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SA(MD)No.144 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	26/07/2024
Date of Pronounced	18/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.144 of 2022

and

CMP(MD)No.1658 of 2022

1.Surulivel
2.Mohan
3.Prabu
4.Nethaji
5.Siva

: Appellants/Appellants/
Defendants 1 to 5

Vs.

1.Sudha
2.Suruliammal
3.Suruliammal @ Pasunkili

: 1st Respondent/
1st Respondent/
Plaintiff
: 2nd and 3rd Respondents/
2nd and 3rd Respondents/
7th and 8th Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment, dated 08/09/2021 made in AS No.9 of 2021 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni, confirming the decree and judgment, dated 29/08/2017 made in OS No.145 of 2009 on the file of the Sub Court, Theni.



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For Appellants : Mr.P.Arun Jayatram

For 1st Respondent : Mr.M.Saravanan

For R2 and R3 : Mr.R.Pon Karthikeyan
(No appearance)

J U D G M E N T

This second appeal is filed against the decree and judgment, dated 08/09/2021 passed in AS No.9 of 2021 by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni, confirming the decree and judgment, dated 29/08/2017 passed in OS No.145 of 2009 by the Sub Court, Theni.

2.Plaint averments in brief:-

The plaintiff's father Palanisamy and the first defendant were born to Subramania Thevar and Jakkammal. The defendants 7 and 8 are daughters. The defendants 2 to 6 are the childrens of the first defendant. The 6th item was purchased by Subramaniya Thevar on 29/05/1952 from one Marimuthu Thevar. Items Nos.1, 3, 4 and 5 are the ancestral properties. The second item was purchased in the name of Jakkammal from one Ramaiya Thevar on 20/06/1973. All the properties were treated as joint family properties or coparcenary properties. Palanisamy died some 15 years prior to the plaint. The plaintiff's



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mother married one Pandian and separated from the family.

The plaintiff was brought under the care of Subramania Thevar. The plaintiff and Subramania Thevar were enjoying the properties as a joint family coparcenary properties. Subramania Thevar died some four years back as intestate. One Jakkammal is the grand-mother. So, the plaintiff, the first defendant and the childrens 2 to 5 and the 7th defendant are the direct Class-I legal heirs. The plaintiff came to know that the defendants 3 to 6 are making arrangement to sell the third item to the 6th defendant. So, the plaintiff demanded partition of her share. It was delayed. So, the suit notice dated 17/07/2009 was issued. There was no proper reply. The 6th defendant has added as a formal party. The suit is laid for partition and separate possession of 1/3rd share of the plaintiff and for costs.

3. Statement was filed by the defendants 1 to 5:-

The relation is admitted. But genealogical table annexed with the plaint is denied. The first item belongs to the first defendant through the oral sale. The plaintiff is living in a house belonged to the family ancestrally. In another house, the plaintiff's mother-in-law and the first defendant's sister Chinna Suruliammal is living. The 2nd item was sold by the 7th defendant to



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the 6th defendant on 15/07/2009, which is not binding upon the defendants 1 to 5 right. Third item was allotted during the life time of Subramania Thevar to the plaintiff's father and the first defendant orally. As per the oral partition, the first defendant is in possession of 2.50 Acres. So, the first defendant has no objection for the plaintiff to take his father's share, so far as the third item is concerned.

4.The 4th item originally belonged to one Narayanapillai. From him, the first defendant purchased the properties three years back. So, the plaintiff cannot claim any right in the 4th item. The 5th item belongs to the first defendant's mother Sankampatti by way of purchase. Sankampatti executed a registered Will in favour of the first defendant on 07/05/2008. After the death of the mother, Will came into effect and the first defendant became the owner and is in possession.

5.On the basis of the pleadings, the trial court framed the following issues:-

*(1).Is it true that 1st item of
plaint schedule property was allotted
to the 1st defendant orally?*



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(2).Whether the sale deed, dated 15/07/2009 executed by the 7th defendant for favour of 6th defendant it is respect to 2nd item of the property is valid in law?

(3).Is it true that the 3rd item of the property was allotted to the 1st defendant in the oral partition?

(4).Whether the 4th item property was self acquired property of the 1st defendant?

(5).Whether the 5th item of the property was self acquired property of the 1st defendant's mother the mother Tmt.Jakkammal?

(6).Whether the suit is bad for non-joinder of necessary parties?

7.Whether the plaintiff entitled for 1/4th share in the plaint schedule properties?

8.To what other reliefs, the plaintiff is entitled to?

6.Before the trial court, on the side of the plaintiff, one witness was examined and 10 documents were marked. On the side of the defendants, 2 witnesses were examined and 4 documents were marked.



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7.At the conclusion of the trial process, the suit was decreed as prayed for with costs granting preliminary decree allotting 1/4th share to the plaintiff without any costs.

8.Against the judgment and decree, the defendants 1 to 5 filed the appeal in AS No.9 of 2020 before the Principal District Judge, Theni. It came to be dismissed concurrent with the judgment and decree of the trial court.

