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S.A.No.774 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.774 of 2022

and

C.M.P.No.15921 and 15922 of 2022

1.Sulochana

2.Srimathi

3.Sangeetha

... Appellants

Vs.

1.Bangaruammal

Rani (died)

2.K.Devadoss Reddiar

3.V.Padmanabham

4.Syed Hyder Ali

5.Rose Mary

6.Chinnakannu Pillai

7.K.Babu

8. Prema

9.Latha

... Respondents



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Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 30.03.2022 in AS.No.35 of 2011 on the file of the Additional District Judge, Chengalpattu reversing the Judgement and Decree dated 06.01.2011 in OS.No.116 of 1999 on the file of Sub Judge, Madurantakam.

For Appellant : M/s.T.R.Rajagopalan, Senior Counsel
for M/s.K.Aswini Devi and
S.T.Bharath Gowtham
For Respondent : M/s.N.Sivaprakash [R.1]
: M/s.S.Sujatha [R.3]
: No appearance[R.2, R.5 to R.9] -served
: Not ready in notice [R.4]

JUDGEMENT

The defendants 1 to 3 in the suit O.S.No.116 of 1999 on the file of the Sub Judge, Madurantakam are the appellants before this Court. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The above Second Appeal had been admitted on the following



Substantial Questions of Law:-

“1) Whether the learned Additional District Judge is right in reversing the well-considered judgment of the trial Court by shifting the burden of proof on the defendants to prove the properties purchased and stands in the name of Mr.Lakshmipathy is not the ancestral properties when the plaintiff miserably failed to lead any evidence?

2) Whether the learned Additional District Judge is right in holding that the plaintiff is entitled to 23/90 share in all the suit properties when she has been ousted from the properties from 1961 when she got married and her father was alive and that the properties stood in the individual name of Mr.Lakshmipathy till his death at 1994?

3. The plaintiff had filed suit O.S.No.116 of 1999 on the file of



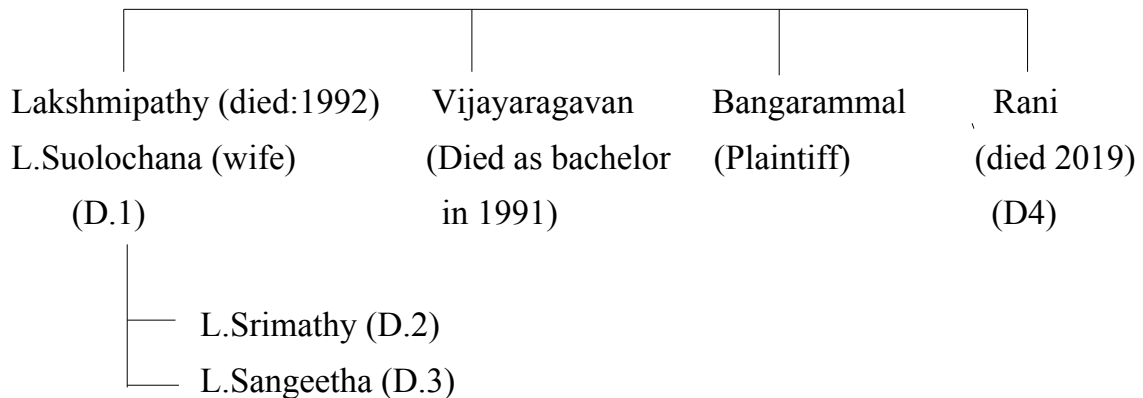
the Sub Judge, Madurantagam for partition in respect of 63 items of property. The 63rd item being a house site.

4. The following genealogy would help in appreciating the contentions of the respective parties:-

GENEALOGY

Perumal Reddiar (died 1984)

Jayalakshmi (wife) (died 19.03.1999)



5. The plaintiff would submit that the suit properties are the joint family properties of her father Perumal Reddiar. The plaintiff's father and her two brothers Lakshmipathi and Vijaya Ragavan constituted a Hindu Joint Family. She would submit that on the death of her father on 10.05.1984, she became entitled to a 1/15th share in the suit



properties. Her brother, Vijay Raghavan had died a bachelor even as early as in August 1990 and his $\frac{2}{5}$ th share devolved on her mother. It is also her case that her other brother Lakshmipathi, the husband of the 1st defendant and father of defendants 2nd and 3rd died intestate in August 1992 and his $\frac{1}{10}$ th share also devolved on her mother. Therefore, in total her mother, Jayalakshmi was entitled to a $\frac{17}{30}$ th share in the suit schedule properties. Her mother thereafter died intestate on 19.03.1999 and therefore, the plaintiff became entitled to a $\frac{23}{90}$ shares in the suit properties.

