



S.A.No.364 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.364 of 2021
and
C.M.P.No.6845 of 2021

- | | | |
|-----|---|-----------------|
| 1. | Smt.Shanmugavalli | |
| 2. | D.Selvaraj | |
| 3. | D.Saravanaraj | ... Appellants |
| | Vs. | |
| 1. | S.P.Damodaran | |
| 2. | G.Selvan | |
| 3. | K.Arjunan | |
| 4. | K.Krishna Kutty | |
| 5. | K.Mohandas | |
| 6. | Vital H.Govinda | |
| 7. | Heena V.Patel | |
| 8. | P.Senthil Kumar | |
| 9. | A.Karuppanna | |
| 10. | R.Selvaraj | |
| 11. | A.Balakrishnan | |
| 12. | B.Sadasivam | |
| 13. | V.R.Manivasagam | |
| 14. | The Sub-Registrar, Sulur,
O/o the Sub-Registrar, Sulur,
Coimbatore Taluk. | |
| 15. | V.Ramasamy Naidu | |
| 16. | S.Ranganathan | |
| 17. | S.M.Pechiannan | |
| 18. | S.P.Subramaniam | |
| 19. | M.Pechiannan | ... Respondents |



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PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 23.06.2020 in A.S.No.83 of 2018 passed by the learned V Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree of O.S.No.292 of 1997 dated 12.04.2018 passed by the learned I Additional Subordinate Judge, Coimbatore.

For appellants : Mr.J.R.K.Bhavanantham

For respondents

For R1 to R13&R15 to R19 : No appearance

For R14 : Mrs.Dr.S.Suriya
Additional Government Pleader

JUDGMENT

The plaintiffs, who have concurrently lost before the Courts below, have filed the above second appeal.

2. The following are the facts which have given rise to the above second appeal. For the ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiffs had filed a suit in O.S.No.292 of 1997 on the



file of the I Additional Subordinate Court, Coimbatore, seeking partition of their 3/4th share in the suit properties. The first plaintiff is the mother of the plaintiffs 2 and 3 and the first defendant is her husband. The plaintiffs 2 and 3 and one Ramaraj were born to the first plaintiff and the first defendant. The said Ramaraj who was born on 15.06.1980, died within 6 months.

2.2. It is the case of the plaintiffs that the properties which have been described in the I schedule are the ancestral properties of the first defendant, which were allotted to the first defendant under a partition deed dated 31.08.1990. The properties allotted to the first defendant have been described in the 'C' schedule. The plaintiffs would submit that since the properties are the ancestral properties, the first defendant is entitled to a 1/4th share and the plaintiffs 2 and 3 and the deceased Ramaraj are entitled to a 1/4th share each. Since Ramaraj died, his share would devolve on the first plaintiff. Therefore, together, the plaintiffs are entitled to a 3/4th share in the suit properties.



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2.3. The plaintiffs would submit that the buildings in the I Schedule are the joint family properties of the plaintiffs and the first defendant. The buildings therein are assessed in the name of the first defendant and the building bearing Door No.91 continues to be assessed in the name of his predecessor-in-title. The III Schedule of the suit properties is an agricultural land measuring an extent of 2 acres 23 cents, which was purchased by the first defendant and his brother under a registered sale deed dated 26.03.1976. This property was also acquired from and out of the ancestor nucleus. The first defendant and his brother had partitioned the agricultural land under a partition deed dated 20.08.1990 and the plaintiffs are entitled to a 3/4th share in the said property as well.

2.4. The plaintiffs would contend that the first defendant is living away from the family and is leading a reckless life. The plaintiffs have come to know that the first defendant is borrowing heavily and none of these amounts are spent for the welfare of the family. The plaintiffs would further submit that the first defendant claiming this



property as his self-acquired property, is creating documents and borrowing amounts. The plaintiffs would submit that these dealings would not bind the 3/4th share of the plaintiffs. It is the case of the plaintiffs that the 15th defendant had obtained a collusive attachment against the first defendant in the suit in O.S. No.1062 of 1962 on the file of the Subordinate Court, Coimbatore. Pursuant to this decree, the plaintiffs would contend that the Court had ordered attachment of the property and the same is not binding on the plaintiffs.

2.5. The plaintiffs would submit that the elders in the family tried to resolve the disputes since the first defendant is leading a wayward life. However, the first defendant refused to reform. They would further contend that the defendants 2 to 13 are close associates of the first defendant and they are attempting to create documents by taking advantage of their proximity to the first defendant. The plaintiffs had also approached the 14th defendant i.e., Sub Registrar, Sulur, not to entertain the documents for registration. Hence, the plaintiffs have come forward with the suit in question.



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2.6. The 8th defendant had filed a written statement which was adopted by the defendants 9 and 10, in which, they would admit that the I Schedule property belonged to the father of the first defendant, Palaniappan, who was in possession and enjoyment of the property till his death. He was an affluent agriculturist and after his death, the properties were divided between the first defendant and his brother, Manoharan, under the partition deed dated 20.08.1990. The item 1 of the suit property as well as the item 2 of the suit property were allotted to the first defendant, besides other properties. The said partition deed is a registered one. An extent of 1 acre was allotted to the said Manoharan which was described in the 'A' schedule and a similar extent of property described as 'B' schedule was allotted to the first defendant. These properties have been mentioned as items 1 and 2 of the suit property. The first defendant continued to be in possession and enjoyment of the suit property. Thus, the defendants would submit that they have purchased the property from the first defendant for a valid consideration and therefore, they are *bona fide* purchasers for value. The first defendant had informed them that the property is his self-



acquired property. The defendants would submit that the suit filed against them may, therefore, be dismissed.