9.Against which, this second appeal is preferred.

10.At the time of admission, the following substantial question of law was framed:-

"Whether the First Appellate Court was right in confirming the judgment and decree with regard to the fourth item of the suit schedule property dispute the fact that the said property was assigned by the Government in favour of the first respondent?"

11.Heard both sides.



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12.Since the appeal is admitted only with reference to the 4th item of the property, we do not concentrate upon the other properties. The judgment and decree of the trial court and the first appellate court are now disputed by the parties except the 4th item.

13.Now we will go the evidence on record in this regard, first of all the brief tracing of title to the 4th item by the plaintiff. In para 6 of the plaint, it is stated by the plaintiff that the 4th item belongs to the family ancestrally. Even though in the written statement, the relationship, as mentioned in the geological table is not admitted, but during the course of evidence, the relationship between the parties is not disputed. The plaintiff namely Sudha is the daughter of Palanisamy, who is the son of Subbramani. Palanisamy and the first defendant are brothers which is admitted by the first defendant in the statement itself.

14.As mentioned above, it is stated that the 3rd item was allotted jointly to the plaintiff's father and the first defendant. So, they have no objection for the plaintiff to take her father's share. So, by this way the relationship is duly admitted which requires no further discussion.



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15.Now coming back to the 4th item, it is contended on the part of the first defendant that it belongs to the first defendant absolutely by way of purchase from one Narayanapillai.

16.Now we will go to the findings of the trial court with regard to the 4th item. The first defendant has failed to prove that it is self-acquired property purchased from one Narayanapillai. No documentary evidence or oral evidence was let in. So, that contention was rejected by the trial court.

17.Now we will go to the evidence of the first defendant in this regard.

18.Regarding this item, the appellants having failed before the trial court to produce the document of sale or oral evidence, in the firsts appellate court, he has produced Ex.B5. Assessment order, dated 28/07/1973, which was issued in favour of them. A new stand has been taken by the first defendant that the property was assigned to him by the Government under Ex.B5, even though, there was no pleading in this regard and quite contradictory stand taken by the first defendant, the first appellate court though it fit to examine that issue also.



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19. In para 19 of the appellate court finding can be reproduced herein:-

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"19. The 1st defendant has admitted in cross examination that his date of birth is 10.04.1952. The assignment order Ex.B5 has been issued on 28.07.1973 at the age of 21 years of 1st defendant. The assignment order and connected records would show that the 1st defendant has given application stating that he has been in enjoyment of the property for 15 years. It shows that from the age of 6 years, the 1st defendant has claimed to have enjoyment over the property. It is not possible for child to take possession of land as claimed. There is very possibility that the Thiru.Subramania Thevar was in possession and enjoyment of the property and obtained assignment in the name of 1st defendant who is his elder son as argued on the side of plaintiff and the defendants 7 and 8. This court accepts the case of the plaintiff that



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the 4th item of plaint schedule properties is also belonged to family of Thiru.Subramania Thevar. Based on neither the assignment order Ex.B5 nor the adangal Ex.A7, the 1st defendant could claim exclusive right over the 4th item of the plaint schedule properties.

20.Reading of this finding shows that it is well reasoned order. Date of birth of the first defendant is 10/04/1952. The assessment was made on 28/07/1973.

21.The assessment order reads that the first defendant has given application that he was in possession of the property for more than 15 years, which means that he is in possession from his age, when he was aged about 6 years. So, this was highly not true and not possible also. So, in all probabilities, the properties would have been assigned in favour of Subramaiya Thevar and in the name of the first defendant. So, when mutual contradictory stand has been taken by the first defendant and more particularly right over the property under Ex.B5 is also not genuine in nature, I am of the considered view that no interference is called for on this issue framed by the appellate court.



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22.The learned counsel appearing for the appellant would submit that without properly assessing the date of birth of the first defendant, the above said finding was rendered by the appellate court. There is no bar for the Government to issue assessment in favour of minors. But in the absence of proper evidence on record to show the correct age of the first defendant, the appellate court has recorded a wrong finding. The learned counsel appearing for the appellant would rely upon the judgment of this court reported in ***Kasturi Rengan Vs.Kaayabu (died) and others (2021(6) CTC 195)***. But the above said judgment is not applicable to the present case.

23.Per contra, it is the case of the plaintiff that on the basis of Ex.B5, no additional written statement was filed or amendment application as the case may be. At the time of Ex.B5, even as per the admitted age of the first defendant, he was aged about only 17. So, probable theory was adopted by the first appellate court in recording the finding, which requires no interference.

24.For all these reasons, I find that absolutely no interference is called for in the judgment of the trial court as confirmed by the first appellate court.



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25.In the result, this second appeal is **dismissed** confirming the judgment and decree passed by the courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

18/10/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Sessions Judge,
Mahalir Neethimandram,
(Fast Track Mahila Court),
Theni.
- 2.The Sub Judge,
Theni.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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