



S.A.No.182 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

JUDGMENT RESERVED ON : 25 / 09 / 2024

JUDGMENT PRONOUNCED ON : 07 / 01 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.182 OF 2020

Velayudham

...

Appellant /
1st Respondent /
1st Defendant

Vs.

1.Murugaiyan

...

1st Respondent /
Appellant /
Plaintiff

2.Manickam

3.Manonmani

4.Poongothai

5.Ambiga

6.Anjalatchi

7.Malliga

R.Jegathambal (Died)

...

Respondents 2 to 9 /
Respondents 2 to 9 /
Defendants 2 to 8

8.Dhanasingh

9.Sadhasivam

10.Suresh

11.Tamilarasi

...

Respondents 8 to 11 /
Respondents 9 to 12 /



S.A.No.182 of 2020

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 5, 2019 made in A.S.No.13 of 2016 by the learned Principal Sub Judge at Puducherry, partly allowing the appeal and modifying the Judgment and Decree dated July 5, 2016 made in O.S.No.966 of 2005 by the learned I Additional District Munsif, Puducherry.

For Appellant	:	Mr.Krishnappan Senior Counsel for M/s.Swarnalatha Ramachandran
For Respondent-1	:	Mr.J.Kumaran
For Respondent-3	:	Mr.M.Mohan Raj
For Respondents 8-11	:	Mr.D.Senthil Kumar
For Respondents 2 and 4 to 7	:	No Appearance

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated December 5, 2019 passed in A.S.No.13 of 2016 by the 'Principal Sub Court at Puducherry' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated July 5, 2016 passed in O.S.No.966 of 2005 by the 'I Additional District Munsif Court, Puducherry' ['Trial Court' for brevity] was partly modified.



S.A.No.182 of 2020

2. For the sake of convenience, hereinafter, the parties will be

referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. One Ramasamy has three sons, namely the plaintiff, first defendant and second defendant, as well as five daughters. In the plaint, it is averred that, as per the then prevailing Customary Hindu Law in Pondicherry, Ramasamy and his three sons constituted 'co-proprietorship', wherein any acquisition made by any member thereof, is deemed to be purchased by the father and belonging to the family. As such, some items of the Suit Properties were purchased in the name of first defendant and enjoyed in common.

3.1. Father – Ramasamy passed away on March 6, 2000. With the advent of Section 4 of the Hindu Succession Act, 1956 ['H.S.Act' for short], the Customary Hindu Law ceased to exist and all Class-I legal heirs became entitled to property. While so, the five daughters of Ramasamy virtually gave up their shares in consideration of performance of their marriage. Hence, only the sons are entitled to share in the Suit Properties. As such, the plaintiff is entitled to 1/3rd share in the Suit Properties.



S.A.No.182 of 2020

3.2. In respect of Item No.9 of Suit Properties, the plaintiff

was constrained to file a Suit in O.S.No.386 of 2000, as the defendants fabricated a Release Deed trying to usurp his share in the Suit Properties. The plaintiff had reserved his right to file a Suit for partition later in time, in that Suit.

3.3. The defendants are hindering the plaintiff from involving in the agricultural operations in Suit Properties and have not provided him his share in the profits arising therefrom for the past three years (from the date of Suit). Further, the defendants did not come forward for an amicable partition. Hence, the Suit for partition of his 1/3rd share, for past *mesne* profits of Rs.1,80,000/-, for determining future *mesne* profits by appointment of Advocate Commissioner and for other reliefs.

DEFENDANT NOS.1 AND 2'S CASE

4. Sum and substance of the written statement filed by the defendants 1 and 2 is that Ramasamy Gounder, the father of the plaintiff and defendants 1 to 7 possessed 1 *Kani* 25 *Kuzhies* of agricultural land, out of which, 50 *Kuzhies* were wet land and the remaining 75 *Kuzhies* were rain fed dry land. Ramasamy Gounder passed away intestate leaving



S.A.No.182 of 2020

behind his wife – Jagathambal, five daughters and three sons, as his legal representatives. According to the defendants 1 and 2, in Pondicherry, the concept of ancestral property and self-acquired property does not exist. The daughters of Ramasamy Gounder are also entitled to share in the Suit Properties. The plaintiff is entitled to 1/9 share in the properties left by Ramasamy Gounder along with the debts incurred not only for purchasing properties and cultivation, but also for the marriage of five sisters.

