



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 22.02.2024	Judgment Pronounced on 28.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.710 of 2017

1.Kalaivani

2.Saraswathi

3.Dhanalakshmi

..Appellants

Vs.

Palanisamy

1.Dhandapani

2.Vadivel

3.Rathinammal (Died)

4.Sambooranam

5.Anitha

6.Kavitha

..Respondent

[Memo recorded.

R3 died, appellants and other respondents are legal representatives of the deceased R3 vide order dated 30.10.2023 in S.A.No.710 of 2017]



PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.02.2013 made in A.S.No.68 of 2013 on the file of the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 30.08.2010 passed in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

For Appellants : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

For Respondents

For RR1 & 2 : No appearance

For R3 : Died

(Appellants and other respondents are the LR's of the deceased R3)

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 19.02.2013 made in A.S.No.68 of 2013 on the file of the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 30.08.2010 passed in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

2.The unsuccessful plaintiffs in a suit for partition are the appellants herein.

3.The parties are described as per their litigating status before the



Trial Court.

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4.The case of the plaintiffs is that they are daughters of late Appadurai and the defendants 1 to 3 are brothers and the 4th defendant is their mother. The defendants 5 to 7 have been impleaded as legal heirs of the 1st defendant, pending the suit, being his wife and daughters. According to the plaintiffs, their father Appadurai died intestate in the year 1998 and the properties are joint family properties and their father was managing the same as Kartha/Manager and consequent to his demise, the plaintiffs are entitled to seek partition of the suit properties into seven equal shares. Seven items of the properties have been set out in the schedule.

5.The case of the 1st defendant, one of the brothers, is that the plaintiffs were never members of Hindu Joint Family and the joint family properties were partitioned during the lifetime of the father, between the father and the sons, twenty years back and subsequently, the 1st defendant has separately purchased properties in his name and he has built a house in one item of the suit property where the defendants 2, 3 and 4 are residing and the plaintiffs were all given in marriage even prior to 1989 when the Tamil Nadu Amendment Act I of 1990 came into force and therefore, the plaintiffs cannot



6.The 3rd defendant filed a written statement stating that the properties are joint family properties and there is no partition between the father and the son as claimed by the 1st defendant and the 3rd defendant had no objection for a partition decree being granted and also sought for his share to be allotted at the time of passing of a preliminary decree.

7.The 4th defendant filed a separate written statement stating that there was no partition in the family as claimed by the 1st defendant during the lifetime of Appadurai and the 4th defendant was paying revenue taxes and electricity dues out of joint family funds. Further, it is contended that the 2nd item of the property was built only by Appadurai and not by the 1st defendant and the property in the name of the 1st defendant was also purchased only out of joint family funds. The 4th defendant also sought for declaration of her share in the suit properties.

8.The Trial Court held that the 1st item of the suit property was the separate property of the 1st defendant. In so far as the 2nd and 3rd items of the property is concerned, the Trial Court held that the Will set up by the 1st



defendant was not proved and the said items 2 and 3 are in possession of the 1st defendant and consequent to his demise, the defendants 5 to 7 are entitled to the same and that they were also not joint family properties. Regarding 4th and 5th schedule items, finding that patta in Ex.B13 was in the name of the defendants 2 and 3, the said items were also held to be not joint family properties. However, in so far as items 6 and 7, the Trial Court finding that Ex.B41, patta was only in the name of the father, Appadurai, the said item was joint family property and consequently, held that it alone was available for partition.

9.An appeal was preferred by the plaintiffs alone and the decree in respect of items 6 and 7 was not challenged by any of the defendants and therefore, the same become final. The scope of the appeal was therefore narrowed down to items 1 to 5. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal, confirming the entitlement of the plaintiffs in respect of the items 6 and 7 alone. Aggrieved by the said concurrent findings of the Courts below, the plaintiffs have preferred the above Second Appeal.

10.The above Second Appeal was admitted by this Court on

30.10.2023, on the following substantial questions of law:



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“1) Whether the finding arrived by the Courts below that there was an oral partition in the family is supported by any acceptable evidence?

2) Whether the findings of the Courts below that there was an oral partition as pleaded by the first defendant is based on no evidence?”

11.I framed the following additional substantial questions of law before hearing the learned counsel:-

“Whether the Courts below were right in holding that the 1st item of the suit property was the separate property of the 1st defendant in the light of overwhelming evidence that it was purchased from and out of joint family funds.”

12.I have heard Mrs.Chitra Sampath, learned Senior Counsel for Mr.T.S.Baskaran, learned counsel for the appellants and Mr.D.Akaash, learned counsel for Mr.N.Manokaran, learned counsel for the respondents 4 to 6 and also I have gone through the plaint, written statements filed by the contesting defendants as well as the defendants sailing with the plaintiffs, oral and documentary evidence adduced by both the parties and also the judgments of the Trial Court as well as the First Appellate Court.



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13.Mrs.Chitra Sampath, learned Senior Counsel would rightly contend that the point for adjudication would only be as to whether the plea of the defendants that there was an oral partition about 20 years back was true and if so was it acted upon, to deny a right to the plaintiffs. In so far as item 1 of the suit property, the Sale Deed admittedly stands in the name of the 1st defendant. The only document available is Ex.B16 to establish that funds were available from an award amount and also sale of other properties. However, mere sufficiency of funds at the hands of the father, Appadurai would not automatically lead to a presumption that the Sale Deed in Ex.B1 was acquired only by the father, in the name of the 1st defendant. In Ex.B39, the father himself has given a complaint that the sale consideration for purchasing item 1 was met by him and not by the 1st defendant. The Trial Court has considered the said document and found that the 1st defendant was neither a complainant nor a witness to the said Ex.B39 and therefore, it would not bind the 1st defendant. In the absence of any material to show that only joint family funds were utilized to purchase item 1 of the suit property, the Courts below held that it is the separate property of the 1st defendant and not a joint family property or property purchased out of the joint family funds.