2.7. Though the 9th defendant had adopted the written statement of the 8th defendant, he had also independently filed a written statement, in which, he would admit the relationship of the parties and contend that the suit properties were self - acquired properties of Palaniappan, father of the first defendant who died around 1983. During his lifetime, the said Palaniappan was in exclusive possession and enjoyment of the properties. On his death, his sons viz., first defendant and others and his daughters became entitled to equal share by virtue of Section 8 of the Hindu Succession Act. On 31.08.1990, a partition deed was entered into between the legal heirs of deceased Palaniappan. Under this partition, the first defendant had become the absolute owner of the I schedule properties. The said Palaniappan had purchased the second item from and out of his separate earnings and put up a superstructure on it. Therefore, these properties, by no stretch of imagination, are termed as ancestral properties. On the contrary, they



are individual properties of the first defendant. The defendants would further submit that the suit itself is a collusive one, since the first plaintiff and the first defendant continue to live under the same roof. After selling the properties to the parties, the first defendant had manipulated the first plaintiff to institute the proceedings.

2.8. A written statement has been filed by the 14th and 18th defendants. All of them contend that the properties are exclusive properties of the first defendant.

2.9. The plaintiffs had filed a reply statement *inter alia* reiterating that the 'A' schedule of the suit property consisting of 2 items of the properties are the ancestral properties of the grandfather Palaniappa Thevar. There was an existing building with godown in the said property, which was used as a rice mill by the family and out of that business, the family was earning more than Rs.1,00,000/- per month and from and out of its income, the said Palaniappan had started a bus transport business in the name and style of “Palaniappa



Transport” along with his two sons. The 2nd item of the family property was sold away leaving only an extent of 0.10 cents of land by the first defendant and his brother and this sale price was used to purchase the 3rd item of the property. Therefore, even this property should be construed as a joint family property.

TRIAL COURT:

3. The Trial Court had framed an issue as to

“Whether the plaintiffs are entitled for the relief of partition?”

4. The first plaintiff had examined herself as P.W.1 and marked Exs.A1 to A25. The 18th defendant alone had examined himself as D.W.1 and marked Exs.B1 to B10. The first defendant had neither filed a written statement nor entered the witness box.

5. The Trial Court, on considering the evidence both documentary and oral, held that the plaintiffs who have come forward with the contention that the properties are ancestral properties and that



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the first plaintiff's father in law was running a rice mill, income from which had constituted the nucleus for purchasing the properties, had failed to prove the same. The learned Judge held that the plaintiffs have failed to prove the running of the rice mill. The Trial Court held that under Exs.A5 - sale deed dated 26.03.1976, the first defendant and his brother had purchased the property and under Ex.A6 - partition deed dated 20.08.1990, the first defendant is entitled to a half share in the suit properties. The learned Judge held that the only cause of action in this partition suit is that the first defendant is living a wayward life and the first defendant and the plaintiffs are living separately. However, documents Exs.B2 to B10 clearly show that the plaintiffs and the first defendant are living under the same roof. Therefore, the learned Judge had dismissed the suit.

LOWER APPELLATE COURT:

6. Aggrieved by the same, the plaintiffs had filed an appeal in A.S No.83 of 2018 on the file of the V Additional District and Sessions Court, Coimbatore. The learned District Judge has confirmed the



judgment and decree of the Trial Court and dismissed the appeal.

7. Aggrieved by the same, the plaintiffs are before this Court.

8. Heard the learned counsel appearing for the appellants and for the respondents.

DISCUSSION:

9. The plaintiffs have come to the Court on the following two grounds:-

(A.) The first defendant is living a wayward life and squandering away the properties;

(B.) The properties that are sought to be sold away are the ancestral properties and the properties purchased from ancestral nucleus, in which, the plaintiffs have 3/4th share.

10. The Courts below, on the basis of the evidence, have held that the contention of the plaintiffs that the first defendant is living a wayward life has not been proved by the plaintiffs. On the contrary, the



documents Exs.B2 to B10 have been produced on the side of the defendants to prove that the plaintiffs and the first defendant are not only living under the same roof, but, the first plaintiff and first defendant have been jointly purchasing the property, whose value is Rs.23,45,000/- (Rupees Twenty Three Lakhs Forty Five Thousand only). Therefore, that contention that the first defendant is squandering away the family wealth stands belied. The fact that all these transactions are being done jointly proves that the family is intact and the first defendant is very much living with the plaintiff.

11. The plaintiffs have contended that the ancestral property was a rice mill, the income from which, contributed to the purchase of the properties. However, the plaintiffs have not let in evidence whatsoever to prove that the father-in-law of the first plaintiff was running a rice mill and this rice mill was the source of income for purchasing the other properties. Therefore, once the plaintiffs have failed to prove the aforesaid issues, then, the plaintiffs are not entitled to the decree for partition, which has been rightly turned down by the



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Courts below. I see no reason to differ from this concurrent detailed findings of both the Courts below, particularly, when no substantial question of law has been made out by the appellants and the appellants have not been able to point out any discrepancies in the judgment and decree of the Courts below.

Accordingly, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.

09.01.2024

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

1. The V Additional District and Sessions Judge, Coimbatore.
2. The I Additional Sub Judge, Coimbatore.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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