4.1. The plaintiff is younger to the 1st defendant by 11 years and the 2nd defendant is younger to him by 16 years. Ramasamy Gounder met with a road accident while driving a Bullock Cart in 1974 and suffered multiple fractures which disabled him from pursuing agricultural operations. Hence, the 1st defendant, the eldest son who passed S.S.L.C. Examination in 1975, was persuaded by his father to discontinue his education and take up cultivation of lands. Besides cultivation, the 1st defendant also did brick-kiln business separately by taking lands on lease in various villages far from the Suit village. Using the income therefrom as well as with the help of loans, the first defendant purchased 8 Acres of land and two house sites and performed the marriage of all the five sisters as well. To discharge the loans, he sold an extent of 5 acres of land and an



S.A.No.182 of 2020

extent of 10 *Kuzhies* of land. Accordingly, the defendants 1 and 2 sought to dismiss the Suit.

CASE OF DEFENDANT NOS.3 TO 8

5. The defendants 3 to 8 in their written statement affirmed the contentions raised by the defendants 1 and 2 in their written statement and also stated that the description of properties is confusing in nature and that the separate properties of the 8th defendant are also included in the Suit. The father of both the plaintiff and the defendants owned only 1 Acre Punja land and ½ *Kani* Nanja land, and the income therefrom was meagre and not sufficient to run the family. Item Nos.23 to 25 of the Suit Properties were purchased by the 8th defendant out of the income from her agricultural work and milk vending business. Hence, the plaintiff and other defendants have no right in it. Further, it is stated that the 1st defendant from the income derived from his brick-kiln business and casuarina business, spent huge amount for his sisters' marriages, medical expenses and purchased various items of Suit Properties as well. The plaintiff has no right over those properties and he is entitled to only 1/9 share in his father's properties. Further, the plaintiff is not entitled to *mesne* profits. Further, the plaintiff has not valued the Suit properly and



S.A.No.182 of 2020

has not paid proper Court-Fee. Accordingly, the Suit is liable to be

dismissed.

TRIAL COURT

6. At trial, plaintiff examined himself as P.W.1, and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant – Velayutham was examined as D.W.1, 8th defendant was examined as D.W.2, one Elumalai was examined as D.W.3, one Kumar was examined as D.W.4, 5th defendant was examined as D.W.5 and Ex-B.1 to Ex-B.8 were marked.

7. Upon hearing both sides and considering the evidence available on record, the Trial Court arrived at the findings that the plaintiff failed to establish surplus income from joint family properties; that the first defendant established that he has a brick-kiln business and he purchased Item Nos.1, 2, 4, 10, 12 and 22 of the Suit Properties through the income therefrom; and that there is no sufficient evidence available on record to conclude that Item Nos.1, 2, 4, 10, 12 and 22 bears the character of joint family properties. Further, during the pendency of the Suit, the 8th defendant died intestate. Accordingly, the Trial Court decreed the Suit



S.A.No.182 of 2020

WEB COPY

partly and passed preliminary Decree directing division of Item Nos.3, 5 to 9, 11, 13 to 21 and 23 to 25 of Suit Properties into 8 equal shares and allot one such share to the plaintiff. The Trial Court dismissed the Suit for partition with regard to Item Nos.1, 2, 4, 10, 12 and 22 and also dismissed the Suit for past and future *mesne* profits. The Trial Court further directed the plaintiff to pay Court-Fee of Rs.4,700.5/- and created charge for the above sum over his said 1/8th share, since the plaintiff had filed the Suit as an indigent person.

FIRST APPELLATE COURT

8. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court, which after hearing both sides and perusing the documents available on record, partly allowed the appeal holding that Ex-A.7 – Revenue records prove that an extent of 2.41 Acre was owned as joint family properties; that there is no proof that the first defendant was having separate income; that the first defendant as *Kartha* of the joint family purchased Item Nos.1, 2, 4, and 22 of the Suit Properties; that there is no proof that Item No.12 of the Suit Properties belong to the joint family; that Item No.10 was purchased under Ex-A.5 – Sale Deed on December 28, 1992 and sold under Ex-A.6 – Sale Deed on February 12,



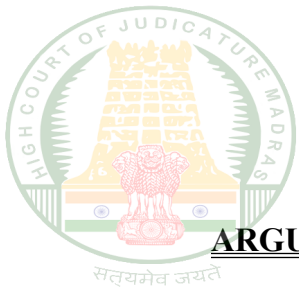
S.A.No.182 of 2020

2001; that Ex-A.6 Sale Deed was executed by first defendant as *Kartha* of the joint family and the same is binding on the plaintiff. Accordingly, First Appellate Court concluded that the plaintiff is entitled to a Preliminary Decree for 1/8 share in Item Nos.1, 2, 4 and 22 of the Suit Properties in addition to Item Nos.3, 5 to 9, 11, 13 to 21, 23 to 25 of the Suit Properties granted by the Trial Court with *mesne* profits, and dismissed the appeal with regard to Item Nos.10 and 12 of the Suit Properties. To the above extent, the First Appellate Court modified the Judgment and Decree passed by the Trial Court.