6. It is her contention that she had been receiving and participating in the income of the suit property and is therefore deemed to be in joint possession of the same. Thereafter, the defendants 1 to 3 took a hostile attitude towards her and denied her share in the suit schedule properties.

7. The plaintiff would submit that the entire joint family continue to be an agricultural family. It is also her contention that her brother



Lakshmipathi was cultivating the suit property till his demise and had no independent and separate income of his own. The defendants 5 and 6 have purchased item no.62 of the suit schedule properties and 10 cents of the house site at Acharapakkam Village. The plaintiff would submit that they are not bonafide purchasers for value and they had purchased the property knowing fully well that the plaintiff had a right to the same. The plaintiff would submit that despite repeated requests, the defendants were not coming forward to partition the suit schedule properties and allot her 23/90 shares. Thereafter, the plaintiff had issued a lawyer notice dated 08.09.1999 calling upon the defendants 1 to 5 seeking partition of the properties. The defendants who received the notice had neither sent a response nor effected the partition. Therefore, the plaintiff has come forward with the suit in question.

8. The defendants 1 to 3 had filed a written statement inter alia admitting the relationship of the parties and denying the claim of the plaintiff that she is entitled to a share in the suit schedule properties. The defendants would contend that the plaintiff had been given 30



sovereigns of gold jewels and Rs.25,000/- as dowry apart from articles and expenses for her marriage. The 4th defendant was also given a similar treatment by her father and the father had categorically stated that the daughters should not ask for any more properties. The plaintiff and the 4th defendant had also not claimed any share to the properties of Perumal Reddiar. After the death of their father, it was only the mother, Jayalakshmi and the defendants 1 to 3 who are in possession and enjoyment of the properties of Perumal Reddiar.

9. The defendants would also contend that Jayalakshmi had executed a Will on 19.01.1999 bequeathing her share on her grand daughters, defendants 2 and 3. The defendants would further submit that only the properties at Kattukudalore alone was owned by the Perumal Reddiar and Jayalakshmi who had got the same under a registered exchange deed dated 25.05.1959. However, the properties at Nemam Village was purchased in the name of Lakshmipathi with the funds provided by Kuppa Reddiar, the maternal grand-father of Lakshmipathi. These properties were always treated as his exclusive



properties and not as a joint family property. The said Lakshmipathi till his lifetime had dealt with the property as its absolute owner. Therefore, the plaintiff is not entitled to any share in the property described in Nemam Village. In fact, defendants 1 to 3 had sold items nos.37, 45 and 46 to one Devadoss, the 5th defendant herein who was in possession and enjoyment of the same. Likewise, item nos.50, 51, 60, 61 and 62 were sold to one Khalid much before the filing of the suit. The plaintiff has not added him as a party. The suit is therefore bad for non joinder of necessary parties.

10. Further, item no.63 was purchased by Lakshmipathi for a sum of Rs.2,000/- out of his own funds from Loganatha Pillai under a registered sale deed dated 14.07.1972. The property has been purchased by selling the jewellery of his wife. He has dealt with the property and sold 10 cents to Padmanaban, the 6th defendant herein. This sale is known to all and the plaintiff had also not objected to the same which would only go to show that she has no right to the said property.



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11. The 4th defendant had filed a written statement categorically contending that the properties of Jayalakshmi has been bequeathed to her grand-daughters, the defendants 2 and 3 and only they are entitled to the properties of Jayalakshmi. Neither the plaintiff nor the 4th defendant are entitled to any share in the suit properties. The 4th defendant would submit that she is an unnecessary parties to the suit. She therefore sought for the dismissal of the suit.

12. The learned Sub Judge, Madurantakam before whom the suit was pending had framed the following issues:-

- 1. Whether the Plaintiff is entitled for partition as prayed for in the suit?*
- 2. Whether the 4th Defendant is a necessary party to the suit or not?*
- 3. Whether the suit property is in possession and enjoyment of D.1 to D.3 is true?*
- 4. Whether the Will dated 19.01.1999 executed by*



Jayalakshmi Ammal is true and valid?

