



AS No.8 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

AS No.8 of 2019

Sellammal : Appellant

versus

R.Ponnusamy (died)

1.Vasantha

2.Surendiran

3.Kowsalya

: Respondents

Prayer: Appeal filed against the Judgment and Decree dated 05.07.2018 in OS No.195 of 2013 on the file of I Additional District Judge, Salem.

For the Appellant : Mr.A.K.Kumarasamy,
Senior Advocate,
for Mr.S.Kaithamalai Kumaran

For the Respondents : Ms.R.A.Mona Lisa,
for Mr.R.Marudhachalamurthy

JUDGMENT



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(Made by R.SUBRAMANIAN, J.)

The plaintiff in OS No.195 of 2013, whose suit for partition was dismissed by the Trial Court, is on appeal.

2. According to the plaintiff, the suit properties belong to the joint family, consisting of her grandfather Palani Gounder and his three sons – Periyanna @ Palani Gounder, Ramasamy and Kandasamy. Plaintiff is the daughter of Ramasamy, the second son. The first defendant is the son of Ramasamy and defendants 2 to 4 are the wife and children of the first defendant. The first defendant died pending suit and defendants 2 to 4 are declared as his legal representatives. The plaintiff would claim that the property belonged to the joint family consisting of Palani Gounder and his three sons, and on the death of Ramasamy, the property devolved on the plaintiff and her brother, the first defendant. She would also seek to impugn certain alienations made by Ramasamy in the form of settlement deed dated 12.11.2007 and a release deed dated 07.09.2011, which are produced as Ex.A-16 and A-17. The plaintiff would claim that the first item of the property devolved under Section 6 of the Hindu



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Succession Act and the second item of the property was purchased out of the income from the first item of the property in the name of the second defendant. Therefore, according to the plaintiff, both the properties are ancestral in nature and hence, she would be entitled to a share as coparcener.

3. The suit was resisted by the defendants contending that there was no joint family or coparcenary. The property that was purchased by Palani Gounder under Ex.A-13 sale deed of the year 1953 was his self-acquisition. Even while selling certain properties in the year 1951 under Ex.A-12, though the sons were made parties to the documents, there is a clear recital to the effect that the properties are self-acquisition of Palani Gounder and his wife. Therefore, the claim of the plaintiff that the properties are coparcenary properties or joint family properties is not correct. It is the further contention of the defendants that the suit second item was purchased by the second defendant from and out of her own funds. One of the brothers of Ramasamy, viz., Kandasamy was declared insolvent and his property was brought to sale by the official receiver. The first defendant participated in the sale and purchased



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the property from the official receiver. Therefore, the property belonged to the first defendant as his self-acquisition. It is also claimed that Kandasamy had mortgaged his property in favour of a third party who had filed a suit and obtained a decree and the property was brought to sale and a share of Kandasamy was purchased by one Porappa Gounder under Ex.A.14 dated 26.10.1970. The first defendant paid the value of 1/4th share which was sold in court auction and purchased the property from Porappa Gounder.

4. It is also further pleaded that the eldest son of Palani Gounder viz., Periyanna @ Palani Gounder had borrowed monies from third parties and a decree was passed against him in OS No.564 of 1967 on the file of District Munsif Court, Sankagiri. In execution of the decree, his share was sold in Court auction and one Porappa Gounder, was the auction purchaser. The first defendant paid up the debts and obtained release of the share of Periyanna, which was purchased by Porappa Gounder in Court auction. Thus, it was claimed that the first defendant is the absolute owner of 3/4th share and the remaining 1/4th share was released to him by Ramasamy Gounder, his father, under the release deed dated 07.09.2011 for valid



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consideration.

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5. It is also claimed that one of the properties was settled on the third defendant by Ramasamy Gounder. The sum and substance of the defence was that the properties which are self-acquired properties of Palani Gounder had devolved on his sons, on his death in 1964, under Section 8 and not under Section 6 of the Hindu Succession Act. Therefore, they are his separate properties and he, having alienated the same even during his lifetime, the plaintiff as his daughter, cannot claim a right. On the above pleadings, learned Trial Judge framed the following issues:

- “1. Whether the plaintiff is entitled ½ share over the suit property?
2. Whether the plaintiff is entitled to permanent injunction?
3. Whether the plaintiff is entitled to preliminary decree?
4. To what other relief?”

6. At trial, the plaintiff was examined as P.W.1 and one more witness was examined as P.W.2. Exs.A-1 to A-17 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and



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Exs.B-1 to B-23 were marked.