SECOND APPEAL

9. Feeling aggrieved, the 1st defendant has preferred this Second Appeal which was admitted by this Court on February 19, 2020 on the following Substantial Questions of Law:

- 'a) *Whether the Appellate Court is right in holding that the 1st defendant will have to prove the source of income for purchase of the property?*
- b) *The Appellate Court has failed to consider that the duty of the plaintiff to establish that there is surplus joint family nucleus which enable the first defendant to acquire the property and only if such practice is established then only the burden will be shifted to the 1st defendant to prove the property that he purchased the property out of his own income?'*



S.A.No.182 of 2020

ARGUMENTS

WEB COPY

10. Mr.Krishnappan, learned Senior Counsel for the appellant / first defendant would argue that the First Appellate Court failed to consider the evidence and documents in proper perspective. The burden is upon the plaintiff to prove that there were joint family surplus income to purchase the properties covered under Ex-A.1, and Ex-A.3 to Ex-A.5, however, the plaintiff did not discharge his burden of proof. In the said circumstances, the First Appellate Court, erroneously concluded that the plaintiff proved the surplus joint family income based on Ex-A.7 - Revenue records. He would further submit that the 1st defendant was doing brick-kiln business and thereby, earned considerable amount. Through the income derived from brick-kiln business, the 1st defendant purchased the properties covered under Ex-A.1, and Ex-A.3 to Ex-A.5 and hence, they are his separate properties. Accordingly, he prayed to allow the Second Appeal.

11. Mr.M.Mohanraj, learned Counsel for the Respondent No.3 and Mr.D.Senthil Kumar, learned Counsel for the respondents 8 to 11 would adopt the arguments advanced by the learned Senior Counsel for the appellant / first defendant.



S.A.No.182 of 2020

WEB COPY

12. Per contra, Mr.J.Kumaran, learned Counsel for the 1st respondent / plaintiff would argue that the existence of joint family is admitted. Ex-A.7 - Revenue records would clearly prove the existence of joint family properties. Since the plaintiff proved the existence of joint family and its properties, the plaintiff discharged his burden. Now, the onus shifts to the 1st defendant. The 1st defendant did not produce any document to show that he was doing brick-kiln business and thereby, earning a considerable amount. In the absence of proof, law presumes that the properties covered under Ex-A.1 and Ex-A.3 to Ex-A.5 were purchased in and out of the joint family income. Hence, the Suit Properties are all joint family properties in which the plaintiff is entitled to lawful share. The First Appellate Court failed consider that Ex-A.6 - Sale Deed was executed during the pendency of the Original Suit. The First Appellate Court and the Trial Court ought to have rendered a finding that Ex-A.6 – Sale Deed would not bind the plaintiff's share. Accordingly, he prayed to dismiss the Second Appeal.



S.A.No.182 of 2020

WEB COPY

DISCUSSION

13. This Court has considered the submissions made on either side and perused the evidence available on record in light of the Substantial Questions of Law.

14. The first question that has to be decided in this appeal is whether the H.S.Act would be applicable to the case on hand or not.

15. According to the plaintiff, Customary Hindu Law prevailing in Pondicherry would apply and as per Customary Hindu Law, the plaintiff and the defendants 1 and 2 alone are entitled to share in the Suit Properties and the daughters, who were already married are not entitled to the Suit Properties. If it is so, the burden is upon the plaintiff to prove that the plaintiff's family had renounced Hindu law. Whether the plaintiff's family members are renouncants or not is a question to be decided based on the pleadings and facts.

16. In this case, though the plaintiff pleaded that the Customary Hindu Law which was in vogue in Pondicherry would be the



S.A.No.182 of 2020

applicable law, he miserably failed to prove the same. Moreover, in the plaintiff cause title itself, it is stated that the plaintiff and the defendants are Hindus. Further, in the later part of the plaint, he has pleaded that in view of Section 4 of the H.S.Act, all the Class-I legal heirs would be entitled to property. Hence, this Court is of the view that the plaintiff failed to prove that his family renounced Hindu law.

17. It is apposite to mention here that in the Judgment of this Court in ***M.Kadirvelu Vs. G.Santhanalakshmi***, reported in (2016) 4 MLJ 562, it has been held that the question as to whether a person is a renoucant or not is a question of fact, which should have been pleaded and proved.

