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S.A. No.371 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.03.2024

Pronounced on: 12.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.371 of 2017
and
CMP. No.8762 of 2017

S.Swaminathan

...Appellant

Vs.

1.S.Raghunathan (Died)
2.S.Boopathi
3.The Sub- Registrar,
Joint -I, Sub Registrar Office,
Krishnagiri.
4.R.Mala
5.R.Karthick
6.R.Jothi
(R4 to R6 are bring on record as
LRs of the deceased R1 vide
order dated 05.12.2013)

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and the Decree of the lower Appellate Court in A.S. No.8 of 2016 on the file of the Principal District Judge, Krishnagiri dated 23.09.2016, confirming the judgment and decree in O.S. No.159 of 2013 on the file of Subordinate Court, Krishnagiri dated 21.01.2016.



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For Appellants : Mrs.S.Uma Maheswari
For Respondents : Mr.R.Marudhachalamurthy for R2
Mr.V.Ramesh,
Government Advocate for R3
R1- Died
R4 to R6 – No Appearance.

JUDGMENT

The unsuccessful plaintiff who has suffered concurrent findings before the Trial Court as well as the First Appellate Court, in a suit for partition and separate possession is the appellant before me.

2. The parties are described as per their litigative status before the Trial Court.

3. The material particulars that are necessary for adjudicating the present Second Appeal are as here under:

3.1.The plaintiff states that he is the brother of defendants 1 and 2 and that they constitute a Hindu joint family. According to the plaintiffs, though the suit properties were purchased from and out of income



derived from joint family properties, it was purchased in the name of the 1st defendant who is the eldest brother amongst the three. According to the plaintiff, the suit properties were jointly mortgaged by the plaintiff and defendants, but however, taking advantage of the sale deed in his name and patta also being issued in the name of the 1st defendant, the 1st defendant attempted to sell the suit properties without the plaintiff's and 2nd defendant's knowledge. Hence, a suit was filed seeking partition and separate possession.

3.2. The 1st and 2nd defendants filed a written statement stating that there is no joint family properties existing, much less, income accruing from the said properties. According to the defendants 1 and 2, the 1st defendant is the absolute owner of the suit properties, being his self acquired property and further stated the ancestral properties were partitioned even in the year 1970. It is also contended that the part of the land which was given as the 1st defendant's share was purchased by the plaintiff's wife herself and therefore, there is no question of any joint family nucleus or property available for purchasing the suit properties in the name of the 1st defendant.



3.3. The 3rd defendant, who is the Sub Registrar, Krishnagiri filed a written statement stating that he was an unnecessary party to the suit.

4. The Trial Court found that the suit property was a self acquired property of the 1st defendant and there was no joint family property available from which income was accruing in order to purchase the suit properties from and out of the said income of the joint family. The suit was therefore, dismissed.

5. On appeal preferred by the plaintiff, the First Appellate Court also confirmed the findings of the Trial Court and dismissed the Appeal, thereby the suit as well.

6. Aggrieved by the concurrent findings, the plaintiff has preferred the above Second Appeal. On 17.09.2019, the above Second Appeal was admitted on the following three substantial questions of law:

“i) Whether the Courts below are right in law in denying the relief partition particularly when the first defendant has admitted the claim of the plaintiff in Ex.A4 letter coupled with the material evidence namely Exs. A5, A7, A8 and A137

ii) Whether the Courts below have properly appreciated the law relating to blending particularly when the plaintiff has established the existence of ancestral nucleus and joint family and supported by



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the admission of the first defendant ?

iii) Whether the Courts below have properly appreciated the material evidence in the case namely Exs.A4, A5, A7, A8 and A13 in the proper perspective which establishes the existence of ancestral nucleus and joint family property and blending by the first respondent? ”

7. I have heard Mrs.S.Uma Maheswari, learned counsel for the appellant and Mr.R.Marudhachalamurthy, learned counsel for the 2nd respondent and Mr.V.Ramesh, learned Government Advocate for the 3rd respondent. The 1st respondent died pending the Second Appeal and though his legal representatives have been arrayed as respondents 4 to 6, however, there is no appearance on their behalf.

8. The learned counsel for the appellant would invite my attention to Ex.A4, letter where the 1st defendant has admitted the 1/3rd right of the plaintiff in the suit property. She would also refer to the mortgage deeds, where the plaintiff has also joined the execution of the mortgage along with defendants 1 and 2 and placing reliance on Exs. A4, A5, A7, A8 and A13, the learned counsel for the appellant would contend that the Courts below have not applied their mind judiciously to these documents which clearly established the existence of joint family property as well as ancestral nucleus. She would also contend that these documents would also corroborate the claim of the plaintiff/appellant that the 1st respondent



has chosen to blend his property with the joint family and therefore, the suit properties were available for partition and consequently the plaintiff would be entitled to a 1/3rd share.

