



WEB COPY

S.A. No.73



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2025

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 730 of 2015

and M.P.No.1 of 2015

Murugesan

... Appellant / Appellant/ Defendant No.1

Vs.

1. Lakshmi

2. Selvarani

... Respondents/ Respondents/ Plaintiffs

3. Venkatachalam

... Respondent/ Respondent/ Defendant No.2

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 27.02.2014 made in A.S. No.35 of 2012 on the file of the Principal District Judge, Namakkal confirming the Judgment and Decree made in O.S. No.42 of 2009 dated 02.07.2012 by the Subordinate Judge Court, Rasipuram.

For Appellants : Mr. T. Dhanyakumar

For RR 1 to 3 : Ms. B. Aishwarya
For M/s. N. Damodaran

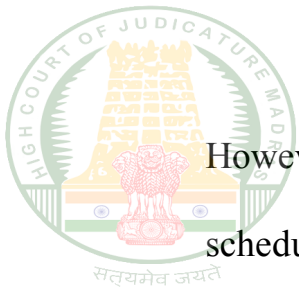


JUDGMENT

This second appeal has been filed by the first defendant in the suit, challenging the judgment and decree of the Trial Court, which has been confirmed by the lower Appellate Court that the suit properties are to be treated as self acquired property of one Sengoda Gounder, who is the husband of the first plaintiff and father of the second plaintiff and defendant Nos.1 and 2.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court. The brief facts leading to filing of this appeal by the appellant/ plaintiff are as follows:

3. The case of the plaintiffs is that the suit schedule properties in item nos.1 to 3 were originally purchased and acquired by one Athiyappa Gounder under various registered sale deeds and partition deed, the item no.4 of the suit property was purchased by the Sengoda Gounder, who is the only son of the said Athiyappa Gounder. After the death of the Athiyappa Gounder, the suit properties were inherited by the Sengoda Gounder under Section 8 of the Hindu Succession Act, 1956 and after the demise of the Sengoda Gounder, the same has to be equally inherited by his Class I legal heirs i.e., wife, sons and daughter.



However, the defendants have not shown any indication to partition the suit schedule property, thereby, the plaintiffs have come forward with the suit seeking for partition and separate possession directing the division of the suit schedule properties into four equal shares and allot one share to each of them.

4. The suit was contested by the first defendant, who is the son of the Sengoda Gounder on the ground that the suit properties are joint family properties and not the separate properties of his deceased father Sengoda Gounder. The first defendant also stated that he is staying along with his wife and child, in the item no.3 of the suit properties. He further contended that the first plaintiff and the defendants earned money by doing agricultural activities in the suit properties and made deposits of more than Rs.25,00,000/- in the name of the first plaintiff from time to time. The second plaintiff had never involved or supported for the livelihood and the joint family income has been utilized for her educational expenses. Further, the joint family has got more than 60 sovereigns of gold jewels and a tractor bearing Registration No.TN-28-S-6502 in the name of the second defendant. Huge amount of money was spent for educating the second plaintiff and for the development of the second defendant and all these facts have been suppressed by the plaintiffs and only with a view to gain more properties than their legitimate share, the suit has been filed by the plaintiffs,



hence prayed for dismissal of the suit.

WEB COPY 5.

Both Courts have considered the case of both sides, framed necessary issues and after appreciating the evidences placed on record, concluded that the suit properties are the separate properties of the Sengoda Gounder. Further, both Courts have also made an observation that the various properties purchased by the Athiyappa Gounder is the self acquired properties and after his death the same have been acquired by his son Sengoda Gounder. Similarly, Sengoda Gounder also purchased property through his own income, thereby, Sengoda Gounder is the sole heir and as well as the owner of the suit property separately purchased by him, therefore, all the suit schedule properties are classified as separate properties of Sengoda Gounder. Both Courts by following the decision of the Full Bench of this Court in *The Additional Commissioner of Income Tax vs. P.L. Karuppan Chettiyar [AIR 1979 Madras page (1)]* and the Apex Court judgement in *The Commissioner of Wealth Tax Kanpur & Others vs. Chandersen & others [(1986) 3 SCC page 567]* has held that the third item of the suit schedule property acquired by way of partition by the said Athiyappa Gounder is also separate property under Section 8 of the Hindu Succession Act, thereby, the Class I Legal Heir's of the Sengoda Gounder



are having equal rights in all the suit schedule properties.