18. Further, this Court in ***Gowri Vs. Subbu Mudaliar***, reported in 2017 (4) CTC 503 has held as follows:

“34.This Court having regard to the fact that the judgment of the Division Bench of this Court relied upon in Krishnamurthy v. Sitaram Gounder, 2002 (3) Law Weekly 669 wherein the parties themselves conceded thereby Customary Hindu Law not governed by the Mitakshara Hindu Law as decided by both Division Benches. Similarly the judgment of the another Division Bench reported in Viswanathan v. Savarimuthurajan, 2004 (3) CTC 81, wherein the Customary



WEB COPY



S.A.No.182 of 2020

Law was applicable only to the Christian Law governed to the Christians are customary as stood prior to the Hindu Succession Act. Both the judgments would not be useful to decide the question of law as to whether the Pondicherry (Extension) Laws Act 1963 prevail over the Hindu Succession Act. Whereas the Judgment of the Division Bench in Pauline Luca v. Jerome Pascal, AIR 1977 Mad. 270 and T.S.Sadagopan (Deceased) v. T.N.K.Ramanujam, 1993 (2) MLJ 481 of this Court and the judgment of the learned single Judge in M.Kadirvelu v. G.Santhanalakshmi 2016 (2) MWN (Civil) 449 : 2016 (4) MLJ 562, appears to be correct law with regard to the applicability of the Act. Further, the Legislators also in their wisdom has clearly carved out only exception to renouncants. If the entire Hindus who are the native of Pondicherry are governed by the Customary Law as contended by the learned Senior Counsel, the Legislators would not have been even extended the Hindu Succession Act to the Pondicherry.

35.The contention of the learned Senior Counsel that the Hindus residing in Pondicherry are governed by the Customary Hindu law cannot be accepted for another simple reason, that Act 39/2005 Hindu Succession Act was enacted by giving equal status to the daughters on par with the sons in a coparcenary system. If the contention of the learned Senior Counsel is accepted, the very purpose of bringing the Act 39/2005 giving equal status to the daughters on par with the sons in joint Hindu family itself would be defeated.

36.Therefore, this Court is of the view that in view of Section 4 of the Hindu Succession Act, which is overriding effect of all the customs Hindu Succession Act alone apply to



WEB COPY



S.A.No.182 of 2020

the Hindus residing in the Pondicherry except Renoncants, who renounced their Personal status and adopted French Law. . . .”

19. As stated *supra*, the plaintiff failed to establish that he and his family members are renouncants. Both the Courts have concurrently held that the H.S.Act would be the applicable law to the case on hand and the same does not require any interference by this Court.

20. The next question is as to whether the properties covered under Ex-A.1 and Ex-A.3 to Ex-A.5 are separate properties of the 1st defendant or not.

21. In this case, the plaintiff’s family lived as a joint family whose only source of income was agriculture. The plaintiff is younger to the 1st defendant by 11 years and the 2nd defendant is younger to him by 16 years. Subsequently, their father met with an accident in 1974 and hence, the first defendant as the eldest son took up cultivation and began managing the joint family properties. The plaintiff married a girl without the consent of his family members in 1996 and hence, he was kept away from the joint family. The aforementioned facts are admitted and there is no dispute with them. Ex-A.7 – Revenue records shows an extent of 2 Acres 41 Cents as joint family holdings.



S.A.No.182 of 2020

22. According to the plaintiff, the properties covered under

WEB COPY

Ex-A.1 and Ex-A.3 to Ex-A.5 were purchased out of the joint family nucleus. According to the defendants, there is no surplus income from joint family properties. The defendants' case is that the 1st defendant was doing brick-kiln business and thereby earned considerable amount. However, there is no piece of evidence available on record to prove the same. In the absence of proof, considering the facts and circumstances, since the existence of joint family is admitted, this Court is of the view that the properties covered under Ex-A.1 and Ex-A.3 to Ex-A.5 were purchased with the aid of joint family properties and out of joint exertions of the joint family members. It is apposite to extract hereunder the relevant portion of the written statement filed by the defendants 1 and 2 wherein they admitted the existence of joint family, its properties and income therefrom:

“11. This defendants submit that they had no other source of income except from the joint family property to make part payment to various loans and the first defendant also spent money from brick-kiln business. This defendant submits that the borrowing of various loans and the subsequent discharge both part-payment and full payment to the various creditors has the approval of all the members of the joint family i.e. 8 out of 9 heirs and it is the plaintiff, who is



WEB COPY



S.A.No.182 of 2020

embarrassing the defendants and their mother by filing this vexatious suit as though the defendants denied the plaintiff his 1/9th share in the joint family property, and his liability to shoulder the responsibility of discharging the loan proportionately.”

