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A.S.No.546 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.06.2024	11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.546 of 2019

Thangarasu

... Appellant

-vs-

1.Murugesan

2.Jayamani

3.Rasathi

... Respondents

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree O.S.No.10 of 2013, on the file of the Additional District Judge, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.D.Gopal
for Mr.M.Lokesh for R1
No appearance for R2 & R3



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J U D G M E N T

The defeated first defendant is the appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking in the original suit.

3. The plaintiff filed the suit in O.S.No.10 of 2013, before the learned Additional District Judge, Namakkal, against the defendants, seeking partition and separate possession of the suit schedule properties.

4. In the suit, there are seven items of properties. Item Nos.1 to 3 are agricultural lands; Item Nos.4, 6 and 7 are vacant house sites and Item No.5 is a house property.

5. Item Nos.1, 2 and 5 of the suit properties were allotted to the father of the plaintiff and the defendants in a partition deed entered into between himself and his brother on 17.09.1952. Item Nos.1, 2 and 5 of the suit properties are shown as B-Schedule property in the partition deed.



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6. The father of the parties herein is one Subbiah. Their mother is Kamakshi Ammal. One of their brothers is Kanagaraj. Father Subbiah died in the year 1998. Brother Kanagaraj died in the year 1999. Mother Kamakshi Ammal died in the year 2001. The suit was filed in the year 2013 between the existing family members.

7. The plaintiff is the youngest brother. The first defendant is the eldest brother and the defendants 2 and 3 are their sisters.

8. As per the plaint, Item Nos.1, 2 and 5 of the suit properties are joint family properties. Item Nos.3 and 4 are purchased in the name of the first defendant based upon the joint family properties, namely, Item Nos.1, 2 and 5. One of the brothers, namely, Kanagaraj purchased Item No.6 of the properties under Ex.A10 and the plaintiff purchased Item No.7 of the properties under Ex.A9. According to the plaintiff, all the properties are joint family properties available for partition.

9. The first defendant filed his written statement. The first



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defendant taken a plea that Item Nos.1, 2 and 5, which are the ancestral properties, alone are available for partition. Item Nos.3 and 4 are his self-acquired properties having purchased the same under Ex.A2 on 23.02.1983 and under Ex.A3 on 08.01.1986 and one of the brothers, namely, Kanagaraj by working as a lorry driver purchased Item No.6 of the properties under Ex.A10 and on his death, Item No.6 is also available for partition. Item No.7 of the properties is the self-acquired property of the plaintiff having purchased the same under Ex.A9. In short, Item Nos.3 and 4, which are self-acquired properties of the first defendant, are not available for partition.

10. In the year 1988, marriage of the third defendant took place and necessary sridhana was given by the plaintiff and the first defendant. Defendants 2 and 3, who are sisters, orally released their shares in Item Nos.1, 2 and 5 of the suit properties during their marriage itself and the plaintiff and the first defendant inherited 5/12 share in Item Nos.1, 2 and 5 of the suit properties, the defendants 2 and 3 inherited 1/12 share in the above properties and hence, Item Nos.3 and 4 having been purchased by the first defendant in his individual capacity are not available for partition and so is the stand of the defendants.



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11. The defendants 2 and 3, who are sisters of the plaintiff and the first defendant remained *ex parte* in the suit.

12. The Trial Court has formulated necessary issues as to the nature and character of the suit properties and also the shares therein.

13. On the side of the plaintiff P.Ws.1 to 5 were examined and Exs.A1 to A10 were marked and on the side of the defendants, D.Ws.1 to 3 were examined and no document was marked. Further, witness documents Exs.X1 to X3 were marked.

14. After hearing the rival submissions of the learned counsel on either side and after perusing the documentary evidence, the Trial Court, by Judgment and Decree, dated 08.03.2018, decreed the suit and ordered to divide the suit properties into 24 equal shares and allotted nine shares to the plaintiff and accordingly, passed a preliminary decree as prayed for by the plaintiff. Challenging the same, the first defendant has preferred this appeal.



