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SA No. 210 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 210 of 2015

and M.P. No.1 of 2015

Sellammal

W/o Late Nachimuthu Oothupallathu Thottam

Mothangalpudur Maathur Village & Post Bhavani

Taluk Erode District.

..Appellant(s)

Vs

1. Malaisamy

S/o Late Nachimuthu Ottanthottam

Ennamanglam Village & Post, Bhavani Taluk,

Erode District.

2. Thavasiappan

S/o Late Nachimuthu Oothupallathu Thottam,

Mothangalpudur Mathur Vilage & Post,

Bhavani Tlauk Erode District.

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 06.11.2013 made in A.S. No.68 of 2013 on the file of the Principal District Court, Erode confirming the judgment and decree dated 25.03.2013 made in O.S. No.26 of 2006 on the file of the Sub Court, Bhavani.



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For Appellant(s):

Mr. G. Sabari Vishnu for M/s.D.Selvaraju

For Respondent(s):

M/s.I.C.Vasudevan [For R1]

R-2 – No appearance.

JUDGMENT

The Second Appeal has been preferred as against the judgment and decree dated 06.11.2013 made in A.S. No.68 of 2013 on the file of the Principal District Court, Erode, wherein the appellant herein, who filed the Suit before the Sub Court, Bhavani in O.S. No.26 of 2006 dated 25.03.2013, filed an appeal. In fact, the Plaintiff has filed the Suit for partition and for permanent injunction. The trial Court partly decreed the Suit and aggrieved by the said decree and judgment, the Plaintiff preferred an appeal before the First Appellate Court in A.S. 68 of 2013 on the file of the Principal District Court, Erode and the appeal was dismissed by confirming the decree and judgment passed by the trial Court. Aggrieved by the said judgment and decree, the present Second Appeal has been preferred by the appellant.

2. The brief facts of the Plaint are as follows:-

The Plaintiff is the mother of the defendants. The 1st item of the Suit properties is the ancestral property of the Plaintiff and the defendants. The said first item of the Suit property was allotted to the share of husband of the Plaintiff through a Partition Deed dated 01.03.1982 between his brothers. The



2nd item was purchased by the Plaintiff and her husband Nachimuthu on 30.05.1996 by contributing the sale price equally by them. Therefore, the Plaintiff is entitled to $\frac{1}{2}$ share and after demise of her husband, she is entitled to $\frac{4}{6}$ share in that property and the defendants are each entitled to $\frac{1}{6}$ share over the 2nd item of the property. In the 1st item of the property, she is entitled to $\frac{1}{9}$ share and the defendants are entitled to $\frac{4}{9}$ share each. The Plaintiff and the defendants are in joint possession of the property. When the Plaintiff, demanded the partition, the defendants denied for the partition.

3. **The brief averments of the Written statement filed by the defendants are as follows:-**

The Suit is not maintainable either in law or on facts. The defendants denied all the allegations in the Plaint, except to those that are specifically admitted herein. The averment that the 2nd item of the Suit property was purchased in the name of the Plaintiff and her husband is true, but the Sale price was not contributed by the Plaintiff and she is not entitled to $\frac{4}{6}$ share over the 2nd item of the property. In fact, the Plaintiff is only entitled to $\frac{1}{9}$ share over the property. The 1st item of the Suit property is an ancestral property of his father Nachimuthu. The 2nd item of the property was purchased in the name of the Plaintiff and her husband out of the joint income derived from the 1st item of the property. The Plaintiff has no separate income to contribute $\frac{1}{2}$ share of the sale price for the purchase of the 2nd item of the property. The Plaintiff, the



defendants and their father are the members of the Undivided Hindu Joint Family. Therefore, the items 1 and 2 properties are ancestral in character.

Therefore, the Plaintiff is only entitled to 1/9 share and for the remaining 8/9 shares, each defendant is entitled to 4/9 share over the said properties. Therefore, they have no objection to grant decree for partition of 1/9 share to the Plaintiff.

4. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues*:

Issues:

- a. Whether the second item of the Suit properties purchased in the name of the Plaintiff and her husband Nachimuthu jointly on 30.05.1996 is their self acquired property or it has got only the character of ancestral property?*
- b. Whether the Plaintiff is entitled for 4/6 share or 1/9 share in the 2nd item of the Suit property?*
- c. Whether the Plaintiff is entitled for reliefs of partition, separate possession and permanent injunction as claimed by her?*
- d. What other reliefs the Plaintiff is entitled for?*

5. Before the trial Court, on the side of the Plaintiff, PW1 and PW2 were examined and Ex.A.1 to Ex.A.7 were marked. On the side of the



defendants, DW1 was examined and no documents were marked on the side of the defendants. The trial Court, after evaluating the oral and documentary evidences adduced on both sides, decreed the Suit in part and passed a Preliminary Decree for partition by dividing the Suit properties into 9 equal shares and allotting one such share to the Plaintiff and 4/9 share to each defendant and dismissed the Suit in respect of the permanent injunction. Aggrieved by the said decree and judgment, the Plaintiff had preferred an appeal Suit in A.S. No.68 of 2013 on the file of the Principal District Court, Erode.