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7. On a consideration of the evidence on record, particularly on the recitals in Exs.A-12 and A-13, learned Trial Judge concluded that there was no joint family or coparcenary consisting of Palani Gounder and his sons. The properties that were purchased by Palani Gounder in the year 1953 are his self-acquisition and on his death in 1964, it was inherited by his sons under Section 8 of the Hindu Succession Act. Therefore, in their hands, it was only a separate property. It was also held that the plaintiff has miserably failed to prove her contention that the release deed and the settlement deed viz., Exs.A-16 and A-17 were brought about by coercion and undue influence.

8. On the said finding, learned Trial Judge concluded that whatever property was inherited by Ramasamy, father of the plaintiff and the first defendant, was his own self-acquired property and he has every right to deal with the same. Having held so, learned Trial Judge upheld the validity of Exs.A-16 and A-17.

9. As regards the second item of the property, learned Trial



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Judge concluded that it stands in the name of the second defendant, who is the wife of the first defendant and no material has been placed to show that it was purchased in the names of defendants 1 to 3 and no material has been placed to show that it was purchased from and out of the so-called joint family funds in their names. On the said conclusion, learned Trial Judge dismissed the suit. Hence this appeal.

10. We have heard Mr.A.K.Kumarasamy, learned Senior Counsel, for Mr.S.Kaithamalai Kumaran, learned counsel for the appellant and Ms.R.A.Monalisa, for Mr.R.Marudhachalamurthy, learned counsel for respondents 1 to 3.

11. Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the appellant would vehemently contend that once it is shown that the property in the hands of Palani Gounder is ancestral in nature and upon inheritance by Ramasamy it will retain the character of being ancestral property, it cannot be said that it belongs to Ramasamy absolutely.

12. Learned Senior Counsel would also point out that the



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second item of property was purchased in the name of defendants 1 to 3 from and out of the income from the first item. If the first item is held to be joint family property, it follows that the second item is also a joint family property. Learned counsel would also contend that Exs.A-16 and A-17 were brought about by coercion and undue influence.

13. Contending contra, learned counsel for the respondents would submit that from the recitals in Exs.A-12 and A-13, it is crystal clear that the properties are self-acquisitions of Palani Gounder. If the properties are self-acquisitions of Palani Gounder, grandfather of the plaintiff, upon his death, after the coming into force of the Hindu Succession Act in 1964, the property is inherited by his sons only under Section 8 of the Hindu Succession Act and therefore, it will not assume the character of ancestral property.

14. As regards the second item, learned counsel would submit that once it is shown that the first item is a separate property of the first defendant, the second item cannot be said to be ancestral property on the ground that it was acquired from out of the income



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derived from the first item.

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15. We have considered the rival submissions. From the contentions of learned counsel for the parties, the only question that arises for determination is, "Whether the suit first item could be said to be coparcenary property or ancestral property in the hands of Ramasamy, in order to enable the plaintiff to claim a right *de hors* the documents executed by Ramasamy?"

16. The documents that have been produced clearly show that the suit first item was purchased by Palani as his self-acquisition. Even in the sale deed of the year 1951, which has been filed as Ex.A-12, there is a clear recital that the property belongs to Palani and his wife, as their self-acquisitions and not as their ancestral property. The sale deed of the year 1953 also does not say that it is ancestral property.

17. Reliance is placed on Ex.B-2, evidence of Ramasamy in another suit to claim that the properties are ancestral. Unfortunately



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for the appellant, even in that evidence, it has been very categorically stated that the properties are not ancestral properties and they belonged to Palani and Palani was in possession till his life time. As regards the share of Kandasamy and Periyanna, it is clearly demonstrated that the release deed dated 05.04.1979 and the sale certificate issued by the Receiver dated 26.10.1970 marked as Exs.A.15 and A.14 are properties that were subject-matter of proceeding before Courts and while the share of Kandasamy was purchased by the first defendant under Ex.A-14, the share of Periyanna was acquired by one Porappa Gounder under a Court auction sale, and it was later released in favour of the first defendant upon payment of consideration. Once it is held that the first item is not ancestral property, even assuming that the other properties are purchased using the income from the share of Ramasamy in the suit first item, it would not take the colour of joint family property to enable the plaintiff to claim a share over these properties.

18. The plaintiff has not disputed the execution of Ex.A.16 and A.17. She has chosen to claim that those documents were executed under coercion and undue influence.



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19. We find total absence of evidence in support of the plea taken by the plaintiff regarding execution of Exs.A-16 and A-17. They are registered instruments and once the execution is not denied, proof by examination of an attesting witness is not mandatory. Therefore, we are not able to fault the Trial Court for having reached the conclusion that the plaintiff is not entitled to a share in the properties.

20. The appeal, therefore, fails and it is accordingly dismissed. Bearing in mind the relationship between the parties, costs are made easy in this appeal. CMP No.19178 of 2019 is closed.

(R.S.M., J.)

(R.S.V., J.)

11.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The I Additional District Judge, Salem.



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AND

R.SAKTHIVEL, J.

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