WEB COPY 6. Aggrieved over the concurrent findings rendered by the Courts below, the first defendant has come forward with this appeal and this Court at the time of admitting this second appeal have raised the following substantial questions of law:

- (a). Whether the properties inherited by Sengoda Gounder the common ancestors of the parties to the proceedings on the death of his father are the self acquired properties in his hands or ancestral properties along with the members of the family?*
- (b). Whether the plaintiffs are entitled to only 2/12 share on the admission of P.W.1 that the suit properties are ancestral properties of the family?*

7. The learned counsel appearing for the appellant/ defendant No.1 submitted that the Courts below failed to appreciate the pleadings, evidence and particularly the defence raised by the contesting defendant and failed to advert to the real controversy involved in the proceedings. He further submitted that the findings rendered by the Courts below is contrary to the Hindu Law and the Joint Family system, thereby admitting that the suit properties are the joint family properties. He also submitted that the Courts below also failed to note that several moveables and fixed deposits were not included in the suit properties and



prays to set aside the judgment and decree of the Courts below.

WEB COPY 8. The learned counsel appearing for the respondents submitted that both Courts below after appreciating the evidence placed on record rightly held that all the suit properties held by Sengoda Gounder are his separate and self-acquired properties, thereby, the plaintiffs and defendants are all entitled to 1/4th share each in the suit properties, hence prays to confirm the judgment and decree of the Courts below.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. The scope of interfering with the concurrent findings of both the Courts below is well settled and the Hon'ble Apex Court in ***Hero Vinoth (Minor) vs. Seshammal [AIR 2006 SC 2234]*** has reiterated the jurisdiction of High Court to interfere in the concurrent findings of the Lower Courts and has held in paragraph Nos.12 to 16 as follows:

*“12. We shall first deal with the question relating to jurisdiction of the High Court to interfere with the concurrent findings of fact. Reference was made by learned counsel for the appellant to **Chandra Bhan v.***



WEB COPY

S.A. No.73



Pamma Bai and Anr. (2002 (9) SCC 565) Sakahari Parwatrao Karahale and Anr. v. Bhimashankar Parwatrao Karahale (2002 (9) SCC 608). So far as the first decision is concerned, in view of the factual findings recorded by the lower Court and the first Appellate Court it was held that interference with the concurrent findings of fact are not justified. The question related to possession and two Courts primarily considering factual position had decided the question of possession. In that background, this Court observed that jurisdiction under **section 100** CPC should not have been exercised. So far as the second decision is concerned, the position was almost similar and it was held that findings contrary to concurrent findings of lower Courts and having no basis either in pleadings, issues framed or in questions actually adjudicated upon by any of the lower Courts cannot be sustained. That decision also does not help the appellant in any manner as the factual scenario is totally different in the present case.

13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction under **Section 100** CPC is very limited, and re-appreciation of evidence is not permissible where the trial Court and/or the first Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference under **Section 100** CPC after formulating a substantial question of law.

14. As was noted in ***Yadaraao Dajiba Shrawane (dead) by Lrs. v. Nanilal Harakchand Shah (dead) and Ors. (2002 (6) SCC 404)*** if the judgments of the trial Court and the first Appellate Court are based on mis-interpretation of the documentary evidence or consideration of inadmissible evidence or ignoring material evidence or on a finding of fact has ignored admissions or concession made by witnesses or parties, the High Court can interfere



in appeal.