6. The First Appellate Court, after hearing both sides and perusing the records, framed the following *points for determination*:

- (i) *Whether the 2nd item of the Suit property was purchased out of the Joint family nucleus in the name of the Plaintiff and her husband.*
- (ii) *Whether the judgment and decree of the trial Court is not based on proper appreciation of evidence and law.*
- (iii) *To what relief?*

7. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal by confirming the decree and judgment passed by



the trial Court. Aggrieved by the said decree and judgment of the First Appellate Court, the appellant / Plaintiff has preferred this second appeal.

8. At the time admitting the second appeal, this Court has formulated the following *substantial questions of law*:

1. Whether the Courts below are right in holding that the entire land in item 2 of Suit property is joint family property, while the Plaintiff a female member of the family is the joint purchaser and having title over 50% of the same, in the absence of any proof that the entire sale price was paid from joint family funds?

2. Whether the Courts below are right in not considering the evidence of PW2, who is independent witness in spite of his categorical statement that the Plaintiff had contributed 50% of Sale price, by stating since the witness being attester of Ex.A2 his evidence on other aspects beyond the execution of document cannot be taken account?.

9. For the sake of convenience and brevity, 'the parties' hereinafter will be referred to as per their status / ranking in the Trial Court.

10. The learned counsel appearing for the appellant would submit that the Plaintiff is the mother of the defendants, the 1st item property is the ancestral property of her husband namely Nachimuthu and the defendants are also not denied the same. As far as the 2nd item of the property is concerned, it was purchased by the Plaintiff and her husband Nachimuthu and she also



contributed 50% of the sale price. However, the defendants denied the above said purchase of the 2nd item property and according to the defendants, the said property was purchased in the name of Nachimuthu and the Plaintiff through the income derived from the 1st item of the property, thereby, the 2nd item of the property is also a joint family property and both the said properties are the ancestral and joint family properties of the Plaintiff and the defendants. In order to prove the case of the Plaintiff, she examined PW1 and PW2 and marked Ex.A.1 to Ex.A.7 and on the side of defendants, DW1 was examined, but no documents were marked on the side of the defendants. The Plaintiff has categorically deposed about the purchase of the 2nd item of the property through her earnings. Once the property purchased in the name of a female, it is to be presumed that the property was purchased in her name and she is the owner of the property and it is her self-acquired property, unless the contrary is proved. In this case, the Plaintiff proved that the property was purchased by her and the defendants failed to prove that the property was purchased through the income derived from the ancestral properties. Therefore, the Courts below have failed to appreciate the facts in a proper and perspective manner and came to an erroneous conclusion that the 2nd item was purchased through joint family income. Therefore, the Plaintiff is entitled to 1/9 share over the properties. In fact, the Plaintiff is entitled to 1/9 share over the 1st item of the property and 4/6 share over the 2nd item of the property. The Courts below failed to consider the above said aspects and erroneously came to a conclusion that the 2nd item of the



Suit property was also a joint family property. Therefore, the decree and judgment passed by the Courts below are liable to be set aside.

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11. The learned Counsel appearing for the respondents would submit that there is no dispute in respect of the relationship between the parties and the Plaintiff has no independent income and she is only a house wife. The 1st item of the Suit property is an ancestral property and the father of the defendants is entitled to that property through partition between his brothers and based on the income derived from the 1st item of the Suit property, the 2nd item property was purchased in the name of the Plaintiff and their father. Therefore, the 2nd item property is also to be treated as joint family property. Therefore, both the properties are joint family properties and the Plaintiff is only entitled to 1/9 share and for remaining 8/9 shares, the defendants are each entitled to 4/9 share over the Suit properties. Therefore, the Courts below have correctly appreciated the law and facts and correctly arrived at a fair conclusion. Therefore, there is no any perversity or infirmity in the decree and judgment passed by the Courts below. There is no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