5. Whether the defendants 1 to 3 prescribed title ouster as against the plaintiff is true?

6. Whether the properties of Nemam village is self acquired property of Lakshmipathy pleaded by the 1st defendant is true?

7. Whether the suit is barred for non joinder of suit property?

8.To what relief?

13. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.9. The 1st defendant had examined herself as D.W.1 and Subramamiam, Padmanaban, Chinnakannu Pillai and Rose Mary as D.W.2 to D.W.5 and marked Ex.B.1 to B.15.

14. The learned Trial Judge on considering the evidence on record observed that though the defendants had taken a plea that the



properties in Kattukudalore Village, namely, item Nos.1 to 46 had been come into possession of the Perumal Reddiar and his wife Jayalakshmi under an exchange deed. However, during their oral evidence, they had conceded that it was the ancestral properties of Perumal Reddiar.

15. With reference to the item Nos.47 to 63 which stood in the name of Lakshmipathi, the deceased husband of the 1st defendant and father of defendants 2 and 3, the learned Judge had observed that there is no pleading or proof that the surplus income from item nos.1 to 46 had been used for the purchase of item nos.47 to 63. The learned Judge had also observed that there is no proof to show that these properties were being enjoyed by the joint family after its purchase. The learned Judge ultimately held that the plaintiff is entitled to a partition in respect of item nos.1 to 46 and the suit was dismissed with reference to item nos.47 to 63.

16. Challenging the said judgement and decree the defendants



had not preferred any appeal. However, the plaintiff had filed A.S.No.35 of 2011 on the file of the Additional District Judge, Chengalpet.

17. The Lower Appellate Court had framed the following points for consideration :-

(i) Whether the Trial Court is correct in dismissing the suit in respect of items 47 to 63 by holding that they are self acquired properties of Lakshmipathy Reddiar?

(ii) Whether the plaintiff is entitled to share in suit items 47 to 63?

18. Ultimately, the learned Judge observed that when item nos.47 to 62 were purchased under Ex.B.1, Lakshmipathy was only a 12 years old boy and even at that time his father Perumal Reddiar had sufficient lands and income. The learned Judge observed that the consistent case of the plaintiff is that the property had been purchased only from the nucleus of the ancestral properties. Therefore, the learned Judge held



that it could only be the father who had purchased the property in the name of the elder son, Lakshmipathy using the nucleus from the ancestral properties. The learned Judge also relied upon the recitals in Ex.B.10 and Ex.B.15 where the 1st defendant had sold the property stating that the said property is an ancestral property. Therefore, the learned Judge has proceeded to allow the appeal in respect of item nos.47 to 63 as well. Challenging the same, the Second Appeal has been filed by defendants 1 to 3.

19. Mr.T.R.Rajgopalan, the learned Senior counsel appearing on behalf of the learned counsel for the appellants/defendants would submit that admittedly item nos.47 and 63 stood in the name of Lakshmipathi. The defendants had pleaded that the property was purchased in the name of Lakshmipathi by his maternal grandfather, Kuppa Reddiar. The plaintiff claims a right to the same stating that these properties have been purchased from out of the ancestral nucleus of the joint family. Therefore, the initial burden is cast upon the plaintiff to prove that the ancestral property was yielding income and



that such income was in surplus and from and out of this surplus income the properties have been purchased. This onus has not been discharged by the plaintiff. In fact, he would draw the attention of the Court to the plaint where there is no pleading to the effect that item nos.47 to 63 had been purchased from out of the income derived from the joint family property.

20. He would further argue that when the property has purchased in the name of a junior member of a joint family, the onus lies upon the person claiming a right to this property to prove that the property has been purchased from out of the income from the joint family property. He would submit that admittedly in the instant case, the plaintiff has not proved the ancestral nucleus. He would rely upon the judgement reported in *AIR 1947 PC 189 - Randhi Appalaswami Vs. Randhi Suryanarayanamurti and Ors.* in support of the above contention.

21. He would further submit that a mere existence of a joint family does not automatically lead to the presumption that the property



held by any member of this joint family is the property of the joint family. Once the initial burden of proving that the income from out of the nucleus of the joint family was the source of the income for the purchase of property is discharged, then the onus would shift upon the person claiming an independent right to this property. He would rely upon the judgement reported in *AIR 1954 SC page 379 - Srinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*. The learned Senior counsel would also rely upon the judgements reported in *(2020) 6 SCC 387 - Bhagwat Sharan Vs. Purushottam and Others*, *2023 (6) CTC 732 - Thangam Periyasamy Education Trust Vs. Senthamizhselvi and Ors.* for the above proposition.