9. Per contra, Mr.R.Marudhachalamurthy, learned counsel for the 2nd respondent, would submit that both the Courts have concurrently found that there is no joint family property available in the first place, leave alone income accruing therefrom, in order to enable the eldest brother namely, the 1st defendant to purchase the suit properties from and out of the said surplus income, in his name. He would pray for dismissal of the Second Appeal.

10. The learned Government Advocate Mr.V.Ramesh, would submit that the Sub Registrar has been unnecessarily impleaded as a party to the suit and no relief has also been claimed against the 3rd defendant and he would therefore, pray for confirming the concurrent findings rendered by the Courts below.

11. I have applied my mind to the submissions advanced by the learned counsel for both the parties. I have also gone through the plaint,



written statement of the defendants 1 to 3 and the evidence adduced, oral and documentary by the parties before the Trial Court.

12. The plaintiff has approached the Court on the premise that the plaintiff and defendants 1 and 2 constitute a Hindu Undivided Family and that the suit properties were purchased from the income that derived from the joint family properties. However, it is the specific case of defendants that the suit properties were the self acquired properties of the 1st defendant, who was running a grocery business and the property was acquired out of the said income. The defendants have also positively asserted that the joint family properties were partitioned way back in the year 1970 and one of the properties allotted to the 1st defendant thereunder was even purchased by the plaintiff's wife and therefore, the property which is acquired in the name of the 1st defendant much later, in the year 1973 had nothing to do with the joint family properties which were partitioned more than three years prior to the purchase of the suit properties by the 1st defendant.

13. That apart, it is seen that the plaintiff, during cross examination



has categorically admitted that the joint family properties were not yielding any income. Therefore, the question of any surplus income being available at the hands of the coparceners to acquire further properties is ruled out. The only document on which reliance is heavily placed on by the learned counsel for the appellant is Ex.A4. Ex.A4 is a document alleged to have been executed by the 1st defendant where under the 1st defendant has stated that the plaintiff had a 1/3rd share in the suit property. However the original of the said document viz., Ex.A4, has not been produced by the plaintiff. It is only a photocopy that has been marked subject to objection. Further, the 1st defendant has denied execution of any such letter as well. In such circumstances, the Courts below have rightly not placed any reliance on the said Ex.A4. Even in respect of some of the mortgages in which the plaintiff has joined the execution of the deeds along with the 1st and 2nd defendants, the Courts below have held that merely because the plaintiff had joined a couple of mortgage deeds, in evidence it has come out that the amounts due to the mortgage deed in the respective cases were all repaid only by the 1st defendant and not by the plaintiff or the 2nd defendant. Further, the 2nd defendant has also not supported the plaintiff's case that their brother constituted a Hindu Undivided Family.



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14. When the plaintiff comes to the Court with a case that the suit properties, standing in the individual name of the 1st defendant was actually purchased out of surplus income from the joint family property, the burden is certainly on the plaintiff to establish two things. Firstly, the existence of a joint family and secondly, surplus income accruing from the said joint family property to enable acquisition of the suit properties in the name of Karta, i.e the eldest brother. Here the plaintiff has miserably failed in establishing the existence of a joint family on the date of acquisition of the property in Ex.A1 in the name of the 1st defendant. Further, the Courts below have non-suited the plaintiff on his own admissions that the joint family properties were not yielding any income and that the suit properties were not purchased out of the income derived from the ancestral property.

15. Unfortunately the plaintiff appears to have diverted his original case by stating that the suit property was purchased from and out of the income accruing from the grocery shop. This was not the case of the plaintiff in the plaint, when the plaintiff had come to the Court with a specific plea that the suit properties were purchased of income from joint



family properties. He cannot abandon the same and try to invite a new theory as if the suit property were acquired from and out of income from the grocery shop that was being run by the 1st defendant. There is also no evidence to establish that the grocery shop business was a joint family business of the brothers. The Courts below have rightly appreciated the oral and documentary evidence adduced by the parties and held that the plaintiff has miserably failed to establish the existence of joint family income in order to purchase the suit properties in the name of the 1st defendant.

16. I do not see any material irregularity or perversity in the findings of the Courts below, especially their findings with regard to Ex.A4, A5, A7, A8 and A13. In fine, the substantial questions of law are answered against the appellant and the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

12.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order



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rkp

To

1. The Principal District Judge, Krishnagiri.
2. The Subordinate Judge, Subordinate Court, Krishnagiri.

P.B.BALAJI, J.

rkp

Pre-delivery Judgment in

S.A.No.371 of 2017

and

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