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15. After hearing the oral submissions of the respective counsels and after perusing the documentary evidence, the following points arise for consideration:

- (i) Whether Item Nos.3 and 4 of the suit properties are self-acquired properties of the first defendant?
- (ii) Whether the property purchased under Ex.A9 sale deed in favour of the plaintiff is purchased with the element of the joint family properties?
- (iii) Whether Item No.6 of the suit properties is available for partition?
- (iv) Whether the plaintiff is entitled to 9/24 share as claimed by him in the plaint.

16. According to the plaintiff, Subbiah and Kamatchi Ammal having three sons and two daughters, of which one of the sons, namely, Kanagaraj died in the year 1999 as a bachelor. The plaintiff and the first defendant are sons and the defendants 2 and 3 are daughters of the said Subbiah and Kamatchiammal. The relationship between the parties is not in



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dispute.

17. According to the plaintiff, Item Nos.1, 2 and 5 of the suit properties were allotted to the share of the father of the plaintiff and the defendants, namely, Subbiah, under a partition deed dated 17.09.1952. Item Nos.3 and 4 of the suit properties were purchased in the name of the first defendant, under Exs.A2 and A3, out of the income derived from Item Nos.1, 2 and 5 of the suit properties. Item No.6 of the suit properties was purchased in the name of Kanagaraj out of the income derived from the aforesaid ancestral properties. The said Subbiah died in the year 1998, Kanagaraj died in the year 1999 and Kamakshi Ammal died in the year 2001, leaving behind the plaintiff and the defendants as their legal heirs.

18. While the things be so, from the adjudication papers of the Trial Court, I find that during the pendency of the suit, the plaintiff filed I.A.No.35 of 2014 to include Item No.7 of the properties, which stands in his name, in the suit for partition. By order dated 17.10.2014, the said interlocutory application was allowed. Schedule of properties, pleadings and the prayer in the plaint were amended. Thereupon, additional written statement of the first defendant was taken on file.



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19. As stated supra, according to the first defendant, Item Nos.3 and 4 of the properties are his exclusive properties. With regard to Item Nos.1, 2 and 5, the plaintiff and the first defendant are entitled 5/12 share each and the defendants 2 and 3 are entitled to 1/12 share each.

20. The plaintiff claims that both the plaintiff and the first defendant are entitled to 9/24 share each in the suit properties.

21. In view of the above discussions, since none of the parties disputed the nature and character of the Item Nos.1, 2 and 5 of the properties, they were held to be ancestral properties.

22. Item No.6 of the properties purchased by Kanagaraj under Ex.A10 on 03.04.1992, as he died as a bachelor, it was reverted back to the joint family.

23. In view of inclusion of Item No.7 of the properties, though it stands in the name of the plaintiff, the same is also available for partition and therefore, Item Nos.1, 2, 5,



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6 and 7 are available for partition. Accordingly, now, the scope of this appeal is narrowed down as to whether Item Nos.3 and 4 are the self-acquired properties of the first defendant or not, which is to be considered in this appeal.

24. In the case of ***Malla Naicker @ Singari vs. Jeeva (minor)***, reported in **2012 (1) CTC 128**, it has been observed as follows:

“17. Therefore, having regard to the presumption as per the law laid down by the Hon'ble Supreme Court as well as our High Court as referred to above, and as stated in Mulla Hindu Law that when a Kartha claims certain properties as a separate properties and the joint family admittedly possessed of some nucleus, the burden is on the Kartha to prove that the properties are his separate properties and not purchased out of the joint family properties' income. On the other hand, if the co-parcener claims certain properties as his separate properties, then the burden is cast on the other co-parcener, who claims that the property is a joint family property to prove that property purchased in the name of one of the co-parceners was purchased out of the joint family properties' income and it was not a separate property.”