22. Mr.Sivaprakash learned counsel appearing on behalf of the plaintiff would submit that there is no proof to show that Lakshmipathi had necessary funds for purchasing the suit property. That apart, he would contend that the defendants had not proved that Kuppa Reddiar had provided the money for purchasing the item nos.47 to 63. He would further submit that even in Ex.B.1, Perumal Reddiar has been



shown as the guardian which would only go to show that the said Perumal Reddiar had contributed for the purchase of the property. He would also submit that the defendants have pleaded an ouster would only prove the plaintiff's case that the property belonged to Perumal Reddiar.

23. In response to the defendants' argument that there is no plea regarding the existence of an ancestral nucleus, the learned counsel referred to paragraph no.6 of the plaint where the plaintiff has pleaded that the family was a joint family and continued to be an agricultural family and that Lakshmipathi was cultivating the land till his death and he had no independent and separate income of his own. The learned counsel would argue that this is sufficient pleading with reference to the existence of an ancestral nucleus.

24. The learned counsel would submit that the properties are not ancestral but are the properties of Perumal Reddiar. He would submit that a perusal of the recitals in Ex.B.1 would only go to show that the



consideration has been provided by Perumal Rediar in as much as the Lakshmipathi is described as a minor aged about 12 years and he is represented by his father. That apart, he would draw the attention of the Court to the evidence of P.W.1 the plaintiff who in her chief examination has clearly stated that the suit properties were the joint family properties in the possession of her father. He would also draw the attention of the Court to her contention that her father was an agriculturist and that during auspicious and festival days she would visit her mother's house and she would receive the usufructs from the lands. He would also submit that the allegation of the defendants in their written statement that the item no.63 was purchased by selling the jewels of the 1st defendant is an absolutely false statement since on the date of purchase of item no.63, the 1st defendant was not married to Lakshmipathi. She would therefore submit that Ex.B.1 and B.5 though standing in the name of the deceased Lakshmipathi are properties purchased benami in the name of the Lakshmipathi. The learned counsel would rely upon the judgement reported in **1998 3 LW page 417 - Satya Gupta Vs. Brijesh Kumar** in support of his argument.



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25. Heard the counsels on either side.

26. The plaintiff has come to Court stating that the suit properties are the joint family properties of her father, Perumal Reddiar and therefore on his death she was entitled to a share in the property. From a perusal of the plaint it is not clear if the plaintiff is claiming the suit properties to be her father's ancestral properties or that it is the self acquired properties of the said Perumal Reddiar. In the plaint she has stated as follows : -

“The plaintiff submits that the properties described in the schedule hereunder are the joint family properties of her father, Perumal Reddiar, She further submits that her father and her two brothers, Lakshmipathi and Vijaya Ragavan constituted the Hindu joint family. The plaintiff states that the said joint family owned and possessed the properties described in the schedule hereunder, hereinafter



referred to as the suit properties.”

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27. The above statement holds good for all the properties. There is no specific pleadings anywhere in the plaint that item nos.47 to 63 which admittedly stands in the name of Lakshmipathi, the husband of the 1st defendant and father of defendants 2 and 3 was purchased from out of the income of the joint family property. It is the case of the plaintiff that the properties are the self-acquired property of Perumal Reddiar. However, no document has been filed to prove the same.

28. That apart, the Trial Court had observed that item nos.1 to 46 are the ancestral properties of Perumal Reddiar and partition had been granted in respect of item nos.1 to 46 for which there is no appeal on the side of the defendants and therefore the ancestral nature of items 1 to 46 has been admitted by the defendants as well. In order to claim a right to item nos.47 to 63 the plaintiff ought to plead and prove that the income which has been used for the purchase of item nos.47 to 63 came from out of the joint family nucleus. As already submitted there



is no plea regarding the source of income for item nos.47 to 63 and the plaintiff has also not proved that the item nos.1 to 46 yielded such income that the surplus of the income had been used for the purchase of the properties item nos.47 to 63. The Privy Council in the judgement reported in ***AIR 1947 PC 189 - Randhi Appalaswami Vs. Randhi Suryanarayanamurti and Ors*** was considering whether the minors represented by their maternal uncle as next friend were entitled to a share in the father's property when the father had pleaded that it is his separate property. From the evidence the learned Judges had held that the family expenses exceeded the income derived from the joint property. It was also seen that the defendant therein was a man of enterprise and out of his energy and labour had acquired large fortune. The Hon'ble Privy Council by rejecting the claim of the minors observed as follows:-

“Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to



establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.”

