



S.A.No.3 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.3 of 2024
and C.M.P.No.198 of 2024

1. M.Dhanapal
2. Selvi
3. Manimekalai

...Appellants

Vs

1. Kannammal
2. Muthukumar
3. Malar
4. Santhi

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 29.10.2021 made in A.S.No.21 of 2017 on the file of the Principal Sub Court, Kallakurichi confirming the judgment and decree dated 20.01.2016 made in O.S.No.429 of 2011 on the file of the learned First Additional District Munsif Court, Kallakurichi (Full Additional Charge of the second Additional District



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Munsif Court, Kallakurichi).

For Appellants : Mr.N.Manoharan
For Respondents
2 to 4 :Mr.R.Neethi Perumal

JUDGMENT

The plaintiffs are the appellants before this Court, having concurrently lost before the Courts below.

2. The facts are briefly set out herein below and the parties, for ease of understanding, are referred to in the same ranking as before the trial Court.

3. The plaintiffs had filed the suit O.S.No.429 of 2011 on the file of the I Additional District Munsif Court, Kallakurichi seeking a preliminary decree for partition of their 3/6th share in the suit schedule properties. The suit schedule properties consisted of five (5) items of



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properties. It is the case of the plaintiff that the suit properties belonged to the plaintiffs and defendants 1 to 3, the same being their ancestral joint family properties and the properties were acquired from out of the joint family income. The plaintiff would submit that the first defendant is his father, the third defendant is his brother and plaintiffs 2 and 3 and the second defendant are his sisters. It is his contention that the suit properties are ancestral properties of Palani Gounder. Palani Gounder had died intestate and the properties devolved on the first defendant and he was managing the properties as Kartha of the joint family. He was in possession and enjoyment of the properties in this capacity. Thereafter, the plaintiffs and defendants 1 to 3 were in enjoyment of the same.

4. The plaintiffs would contend that the first defendant was taking steps to alienate the properties. Therefore, the plaintiffs had



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issued a legal notice calling upon the defendants to partition the properties. However, there was no response to the same.

5. The plaintiffs would submit that he had earlier filed a suit O.S.No.177 of 2008 for partition. Some averments had not been included, the plaintiffs had withdrawn the aforesaid suit seeking liberty to file a fresh suit for the same cause of action. Such liberty was also granted and therefore, the plaintiffs have come forward with the present suit in question.

6.The third defendant had filed a written statement *inter-alia*, denying the claim of the plaintiffs that the suit properties are ancestral joint family properties of defendants 1 to 3. The third defendant had contended that the plaintiffs and defendants 1 to 3 are natives of Salem belonging to Uthamasozhapuram Village. Palani Gounder, the



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father of the first defendant had died when the first defendant was just about 8 years old. There were no ancestral properties. The first defendant had left Salem and come to the suit village for eking out his livelihood in the year 1967. Thereafter, out of his own exertions, he had earned money and under a Sale Deed dated 17.10.1967, he has purchased the land measuring 12 acres 18 cents. Out of this extent, 9 acres 15 cents were sold and thereafter an extent 2 acres and 78 cents were sold to one Ayyathurai Udayar. After the sale of the above extent, 25 cents remained and this extent was settled on the first plaintiff and third defendant under a settlement deed dated 10.02.2000. It was also the contention of the defendants that the 1st item of the suit properties was purchased by the first defendant under a Sale Deed dated 13.11.1989. Likewise, the 3rd item was purchased under a Sale Deed dated 25.02.1978 and 2nd, 4th and 5th items were assigned by the Government to the first defendant under a Assignment



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Deed dated 30.03.1985. Therefore, the suit properties are the exclusive properties of the defendants. These properties have been sold by the first defendant to the fifth defendant under a registered Sale Deed dated 09.01.2009 and since there were some mistakes, a rectification deed dated 11.06.2009 was also executed. The fifth defendant has been in possession and enjoyment of the properties since the purchase. The suit properties are self-acquired properties of the first defendant. Pending suit, the first defendant had passed away and 6th defendant was impleaded as one of his legal heirs. Thereafter, the 6th defendant died.

7. The I Additional District Munsif, Kallakurichi had framed the following issues:

- (i) Whether the suit properties are the ancestral properties?
- (ii) Whether the plaintiffs are entitled to the decree for



8.The first plaintiff had examined himself as P.W1 and marked Exs.A1 to 12. The third defendant had examined himself as D.W1 and fourth defendant as D.W2. Exs.B1 to B6 were marked on the side of the defendants. On considering the evidence, the learned Judge dismissed the suit, holding that the suit properties are the self acquired properties. The trial Court held that a perusal of Exs.B12 and B15 would show that the properties had been sold by the first defendant and the properties were in enjoyment of the respective purchasers. The Court below has also taken note of the fact that the plaintiffs, who claim that the properties are all joint family properties, have not taken steps to include these properties in the suit for partition and also failed to implead the purchasers. Therefore, the suit was also dismissed on the ground of partial partition and non-joinder



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of necessary parties. This judgment was taken up on appeal in A.S.No.21 of 2017 and the appellate Court has also confirmed the judgment and decree of the trial Court.

8. The lower appellate Court had held that the plaintiffs, who have come forward with the case that the suit properties are ancestral properties and the properties were purchased from out of the ancestral nucleus, have not taken any steps to prove the same. They have also not been able to establish that there was a joint family and this joint family had purchased the properties from out of which income was derived and that there was sufficient income to purchase the properties. That apart, the appellate Court has taken note of sale of the properties by the first defendant in favour of the defendants 4 and 5. Challenging the same, the plaintiffs are before this Court.

9. Heard Mr.N.Manoharan, learned counsel for appellants and



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Mr.R.Neethi Perumal, learned counsel for respondents 2 to 4 and perused the materials available on record.

10.The courts below have concurrently held that under Exs.B12, 13, A8, and A10, the suit properties have been purchased by defendants 4 and 5, and the revenue records have also been mutated in their respective names. The plaintiffs, who contend that the properties are ancestral properties as well as the properties out of the ancestral nucleus, have failed to prove the same. Therefore, considering the fact that the properties have been purchased in the name of the first defendant and that the properties are the self-acquired properties of the deceased first defendant, I see no reason to interfere with the concurrent judgment and decree of the courts below. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2023

9/11



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Index : Yes/No

Speaking order/non-speaking order
srn

To

1. The Principal Sub Court, Kallakurichi
2. The First Additional District Munsif Court, Kallakurichi
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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