23. It is settled law that admission made in the pleadings is a judicial admission admissible under Section 58 of Indian Evidence Act, 1872 and bears more evidentiary value. The First Appellate Court has rightly come to the conclusion that the Suit Properties are joint family properties. There is no need to interfere with the same.

24. Further, the First Appellate Court came to the conclusion that the 1st defendant as a joint family Manager / *Karta* sold 10th item of Suit Properties vide Ex-A.6 - Sale Deed pending the Original Suit. He had purchased the same in his name vide Ex-A.5 - Sale Deed. The 1st defendant has every right to dispose of the said property in the interest of the joint family. This Court is of the considered view that Ex-A.6 - Sale Deed was executed to clear the family debts obtained to meet the marriage expenses of the five sisters of first defendant and plaintiff. The 1st defendant as a *Karta* is entitled to sell a portion of the joint family



S.A.No.182 of 2020

properties for the welfare and benefit of the joint family. Except the plaintiff, other defendants did not raise objection / question about the execution of Ex-A.6 - Sale Deed. Though Ex-A.6 - Sale Deed has been executed during pendency of the Original Suit, considering the facts and circumstances of the case and also considering the fact that the marriages for the sisters were performed by the 1st defendant as *Karta* of the joint family, this Court is of the considered view that Ex-A.6 - Sale Deed was executed for family necessity. Hence, the findings of the First Appellate Court with regard to execution of Ex-A.6 - Sale Deed is also correct and there is no need to interfere with it. Moreover, the plaintiff did not prefer any appeal or cross-objection over the Judgment and Decree of the First Appellate Court.

25. The First Appellate Court rightly held that the loans borrowed under Ex-B.1 to Ex-B.8 were for the benefit of the joint family. Further, as far as Item Nos.23 to 25 are concerned, they stand in the name of the mother of the plaintiff and defendants 1 and 2, who died intestate during pendency of the Original Suit. There is no dispute with regard to the said fact. Hence, her shares shall be distributed among her legal heirs [See *Phoolchand -vs- Gopal Lal*, reported in *1967 SCC OnLine SC 266*].



S.A.No.182 of 2020

Further, the First Appellate Court found that the plaintiff as well as the defendants 1 and 2, did not prove that Item No.12 of the Suit Properties belong to the joint family. It is true that there is no document available on record to prove that Item No.12 of the Suit Properties belong to the joint family. However, from the oral evidence adduced on either side, it is discernible that Item No.12 belongs to the joint family. In such circumstances, this Court is of the considered view that there is no impediment to pass a Preliminary Decree in respect of Item No.12 of the Suit Properties. Needless to mention that at the time of Final Decree proceedings, if it is established that it does not belong to the joint family, the Trial Court can very well delete the same from the description of property.

26. The Trial Court wrongly negated the relief of *mesne* profits. In a Suit for partition, the plaintiff, who is excluded from the income arising from the joint family properties, is entitled to get accounts from the defendants who are in actual possession and enjoyment of the Suit properties. The First Appellate Court rightly granted the relief of *mesne* profits in favour of the plaintiff.



S.A.No.182 of 2020

27. As regards Court Fee, the plaintiff and the defendants are

co-owners and hence, the Court Fee valued by the plaintiff under Schedule II Article 11 of Pondicherry Court Fee and Suit Valuation Act, 1972 is correct. The Trial Court, in Paragraph No.XI of its Judgment, has correctly dealt with the aspect of valuation of the Suit. [See. *Neelavathi and Others Vs. M.Natarajan and Others*, reported in *AIR 1980 SC 691*]

The aforesaid decision is applicable to the case *pari materia*.

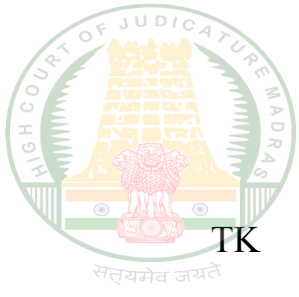
28. Substantial Questions of Law are answered accordingly.

CONCLUSION:

29. In the result, the Second Appeal is partly allowed and the plaintiff is entitled to 1/8 share in the Suit Properties except Item No.10 of the Suit Properties. Accordingly, a Preliminary Decree is passed in favour of the plaintiff. In all other aspects, the Judgment and Decree passed by the First Appellate Court is confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs.

07 / 01 / 2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No



TK

WEB COPY



S.A.No.182 of 2020

To

- 1.The Principal Sub Judge
Puducherry.
- 2.The I Additional District Munsif
Puducherry.



WEB COPY



S.A.No.182 of 2020

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.182 OF 2020

07 / 01 / 2025