



S.A.No.460 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.460 of 2013

and

M.P.No.1 of 2013

Veeraswamy Naidu

.. Appellant

Vs.

1.Srinivasan

2.Kuppammal

3.Lakshmibai

4.Godhavari

5.Pushpa

6.Rukku

7.Buvaneswari

8.Palaniswamy

9.Panchavarnam

10.Hamsavalli

.. Respondents



S.A.No.460 of 2013

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in A.S.No.1 of 2006, dated 29.12.2010 on the file of the learned Additional District Judge/Fast Track Court No.1, Chidambaram upholding and confirming the judgment and decree, dated 27.07.2004 made in O.S.No.5 of 1994 on the file of the learned Subordinate Judge, Chidambaram.

For Appellant : Mr.V.P.Raju
for Mr.A.Kumar

For RR1, 3, 5 to 7 : Mr.N.Manoharan

For RR2, 4 and 8 : RR2, 4 & 8 – Died. (T/E)

For RR9 and 10 : Served, No Appearance

JUDGMENT

The present Second Appeal arises out of a suit for partition. The appellant filed a suit in O.S.No.5 of 1994 on the file of the learned Subordinate Judge at Chidambaram, claiming half share in six items of the property.

2. His claim is that the properties are joint family properties which had been enjoyed by him and his brother Krishnasamy Naidu died. Finding that he is unable to live with the former's heir, he filed the suit. He pleaded



S.A.No.460 of 2013

that he gets half share in the joint family properties and the other half share goes to the share of Krishnasamy Naidu's family. Since it is not possible to live together, he issued a notice on 25.05.1993 seeking for partition, which was replied on 02.07.1993. It contained false averments. Being left with no other option, he came with the present suit.

3. The defendant entered appearance and filed a detailed written statement. It is the case of the defendant that the item Nos.1, 5 and 6 belong to the brother-in-law of their father Pakkirisamy Naidu, namely, one Venu Naidu, son of Rengasamy Naidu. Out of love and affection, Venu Naidu had executed a document of settlement under Ex.B1, dated 27.06.1962 for Item No.1 and a “Will” under Ex.B45, dated 05.05.1922 with respect to Item Nos.5 and 6.

4. Insofar as the Item Nos.3 and 4 are concerned, it is his categorical case that it belongs to Krishnasamy Naidu, who had settled the property in favour of the Temple that had been constructed by the great grandfather of the parties namely Logappa Naidu @ Logaiya Naidu in the year 1870. It was conceded that the Item No.2 is a joint family property and that, when



S.A.No.460 of 2013

the appellant/plaintiff was a minor, Krishnasamy Naidu and his brother Dhayalu Naidu had alienated the property under Ex.A14 and Ex.A15, equivalent to Ex.B15, in favour of third parties and the remaining portion is under the enjoyment of the family.

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

“ 1. Whether the plaintiff is entitled for partition and separate possession of 1/2 share in the suit property ? or not ?

2. Whether the suit properties are acquired out of the joint family funds ?

3. Whether the plaintiff has no right to seek any partition in respect of any of the suit items ?

4. Whether the 9th defendant has prescribed title to the suit items by Adverse possession ?

5. Whether the plaintiff colluded with the 8th defendant to harass the 10th defendant and her sons ?

6. Whether the Court has no jurisdiction to entertain and try the suit ?

7. To what relief ? ”



S.A.No.460 of 2013

6. After a detailed examination of the entire case, the Trial Court granted a decree for a partition insofar as the Item No.2 is concerned. It dismissed the suit with respect to the Item Nos.1, 3 to 6.

7. Aggrieved by the dismissal, a regular appeal was preferred in A.S.No.1 of 2006 to the file of the learned District Judge at Chidambaram. The matter was tried by the learned Additional District Judge cum Fast Track Court No.1 at Chidambaram and the decree was confirmed on 29.12.2010.

8. Aggrieved by the same, the present Second Appeal has been presented before this Court. This Court did not admit the appeal but ordered notice regarding admission on 29.04.2013. On service of notice, Mr.N.Manoharan entered appearance on behalf of the respondents 1 to 7.

9. The matter was listed before me today and I heard Mr.V.P.Raju for Mr.A.Kumar for the appellant and Mr.N.Manoharan for the respondents.



S.A.No.460 of 2013

10. Mr.V.P.Raju would contend that Venu Naidu referred to with respect to Item Nos.1, 5 and 6 is actually Venugopal Naidu, son of Rajagopal Naidu and not Venu Naidu, son of Rengasamy Naidu. He would plead that the properties are ancestral in character and therefore, the Trial Court erred in decreeing the suit only with respect to Item No.2 and it ought to have decreed the suit in full.

11. Mr.N.Manoharan would strenuously contend that the properties that belonged to Venu Naidu, son of Rengasamy Naidu, who was the maternal uncle of the three brothers Krishnasamy Naidu, Dhayalu Naidu and Veeraswamy Naidu and since Venu Naidu did not have any issues, out of love and affection for the eldest brother Krishnasamy Naidu, he had executed a settlement deed with respect to Item No.1 and a “Will” with respect to Item Nos.5 and 6.

12. With respect to Item Nos.3 and 4, he would bring to the notice of this Court, the judgment rendered by this Court in A.S.Nos.1012 and 1025 of 2003, dated 17.07.2012, whereunder, this Court had held that the properties are those belonging to a private temple under the name and style



S.A.No.460 of 2013

of “Bhuvaneswari-Ellaiamman Temple” situated in Bhuvanagiri at Chidambaram District. Insofar as the Item No.2 is concerned, he would submit that there is no dispute that it is the joint family property and on the basis of the decree granted by the Courts below, final decree proceedings had been initiated and possession had also been taken.