12. This Court heard both sides and perused the entire materials available on record.

13. In this case, there is no contravention in respect of the relationship



between the parties and the 1st item property is an ancestral property. The only dispute is in respect of the 2nd item property. According to the Plaintiff, 2nd item of the Schedule property was purchased by her along with her husband through Sale Deed dated 30.05.1996 and she has contributed 50% of the sale price and therefore, she is entitled $\frac{1}{2}$ share of the 2nd item property and she is also entitled $\frac{1}{6}$ share in the remaining half share of her husband as a legal heir of her husband, thereby she is entitled to $\frac{4}{6}$ share over the 2nd item property. According to the defendants, the 2nd item property was purchased in the name of her and her husband, who is the father of the defendants, through a Sale Deed dated 30.05.1996 and the entire sale price has been paid by the defendants' father out of the income derived from the 1st item property. The said 2nd item property has been treated as a joint family property. Therefore, the 2nd item property, which is purchased through the income derived from the 1st item property, is also having character of ancestral in nature. Therefore, both the properties are ancestral properties and therefore, the Plaintiff is entitled to only $\frac{1}{9}$ share over the Suit schedule properties.

14. Before the trial Court, on the side of the Plaintiff, PW1 and PW2 were examined and Ex.A.1 to Ex.A.7 were marked and on the side of the defendants, DW1 was examined and no documentary evidence on the side of the defendants. The trial Court, after considering the evidences on both sides, held that *the evidence of PW1 that she had contributed equally for purchase of*



Item No.2 of the Suit properties by selling her property under Ex.A.7 cannot be looked into as there is no pleading to that effect in the Plaint and also that evidence is highly improbable because the Plaintiff would not have kept the money idle for about nine years and if it is so, then it follows that Item No.2 of the Suit property was purchased by the Plaintiff and her husband Late Nachimuthu out of the income derived from the 1st item of the property and so as the second item property has been purchased from the income derived from the 1st item property which is admitted by ancestral in character, it is recorded that the 2nd item property is also ancestral in character. Therefore, the Plaintiff is entitled to 1/9 share. The First Appellate Court also in its judgment, came to a conclusion that the Plaintiff has no separate income. According to the Plaintiff, she sold her property through Ex.A.7 and utilized the said sale price for the purchase of the 2nd item property. Through Ex.A.7, the property was sold for a sum of Rs.20,000/- and she contributed Rs.75,000/- for the purchase of the 2nd item property through Ex.A.2. As per Ex.A.7, it shows that the above sale was made to meet out the family debts at the relevant point of time. Therefore, the sale price derived through Ex.A7 was utilized by the Plaintiff for the purchase of the 2nd item of the Suit schedule property is not possible. Therefore, the contention of the Plaintiff that the 2nd item property is self-acquired by her and her husband cannot be in countenanced at all. Further the 1st item property was yielding Rs.50,000/- per annum and there was surplus income from the family, thereby, the 2nd item property was purchased. There



are no pleading with regard to the above said Ex.A.7 and sale consideration.

Therefore, the said document cannot be given much importance. Therefore, the evidence of Plaintiff cannot be accepted. Further, PW1 also admitted in her cross examination that the family had no other income, except the income from the agricultural land i.e., the 1st item of the Suit property. Therefore, the presumption automatically apply to the purchase by other family members that those properties also purchased out of the joint family nucleus and also held that the 2nd item of the Suit property also an ancestral property.

15. The First Appellate Court, further relied upon the following judgments of this Court:

- 1. Gowri Ammal v. Vaithilingam (decd) reported in 2001 (3) CTC 577.***
- 2. Jayalakshmi v. Dhanasekaran reported in 2010 (2) MWN (Civil) 239.***
- 3. V. Dhanalakshmi v. Sasikala reported in (2008) 8 MLJ 113.***
- 4. Sangodal Ammal v. Arumugha Kone (died) reported in 2010 (3) MWN (Civil) 463.***
- 5. S. Mariappan (died) v. M. Madasamy reported in 1998 (1) CTC 149.***

After relying upon the above said judgments, the First Appellate Court came to a conclusion that PW1 admitted that there was a surplus income from the 1st item property and there is no other income for the property, thereby, the 2nd item of the Schedule properties was purchased through the income derived



from the 1st item of the properties. Further the First Appellate Court also relied upon a judgment in *Sampath @ Muthu Naidu v. Venkatesan reported in 2008 (6) CTC 16* and came to a conclusion that the 2nd item property was purchased through the income derived from the 1st item property. Therefore, both the Courts below have analysed the evidences and came to a conclusion that the 1st item property was yielding income and the said income was the surplus income and through that income, the 2nd item property was purchased.