15. In **Neelakantan and Ors. v. Mallika Begum (2002 (2) SCC 440)** it was held that findings of fact recorded must be set aside where the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity which materially prejudices the case of one of the parties. (See: **Krishna Mohan Kul alias Nani Charan Kul and Another v. Pratima Maity and others [(2004) 9 SCC 468]**).

16. It is now well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms or a term of a document is a question of law. Construction of a document involving the application of a principle of law, is a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under **Section 100 CPC**. If a document creating an easement by grant is construed as an 'easement of necessity' thereby materially affecting the decision in the case, certainly it gives rise to a substantial question of law. “

11. In this case, both Courts have rendered its concurrent findings that item 1 to 4 of suit properties are the separate self-acquired properties of Athiyappa Gounder and after his death, his only son deceased Sengoda Gounder has become the absolute owner of the properties by virtue of succession as contemplated under Section 8 of Hindu Succession Act, therefore all the suit properties held by Sengoda Gounder are his separate and self-acquired properties, thereby the plaintiffs and defendants are all entitled to 1/4th share



each in the suit properties.

WEB COPY

12. On careful perusal of the partition deed marked as Ex.A.3, both Courts have specifically held that the first defendant/ appellant herein has not established his case that the suit properties are joint family ancestral properties. It is also observed that there is no specific pleading from the first defendant that each property is the joint family ancestral property. It is further observed that even the said Athiyappa Gounder had constituted joint family with his brothers and son and after his separation of the properties by way of partition deed- Ex.A.3, the same had subsequently become his separate properties by virtue of Section 8 of the Hindu Succession Act and this view has been fortified by the decision of the Apex Court in *The Commissioner of Wealth Tax Kanpur & Others vs. Chandersen & others [(1986) 3 SCC page 567]* and Full Bench of this Court in *The Additional Commissioner of Income Tax vs. P.L. Karuppan Chettiyar [AIR 1979 Madras page (1)]*, which were relied on by the trial Court.

13. Similarly, there is no specific evidence adduced from the side of the first defendant to substantiate his case, though he has pleaded that the suit properties are joint family ancestral properties, he has not specifically pleaded as



to which suit property is ancestral joint family property. Further, on careful perusal of all the facts and evidences placed on record, there is no specific documents or evidences to prove that the deceased Athiyappa Gounder has constituted a joint family with his sons and grandsons, even after the Ex.A.3-partition deed and he made all the members to enjoy all his properties. In view of the discussion made above, I am of the view that the substantial question of law raised by the contesting defendant is not made out in this appeal.

14. The next contention of the appellant is that the plaintiffs themselves have admitted that the nature of the suit properties are ancestral properties, which has also been factually rejected by both Courts and the title deeds produced by the plaintiffs clearly reveal that some of the properties were purchased by the Athiyappa Gounder and some were purchased by Sengoda Gounder and there is no evidence adduced on the side of the appellant/ first defendant that all these properties were purchased by his ancestors out of their joint family income. Similarly, on careful perusal of the evidence of P.W.1, it only shows that though she stated that the properties were ancestral properties, the evidence and other circumstances only shows that the properties were separate properties of Sengoda Gounder and after his demise, his Class I legal



heirs shall inherit the same equally. Accordingly, this Court finds no merits in this appeal and that the plaintiffs and defendants are entitled for equal share over the suit property.

15. In the result, this second appeal is dismissed and the judgment and decree of the lower Appellate Court is hereby confirmed. Consequently, connected miscellaneous petition stands closed. There shall be no order as to costs.

14.03.2025

stn

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Principal District Judge, Namakkal.
2. The Subordinate Judge Court, Rasipuram.
3. The Section Officer,
V.R. Section,
High Court, Madras.

K. RAJASEKAR, J.



WEB COPY

S.A. No.73



stn

S.A. No. 730 of 2015

14.03.2025