13. I have to decide whether the question of law suggested here under, arises for consideration :

“ 1. Whether the dismissal of the suit on grounds casually dealing with the claim of the plaintiff while as eldest member of the family, Krishnaswamy who assumed the roll of Kartha of the ancestral Joint Family properties who as a court bird created so many fabricated documents without producing any accounts, schemed to deprive of plaintiff's legitimate 50% share, is correct, or proper or legal.

2. Whether the lower Appellate Court is right in not discussing the merits of the case, especially when the trial court had grossly erred in not observing law, but relied only on oral, vague submissions of the defendants and wrongly dismissed the suit. ”



S.A.No.460 of 2013

14. The genealogy of the parties are here under :

Logaya Naidu



Kuppusamy Naidu



Pakirisamy Naidu

Krishnasamy
(26.01.1984)

Dayalu
(Died bachelor)

Veerasamy Naidu
(Plaintiff)

+

Wife Kuppammal (Died in 2006)



Lakshmi Bai (D3)

Srinivasan (D1)

Godahavari (D4) died

Pushpa (D5)

Rukku (D6)

Bhuvaneshwari (D7)



S.A.No.460 of 2013

15. Unless and until the plaintiff is able to prove that the properties were acquired by Logappa Naidu @ Logaiya Naidu, the same is not open for partition. Venu Naidu, as admitted by P.W.1 in the witness box, is the “தாய் மாமன்” or the “Maternal Uncle” of Krishnasamy Naidu, Dhayalu Naidu and Veeraswamy Naidu.

16. From the perusal of the document under Ex.A15 which is equivalent to Ex.B15, it is clear that the sons of Pakkirisamy Naidu had alienated the property. Insofar as the remaining properties are concerned, there is no dispute that the suit has been decreed and the defendants had not preferred an Appeal. Therefore, I am not concerned with the left over items under Ex.A15 which is equivalent to Ex.B15.

17. With respect to Item Nos.1, 5 and 6, there is absolutely no evidence on the side of the plaintiff in order to prove that the property belong to the joint family of Logappa Naidu @ Logaiya Naidu. On the contrary, from Ex.B1 and Ex.B45, I am able to come to the conclusion that the property belonged to one Venu Naidu, Son of Rengasamy Naidu, who had gifted and bequeathed the property respectively in favour of his eldest



S.A.No.460 of 2013

nephew. These two documents had come into existence atleast 30 years before the presentation of the plaint. When the property belongs to Venu Naidu, he had the absolute discretion to give it to anyone of the nephews but for reasons only best known to him, he had chosen his eldest nephew Krishnasamy Naidu. By no stretch of imagination, I can trace the joint family through the mother side and thereby, attach joint family status to the Maternal Uncle's property.

18. Krishnasamy Naidu, by virtue of Ex.B1 and Ex.B45 having taken possession and had been in enjoyment of the property would enjoy the property as the self acquisition. It is even more important in this case because as long as Krishnasamy Naidu was alive, no proceeding were initiated by the plaintiff questioning the joint family status. It is only 9 years after the death of Krishnasamy Naidu on 26.01.1984 was the present suit for partition laid before the Court. Therefore, I do not find any of the questions of law arising with respect to Item Nos.1, 5 and 6.

19. Insofar as the Item Nos.3 and 4 are concerned, though the pleading of the plaintiff goes on the basis that it is only a joint family



S.A.No.460 of 2013

property, the issue has been from the document under Ex.B39, it becomes clear that Krishnasamy Naidu out of his self acquisition had settled the properties in favour of the Temple which he had been managing namely Bhuvaneshwari - Ellaiamman Temple situated in Bhuvanagiri at Chidambaram District.

20. Whether the Temple is a private temple or a public temple was a subject matter of dispute in O.S.No.15 of 1997 on the file of the learned Subordinate Judge at Chidambaram. The learned Subordinate Judge has held that the Temple is a private temple belonging to Krishnasamy Naidu and managed by him by virtue of rule of primogeniture. Even in the settlement deed that has been executed by Krishnasamy Naidu in favour of the Temple, he had nominated only his eldest son, the 1st defendant herein/Srinivasan as “Dharmakartha”. Being a private temple it is not open for any of the parties to claim a division on the same.

21. In the light of the above discussion, I have to conclude Item Nos.1, 5 and 6 were the self acquisition of Venu Naidu, which he had alienated as well as bequeathed respectively in favour of his eldest nephew



S.A.No.460 of 2013

Krishnasamy Naidu and therefore, a suit for partition is not maintainable.

With respect to Item Nos.3 and 4, being a private temple, yet again a suit for partition is not maintainable. None of the questions of law suggested by Mr.V.P.Raju arise for consideration in the present appeal.

22. I am left with no other option than to confirm the judgment and decree of the learned Additional District Judge cum Fast Track Court No.1 at Chidambaram in A.S.No.1 of 2006, dated 29.12.2010 in confirming the judgment and decree of the Court of the learned Subordinate Judge at Chidambaram in O.S.No.5 of 1994, dated 27.07.2004.

23. Accordingly, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. Considering that the parties are close relatives, I am not inclined to impose any costs.

23.02.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
mkn2



WEB COPY



S.A.No.460 of 2013

V. LAKSHMINARAYANAN, J.

mkn2

To

- 1.The learned Additional District Judge/Fast Track Court No.1,
Chidambaram
- 2.The learned Subordinate Judge,
Chidambaram

S.A.No.460 of 2013
and
M.P.No.1 of 2013

23.02.2024