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25. In ***D.S.Lakshmaiah and another vs. L.Balasubramanyam and another***, reported in **(2003) 10 SCC 310**, it has been observed as follows:

"The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available"

26. In view of the above two decisions, this Court finds that the law recognizes two standards of burden of proofs, one for the Kartha of the joint family and another for a co-parcener, when they claim that certain properties are their separate properties and not joint family properties. Admittedly, the joint family possessed of some nucleus, even though no



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evidence was adduced by the respondent / plaintiff about the nature of income from that nucleus, in the absence of any source of independent income by the other co-parcener, in whose name, the property was purchased, it can be presumed that the joint family properties would have provided the consideration for the purchase of the suit properties.

27. Keeping the above law in mind, let us now consider the evidence available on record.

28. On the side of the defendants, the first defendant was examined as D.W.1. The documents relating to Item Nos.3 and 4 of the properties were marked as Exs.A2 and A3. Even though Exs.A2 and A3 stand in the name of the first defendant, he has to prove that out of his individual income, to the extent of purchasing those properties, alone it was purchased in his name.

29. In this situation, according to the first defendant, he purchased the above said properties out of the income earned by him through his work under Dr.Balasubramaniam. However, the first defendant has failed to produce any document to show that he has earned a considerable salary to



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the extent of purchasing the properties in support of his stand. The first defendant has not filed any document to show his individual income. Even though D.W.2 deposed regarding enjoyment of Item No.3 of the properties under a lease from the first defendant, the first defendant has failed to adduce any evidence to show that he was having individual income.

30. Hence, the first defendant being the kartha, in view of the above law recognizing two standards of burden of proof, one in respect of Kartha of the joint family properties and another is for co-parcenors, when they claim that certain properties are separate properties, it is for him to prove the same.

31. In the instant case, except the oral evidence of D.W.1 that he worked under a Doctor, a registered RIMP Doctor in Namakkal, no documentary evidence has been placed for consideration and hence, the Trial Court has rightly come to the conclusion that the first defendant has not filed any document to show his alleged individual income and has rightly come to the conclusion that the first defendant has failed to prove that Item Nos.3 and 4 properties are his self-acquired properties and as a consequence thereof, they were held to be the joint family properties purchased from and out of the



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income derived from Item Nos.1, 2, 5, 6 and 7. Hence, the findings of the Trial Court for different reasonings, as stated supra, are hereby confirmed.

32. With regard to the quantum of shares, the plaintiff, first defendant, deceased Kanagaraj and their father Subbaiah were entitled for $1/4$ share and after the demise of Subbiah, the $1/4$ share belongs to him was equally divided by the above three sons and the wife of Subbiah, namely, Kamakshi Ammal. After the demise of Subbiah, the plaintiff, first defendant and Kanagaraj were entitled to $7/24$ share each and the defendants 2 and 3 and Kamakshi Ammal were entitled to each $1/24$ share. Thereafter, the said Kanagaraj died as a bachelor and hence, $7/24$ share belongs to him was inherited by his mother Kamakshi Ammal. After the demise of Kanagaraj, his mother Kamakshi Ammal got $8/24$ share and after the demise of Kamakshi Ammal, the share belongs to her i.e., $8/24$ share was inherited by all the parties to the suit at the rate of each $2/24$ share. Hence, it is clear that the first defendant and the plaintiff are entitled to $9/24$ share each in all items of properties and hence, the plaintiff is entitled for getting a decree to the extent of $9/24$ share in the suit properties.



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33. In view of the foregoing discussions, I am of the view that the Judgment and Decree of the Trial Court are well-considered and well-merited and the same do not suffer from any irregularity or irregularity.

34. In the result, this appeal suit is dismissed. The Judgment and Decree, dated 08.03.2018, passed in O.S.No.10 of 2013, on the file of the Additional District Judge, Namakkal, are confirmed. The preliminary decree of partition granted by the Trial Court with regard to 9/24 share in the suit properties is hereby confirmed. No costs.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Additional District Judge,
Namakkal.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

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JUDGMENT
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