plaintiffs are entitled to the relief as they claimed in the plaint?

(vii) What about the cost?



WEB COPY

7. During the course of trial, on the side of the plaintiffs, two witnesses were examined viz., P.W.1 (4th plaintiff) & P.W.2 and 5 documents were marked viz., Exhibits P1 to P5 and on the side of the defendants, one witness was examined viz., D.W.1 (1st defendant) and 5 documents were marked viz., Exhibits D1 to D5.

8. After considering the evidences on record, the trial Court held that the suit is based on the vexatious claim. Hence, the trial Court had dismissed the suit by directing the plaintiffs to pay the cost of Rs.3,000/- to the defendants. Challenging the judgment and decree of the trial Court, the plaintiffs preferred a First Appeal in A.S.No.09 of 2019 before the Appellate Court. However, the Appellate Court has partly allowed the First Appeal by setting aside the judgment of the trial Court, in respect of the 'Costs' imposed on the plaintiffs and confirmed the judgment and decree of the trial Court in all other respects. Aggrieved over the same, the plaintiffs have filed the present Second Appeal before this Court.

9. For admission, this Second Appeal was listed before me. I have heard the counsel for appellants.



WEB COPY

10. The learned counsel for the appellants/plaintiffs submitted that the 3rd defendant who was not having any income to purchase a property. The entire family of the 3rd defendant had decided to purchase a property in the name of 2nd defendant. On 02.09.1986, the 3rd defendant had purchased the suit property in the name of 2nd defendant who was then minor. The suit property has been purchased only from the source of joint family income earned by the 3rd defendant and his sons (plaintiffs). He also submitted that the 2nd defendant who was minor at the time of purchasing the suit property has no right to sell away the suit property without the consent of his other brothers (plaintiffs). Further, the 2nd defendant cannot claim that he is an absolute owner of the suit property. Both the Courts below have dismissed the suit without appreciating the case of the plaintiffs as well as the evidence adduced on the side of the plaintiffs.

11. I have considered the submissions of the learned counsel for the appellants and I have also perused the materials available on record.



WEB COPY

12. Admittedly, the 3rd defendant had purchased the suit property in the name of his son (2nd defendant) who was minor at the time of purchasing the suit property. According to the plaintiffs, the 3rd defendant has purchased the suit property from the joint family income, but, before the trial Court, the plaintiffs did not produce any evidence to show that what was the source of income, for purchasing the suit property in the name of the 2nd defendant. Except the Sale Deed dated 02.09.1986, the plaintiffs did not produce any material evidence to substantiate their case.

13. The trial Court has found that even in the Sale Deed dated 02.09.1986, there is no recital that the suit property was purchased from the income of joint family or for the benefit of joint family property. Hence, the trial Court has rightly held that the suit property could not be considered as the property purchased from the income of ancestral nucleus.

14. Though the 3rd defendant is alive, he did not come forward to state that he has purchased the suit property, from the income of joint family property. The evidence on the side of the plaintiffs is not sufficient to support their case.



WEB COPY

15. It is a well settled law that there is no presumption that a family, because it is joint, possess joint property or any property. To render the property joint, it must be proved that the family was possessed of some property, with the income earned from that property or that property could have been acquired or property was purchased from the joint family funds or by joint labour.

16. Admittedly, in this case, there was no joint family income/funds or joint labour. The trial Court has rightly held that the plaintiffs have no right in the suit property. Further, the trial Court has held that the suit was filed only on the basis of vexatious claim and imposed Costs on the plaintiffs. Though the Appellate Court has set aside the judgment of the trial Court in respect of the 'Costs' imposed on the plaintiffs, it has confirmed the judgment and decree of the trial Court in all other respects.

17. I have gone through the entire evidence including the pleadings and exhibits. Nowhere, it has been stated that on what basis, the suit property shall be construed as the property purchased from the income of



S.A.No.985 of 20__

ancestral nucleus and on what basis, the plaintiffs claim right in the suit property. As stated by the Courts below, since there is no evidence on the side of the plaintiffs to substantiate their case that the suit property was purchased from the income of ancestral nucleus or from the income of joint family, the plaintiffs are not entitled to claim any right in the suit property.

18. I do not find any question of law much less a substantial question of law in the present Second Appeal.

19. In the result, this Second Appeal is dismissed and the judgment and decree dated 09.12.2019 passed in A.S.No.09 of 2019 by the learned Subordinate Judge, Jayankondam is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

29.10.2024

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order



S.A.No.985 of 20__

WEB COPY

- 1.The Sub Court,
Jayankondam.
- 2.The District Munsif Court,
Jayankondam.



WEB COPY



S.A.No.985 of 20__

K.RAJASEKAR, J.

mrr

S.A.No.985 of 2022

29.10.2024