14.In so far as 2nd and 3rd items, in Ex.B42, Will of Munich Ammal



dated 13.09.1974 was rejected as the source of title of the father, Appadurai, though Ex.B14, patta stands in the name of Munich Ammal. However, the Trial Court found that none of the attesting witnesses were examined to prove the Will and especially, when the 1st defendant had denied Ex.B42, Will to be forged. Taking note of Ex.B2 and Ex.B12, patta in the name of the 1st defendant, the Courts below held that items 2 and 3 are properties belonging to the 1st defendant and consequent to his demise, the defendants 5 to 7 are entitled to it and that they are not joint family properties. Moreover, when Ex.B14, patta stands in the name of Munich Ammal, in the absence of proof of Will by examining atleast one of the attesting witnesses, it cannot be said that the Will has to be accepted and consequentially, the properties, namely, items 2 & 3 are to be declared as separate properties of the 1st defendant. In fact, the claim is made in respect of these two items namely, items 2 & 3 under an oral gift which also has not been proved. Therefore, in so far as these items, the judgment and decree of the Courts below are to be necessarily set aside, especially when having held that the Will was not proved in accordance with law, the Courts below have erroneously held that the property was the separate property of the 1st defendant and it cannot be treated as joint family property.

15. In so far as the items 4 & 5, Ex.B.13 patta is the only document



that has been exhibited to show that the defendants 2 & 3 are the owners of the said items. The mutation of revenue records will not establish title and reliance placed on the mortgage by the Trial Court in Ex.B.32 is incorrect since the mortgage is self serving document. By placing reliance on Ex.B.32 and Ex.B.36, it cannot be presumed that the property belonged to the father and defendants 1 & 2 alone. Moreover, even in the evidence, it is admitted that these items of properties were available for partition and therefore, the Courts below ought not to have dismissed the suit insofar as items 4 & 5.

16. Even otherwise, apart from Ex.B.13, Ex.B.32 and Ex.B.36, there is no other document filed on behalf of the contesting defendants to establish that the items 4 & 5 are separate properties of the 2nd and 3rd defendants. These documents do not, in any way, establish the oral partition pleaded by the defendants. Therefore, the findings of the Courts below with regard to items 4 & 5 also requires to be set aside.

17. In so far as 1st item of the suit property, it has admittedly been purchased in the name of the 1st defendant. As already held herein above, merely because the property was purchased within a few days from the date of sale of Ex.B.1 property, it will not lead to a presumption that the properties



standing in the 1st defendant was not his self acquired property but only joint family property. The 1st defendant has not produced any patta in his name. It is however seen that after the demise of the 1st defendant, his legal heirs, namely defendants 5 to 7 have obtained Patta in their names. Therefore, I do not find any strong evidence to rebut the presumption that the 1st defendant's property was only belonging to the 1st defendant and not the property purchased out of surplus funds belonging to the joint family. Ex.B.39 cannot be relied on because it is again a self serving complaint lodged by the father to the police authorities and it is not sufficient to hold that the suit property was purchased only out of the joint family funds. In fact, even on perusal of Ex.B.39, it is only seen that the father claims to have paid the sale consideration. It is not his case that it was purchased out of joint family funds. Therefore, the findings of the Courts below that the item No.1 of the suit property was separate property of the 1st defendant does not call for any interference.

18. In fine, the 1st and 2nd substantial questions of law are answered in favour of the appellants and the 3rd substantial question of law is answered against the appellants herein.

19. In the result, this Second Appeal is partly-allowed and the judgment and decree of the Courts below in respect of item No.1 is confirmed.



In respect of the items 2 to 7, there shall be a preliminary decree in favour of the plaintiffs declaring their 1/7th share each. No costs.

28.03.2024

Index :Yes/No.

Internet :Yes/No.

ata/bsm

Copy to:

1. The Principal District Judge, Krishnagiri.
2. The District Munsif cum Judicial Magistrate, Uthangari.
3. The Section Officer, V.R.Section, High Court, Madras.

P.B.BALAJI,J.

ata/bsm

Pre-delivery judgment made in
S.A.No.710 of 2017



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28.03.2024

S.A.No.710 of 2017

P.B.BALAJI, J.

This matter is listed today (24.04.2024) under the caption “for being mentioned” at the instance of the learned counsel for the respondents.

2. When the matter is taken up for hearing, the learned counsel appearing for the respondents 4 to 6 submits that his name has been inadvertently omitted in the cause title of the order dated 28.03.2024. Further, the learned counsel for the appellants as well as the learned counsel for the respondents submit that the 3rd respondent, who is the mother passed away pending the Second Appeal. Therefore, the share of the parties enlarges to 1/6th share instead of 1/7th share.



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3.Considering the submission of the learned counsel for the respondents 4 to 6, the name of the learned counsel for the respondents 4 to 6, Mr.D.Akaash, may be incorporated in the cause title of the order dated 28.03.2024 and considering the submissions made by the learned counsel on either side, paragraph No.19 of the order dated 28.03.2024 is modified as under:-

“In the result, this Second Appeal is partly-allowed and the judgment and decree of the Courts below in respect of item No.1 is confirmed. In respect of the items 2 to 7, there shall be a preliminary decree in favour of the plaintiffs declaring their 1/6th share each. No costs.”



P.B.BALAJI, J.

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4. Registry is directed to carry out the corrections and issue a fresh order copy to the parties.

24.04.2024