



S.A.No.504 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

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THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.504 of 2024

P.Paulsamy

...Appellant

Vs

1.P.Rukmani
2.P.Arivazhagan
3.P.Nadanasekar
4.K.Kalaiselvi
5.Tamilselvi
6.Vetriselvi
7.P.Karthikeyan

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 praying to allow the Second Appeal and set aside the Decree and Judgment with respect to the suit items 3,4,12,13,31 to 33 passed in A.S.No.28/2021 dated 28.07.2023 by the Learned IInd Addl. District Judge, Chidambaram confirming the Decree and Judgment dated 27.01.2021 passed by the Learned Subordinate Judge, Chidambaram in O.S.No.88/2011.

For Appellant : Mr.S.Balasubramanian



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JUDGMENT

The plaintiff in the suit is the appellant in the Second Appeal. The Second Appeal is filed against concurrent judgment of the Courts below.

2. The parties will be referred to as per their litigative status in the trial court.

3. The facts of the case are as follows:

The plaintiff filed suit for a preliminary decree for partition and separate possession of 8/28 share in the suit properties and other consequential reliefs. The plaintiff and the defendants 2 to 6 are the sons and daughters of one late Pattusamy and the 1st defendant. The father of the plaintiff and the defendants 2 to 6 died intestate in 1995. The 7th defendant is a third party purchaser.

4. The plaintiff filed suit for partition claiming initially 1/7th share and later amended the same claiming 8/28 shares in the suit properties. According to the plaintiff, the entire suit properties were either ancestral properties or properties purchased from and out of the income of the ancestral properties. The plaintiff therefore filed the suit for partition of his 8/28 shares in the suit properties.



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5. The defendants on the other hand stated that suit items 31 and 32 were self acquired properties of the 2nd defendant and suit items 3, 4 and 33 were self-acquired properties of 3rd defendant. Suit items 12 and 13 were absolute properties of the 1st defendant. According to the defendants, items 8 to 11 of the suit properties were bequeathed by their paternal aunt namely Gnanambal to the plaintiff and the defendants 2 and 3. The defendants stated that they had no objection for partition of the other properties. The defendants 4 to 6 the sisters of the plaintiff sailed with the defendants 1 and 3 and stated that the properties standing in the name of the defendants 1 to 3 were self-acquired properties and that they had no objection for partitioning the remaining properties. The 7th defendant who was the purchaser of the item no.32 from the wife of the 2nd defendant filed a separate written statement supporting the case of the defendants.

6. Before the trial court the plaintiff examined three witnesses P.W1 to P.W3 and marked Ex.A1 to Ex.A24. The defendants examined six witnesses D.W1 to D.W6 and marked Ex.B1 to Ex.B55. The trial court after framing necessary issues held that the plaintiff had failed to prove that the joint family properties yielded surplus income which could have formed the basis for the



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purchases standing in the individual names of the defendants 1 to 3. The trial court after considering the entire evidence on record held that the properties in items 8 to 11, 12, 13, 31, 32, 33, 3 and 4 were not joint family properties and therefore the plaintiff was not entitled to claim partition in the same. As regards other items of the suit properties, the trial court found that there was no dispute and therefore the plaintiff was entitled to decree for 8/49 share in the same. In effect the trial court allowed the suit for partition of the plaintiffs 8/49 share in suit items 1, 2, 5 to 7 and 14 to 30 and dismissed the suit as regards items 3, 4, 8 to 13, 31, 32 and 33. Aggrieved by the judgment and decree of the trial court the plaintiff preferred an appeal in A.S.No. 28 of 2021 before the II Additional District Court, Chidambaram.

7. The lower appellate court after considering the evidence on record by judgment and decree confirmed the judgment and decree of the trial court. Aggrieved by the judgment and decree of the Courts below the plaintiff has filed the above Second Appeal.

8. The learned counsel for the appellant arguing for admission in the Second Appeal submitted that the Courts below erred in declining the relief of



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partition to the plaintiff with respect to items 3, 4, 12, 13, 31 to 33, overlooking the fact that the said items were blended with the joint family properties. The learned counsel further submitted that there was absolutely no evidence to show that items 12 and 13 standing in the name of the 1st respondent i.e. the mother of the plaintiff was purchased by her and therefore the Courts below erred in holding that the said items were the separate properties of the mother. The learned counsel further submitted that it was the plaintiff who was cultivating the entire properties and therefore the Courts below erred in finding that there was no blending of the self- acquired properties with that of the joint family properties.

9. I have heard the learned counsel for the appellant and perused the materials placed on record.

10. It is settled law that there is no presumption that Hindu joint family owns property. It is also settled that mere existence of joint family property does not lead to a presumption of the properties standing in the name of individual members to be joint family property. Only when it is established that the joint family properties were income yielding, leaving sufficient surplus which could



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have formed the basis/nucleus for the subsequent purchase of the properties standing in the name of the individual members that the burden shifts to the individual members to establish that the properties standing in their names were their individual acquisitions. If no nucleus is established, then the subsequent purchase in the name of individual members cannot be considered as joint family property. The burden is always on the plaintiff who seeks partition to establish the existence of joint family nucleus and its sufficiency to form the basis of the subsequent purchase in the name of the individual members. Judgments are galore on these aspects but as the law is well settled I would not want to burden the judgment with multiple citations save a few referred herein:

i) The Privy Council in *Randhi Appalaswami V. Randhi*

Suryanarayanamurti reported in **1947 SCC OnLine PC 42** held as follows:

*... The Hindu law upon this aspect of the case is well settled. **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 was 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***



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burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

ii) The Hon'ble Supreme Court in the case of ***Bhagwat Sharan (Dead through legal representatives) Vs. Purushottam and others*** reported in (2020) 6 SCC 387 following the aforesaid judgment of the Privy Council in para '21' held as follows:

"21.....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....."

iii) This Court before the Madurai Bench in the case of ***Gomathi Ammal Vs. S.Arunachalam & another*** reported in **2015-3-L.W.215** in para '14' held as follows:

"14. There cannot be any presumption that there was a joint family or that such joint family did possess properties



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constituting joint family nucleus. Unless it is proved that there was a joint family nucleus capable of yielding surplus income, there cannot be any presumption that the income derived from joint family property was utilised for the purchase of the properties in the name of any one of the members of the joint family. The burden of proving the joint family income being used for acquisition of property in the name of Kartha shall be of a lesser degree than the burden of proof in respect of purchases made by other members of the family."

11. In the present case, there is absolutely no evidence to show the income from the joint family properties. No doubt, certain items of properties are admitted to be joint family properties but in the absence of any evidence that they yielded surplus income, the properties in the name of individual members cannot be presumed to be joint family property. The lower appellate court found that the letters exchanged between the plaintiff's, plaintiff's father, 2nd and 3rd defendant proved that only the defendants 2 and 3 contributed their hard earned money for the management of the joint family properties. The courts below hence held that



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from the said communications, it was clear that there was absolutely no surplus income from the joint family nucleus which could have formed the basis for the purchase in the name of the defendant's 1, 2 & 3.

12. The contention of the learned counsel as regard blending can be straight away rejected on the simple ground of lack of pleadings. It is settled that no amount of evidence can be looked into in the absence of pleadings. The plea of blending is a mixed question of law and fact. Therefore, unless and until a specific plea is raised the opposite party would not have no opportunity to deny and disprove the same. In the present case there is absolutely no whisper in the plaint on blending. Only in the grounds of appeal before the lower appellate court the ground of blending was taken. In my view, in the absence of a plea in the plaint, the said plea cannot be entertained. It is therefore clear that the submission of the learned counsel for the appellant that there was blending of the separate properties of defendant's 2 & 3 with the joint family properties cannot be sustained on the short ground of lack of plea. As the lower appellate court discussed the issue of blending, the appellant's counsel argued on blending also.



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13. The learned counsel for the appellant relied on the management of the entire properties including separate properties of defendant's 2 and 3 by the plaintiff and his father for projecting the plea of blending. In my view, the said contention cannot be accepted. The law on the concept of blending was settled by the Hon'ble Supreme Court in the case of *Mallesappa Bandeppa Desai and another Versus Desai Mallappa Alias Mallesappa and another* reported in **1961 SCC OnLine SC 270 : AIR 1961 SC 1268**. It was held as follows:

"11.The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine, therefore,



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inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending....."

14. Applying the aforesaid principles, it is clear that mere management of the joint family property by the plaintiff will not result in blending. Moreover, blending of the separate property by throwing into common hotch potch has necessarily to be done by the owner and not by any other person. Therefore unless and until the plaintiff is able to establish that the defendant's 2 and 3 voluntarily threw the separate property into the joint stock with an intention to abandon their exclusive right to the property, there can be no blending. In any event, even in the absence of a plea, the lower appellate court on the basis of the evidence found that there was no blending. Hence I find no pressing reasons to interfere with the same.



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15. The courts below on the basis of the evidence on record further found that the defendants 2 and 3 who were employed in the Army and CRPF were financially capable of purchasing the subject properties. When the plaintiff failed to prove that the joint family properties were income yielding but at the same time the defendants were able to prove their individual income from employment in the Army and CRPF, the finding of the courts below that the properties in the name of defendant's 2 & 3 were their separate properties cannot be faulted. Therefore in my view, the courts below were justified in rejecting the plaintiff's suit for partition as regards items 31, 32, 33, 3 and 4.

16. The items 8 to 11 of the suit properties were bequeathed by the paternal aunt to the plaintiffs and the defendants 2 and 3. Therefore the said items can only be construed as separate properties of the defendants 2 and 3. Item nos. 12 and 13 stand in the name of the mother, the 1st defendant. It is trite that there is absolutely no presumption that properties standing in the name of female member of joint family belongs to the joint family. Even the plaintiff has failed to prove that the properties in the items 12 and 13 standing in the name of the 1st defendant, mother were purchased out of the joint family funds. As already found the joint



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family properties were not income yielding and therefore I find absolutely no infirmity in the judgment of the courts below in holding that the properties standing in the name of the 1st defendant, the mother were her self-acquired properties.

I have gone through entire judgment of the courts below and I find that the courts below have given cogent and proper reasons for the findings rendered by them. I therefore find no compelling reasons to interfere with the concurrent judgments of the courts below. I find that no substantial questions of law raise for consideration in the Second Appeal and hence Second Appeal is dismissed at admission stage itself. No costs.

29.07.2024.

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

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N.MALA,J.
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To

1. The II Additional District Judge,
Chidambaram.

2. The Subordinate Judge,
Chidambaram.

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