16. It is well settled law that once the property purchased in the name of a female, it can be presumed that she purchased the property and the same is her self acquired property, unless contra is proved. In the case on hand, the Plaintiff herself admitted that she has no separate income and she sold her property through Ex.A7 Sale Deed for her family debts. In this context, it is relevant to rely the cross examination of PW1, where she admitted that her family property was sold 9 years back and the disputed property was purchased after 9 years. Even in the Sale Deed executed by the Plaintiff, it was mentioned that the property was sold for clearing her family debts. Further, PW1 admitted that there is no further separate income for the family and the family was only depending upon the income through the 1st item property. Therefore, there is sufficient evidence that the 1st item property was yielding Rs.50,000/- per month and the defendants established that the said income is surplus and the 1st item property was allotted to the father of the defendants Nachimuthu in the year



1982. Therefore, the defendants established that the 2nd item property was purchased through the income derived from the 1st item property, thereby it is to be treated as a joint family property. These aspects have been considered by the Courts below and both the Courts have rendered concurrent findings based on the evidences. Therefore, there is no perversity in the orders passed by the Courts below and there is no scope for interfering with the concurrent findings of the Courts below.

17. As far as the *Substantial question of law 1. Whether the Courts below are right in holding that the entire land in item 2 of Suit property is joint family property, while the Plaintiff a female member of the family is the joint purchaser and having title over 50% of the same, in the absence of any proof that the entire sale price was paid from joint family funds?* is concerned, in this case, the Plaintiff has filed the Suit for partition claiming that 1st item property is an ancestral property and the 2nd item is herself acquired property and she along with her husband purchased the 2nd item property for a sale consideration and she also contributed for the said sale price, but the available evidence shows that the family had surplus income from the 1st item property, and the Plaintiff has no separate income. There is a presumption that once the property purchased by a female, it is her self-acquired property, unless the contrary is proved. In this case, the defendants have proved that the 2nd item property was purchased through the income derived from the 1st item property



and the Plaintiff herself has admitted that she has no separate income and according to her, she purchased the property through the sale proceedings of her family property. But her family property was sold 9 years back. Even as per the recitals of the above said Sale Deed Ex.A.7, the said property was sold for clearing the debts of the family. Therefore, the contention of the Plaintiff that she contributed money for the purchase of the 2nd item property has not been proved and the defendants have proved that the 1st item property was yielding more income and the income is surplus and through that surplus income, the 2nd item property was purchased in the name of the Plaintiff and the her husband. But the entire sale price was contributed through the income of the joint family. There are no pleadings to show that the Plaintiff sold her family property and through the said sale amount, she purchased the 2nd item property. PW1 has categorically admitted that there is no other income except the income from the 1st item property for the family. Therefore, the Courts below have correctly appreciated the facts and law and rendered concurrent findings that the 2nd item property was purchased through the income derived from the 1st item property and thereby, the 2nd item property is also an ancestral property and thereby, 1/9 share was allotted to the Plaintiff. Thus, the ***substantial question of law (1) is answered.***

18. As far as the substantial question of law 2) Whether the Courts below are right in not considering the evidence of PW2, who is independent



witness in spite of his categorical statement that the Plaintiff had contributed 50% of Sale price, by stating since the witness being attesor of Ex.A2 his evidence on other aspects beyond the execution of document cannot be taken

account? is concerned, as far as the evidence of PW2 is concerned, he is only an attesting witness of the Sale Deed for the purchase of the property in the name of the Plaintiff and her husband dated 30.05.1996. As far as the attesting witness is concerned, it is well settled law that his role is only to identify the identity of the executor and apart from that, his evidence cannot be looked into. However, according to the evidence of P2, 50% of the sale price was contributed by the Plaintiff. The Plaintiff herself admitted that she has no other income and only through the sale of her family property, she purchased the property. But the said family property was sold for clearing her family debts. Therefore, the evidence of PW2 is not sufficient to hold that 50% of the sale price was contributed by the Plaintiff. Though both the Courts have not considered the evidence of PW2, he is not a competent witness to speak about the sale price paid by the Plaintiff. The available evidence clearly shows that the 2nd item property was purchased through the surplus income of the 1st item property. The evidence of PW2 is not sufficient to hold that 50% of the sale price was contributed by the Plaintiff. Therefore, the Courts below have correctly appreciated the facts and held that both the properties are ancestral properties. Thus, the ***substantial question of law (2) is answered.***

19. In view of the above said discussions and answers to the substantial



questions of law, this *second appeal has no merits and deserves to be dismissed.*

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20. Accordingly, the *Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.*

04-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MJS

To

1. The Principal District Judge, Erode.

2. The Sub Judge, Bhavani..



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P.DHANABAL, J.

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