29. In the instant case, the plaintiff has not discharged this onus cast upon her to prove the existence of the joint family nucleus. In the Judgement of the Hon’ble Supreme Court reported in **(2020) 6 SCC 387 - Bhagwat Sharan Vs. Purushottam and Others** the learned Judge while answering the 1st issue, namely, “1. *Whether the properties mentioned in Para 9 of the plaint are the properties of the joint family both the sides or whether the same are the self-acquired properties as per the averments made by the defendants?*” had held as follows:-

“In view of the law cited above, it is clear that not only jointness of the family has to be proved but



burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a joint Hindu family.”

30. A Division Bench of this Hon'ble Court in the Judgment reported in **2023 (6) CTC 732 - Thangam Periyasamy Education Trust Vs. Senthamizhselvi and Ors** was also considering the similar issue as to whether the properties standing in the name of defendants therein was the joint family properties. After dilating on the various judgments on this question the Hon'ble Bench had ultimately held as follows:-

“40. At the outset, we must point out that it is



settled position of Hindu. Law that there is no presumption that properties possessed by members of the Joint Hindu Family or joint family properties. In case of properties standing in the name of the Manager of a Joint Hindu Family, there is a presumption that the properties are joint family properties, once the basic foundational fact viz. the fact that the acquisition was aided by income from the joint family properties or by a detriment to the joint family properties is established. As regards junior members and female members, there is no such presumption.”

“43. The Hon'ble Supreme Court and this Court have been repeatedly pointing out that unless it is proved that the family had sufficient properties which is normally referred to as the nucleus and the said nucleus is shown to be capable of generating a large income leaving a surplus in the hands of the family to enable it to acquire other properties, properties that



*stand in the name of individual members cannot be treated as joint family properties. In **S.Chinnayan & Others Vs. C. Chidambaram & Ors., reported in 1993 (6) MLJ 41**, a learned Single Judge of this Court (Hon'ble Mr.Justice Abdul Hadi) after referring to various judgments on the law relating to joint family properties held that unless there is pleading of existence of sufficient nucleus and sufficient income there from and proof of such nucleus and the income there from, there cannot be a presumption that the property that stands in the name of an individual member is joint family property.”*

31. Therefore, on a consideration of the above judicial pronouncements and taking into consideration the fact that the plaintiff has not been able to establish that the joint family property yielded income and that it is this income that has been put to use to purchase the item nos.47 to 63 in the name of the deceased Lakshmipathi, the



plaintiff is not entitled to a share in the item nos.47 to 63. Therefore, the Substantial Question of Law No.1 is answered in favour of the defendants.

32. Considering the answer to Substantial Question of Law no.1, there is no question of an ouster since the item nos.47 to 63 are held to be the properties of Lakshmipathi who has purchased it under Ex.B.1 and B.5. Therefore, the Substantial Question of Law no.2 is answered in favour of the defendants. Even if the contention of the plaintiff that the property has been purchased by the father in the name of his son, the transaction is clearly hit by the provisions of Section 4(1) of the Prohibition of Benami Property Transaction Act, 1988. Therefore, on this score also the suit fails in respect of item nos.47 to 63 of the properties subject matter of the suit O.S.No.116 of 1999. The Appellate Court has committed an error in directing the partition of item nos.47 to 63 solely relying upon the stray statement in the sale deed executed by the 1st defendant, namely, Ex.B.10 and Ex.B.15, where defendants 1 to 3 had described the properties as ancestral



properties. As already observed, the onus is upon the plaintiff to prove the existence of ancestral nucleus forming the source for purchasing the item nos.47 to 63.

33. In fine, the Second Appeal is allowed, the Judgement and Decree of the Lower Appellate Court, namely, the Additional District Judge, Chengalpattu in A.S.No.35 of 2011 is set aside and the Judgement and Decree of the Trial Court, namely, the Sub Judge, Madurantakam in O.S.No.116 of 1999 is confirmed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

14.03.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional District Judge, Chengalpattu.
2. The Sub Judge, Madurantakam.

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3. The Section Officer,
V.R.Section,
High Court, Madras.



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