
(2009) 06 MAD CK 0240
In the Madras High Court
Case No : Second Appeal No. 465 of 2000

Anjalai	Vs	APPELLANT
Pavunammal (died) (Annadurai, Bala and Elumalai)		RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0240

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Advocate : J. Ramakrishnan, for the Appellant; A. Gothaman, for Tt.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—The above Second Appeal arises against the judgment and decree in A.S. No. 73 of 1999 on the file of Additional District Court, Tiruvannamalai reversing the Judgment and Decree in O.S. No. 578 of 1990 on the file of District Munsif Court, Tiruvannamalai

2. The defendant in the suit is the appellant in the above second appeal. The respondent is the plaintiff in the suit.

3. The plaintiff filed the suit in O.S. No. 578 of 1990 on the file of District Munsif Court, Tiruvannamalai against the defendant for declaration and injunction.

4. The brief case of the plaintiff is as follows:

(i) According to The plaintiff, the suit property is the vacant site belonging to one Balakrishnaraju. He conveyed the same under a registered sale deed dated 25.7.1967 to the plaintiff's husband Kannan. After the purchase, the said Kannan was in possession and enjoyment of the property and he constructed house and he was residing therein. Subsequently, the said Kannan had left the village in question and his whereabouts are not known. According to the plaintiff, who is the wife of the said Kannan, alone is residing in the suit house. She has

also got two sons namely, Ananthurai and Elumalai, who are also not heard of for the past several years. The plaintiff has got a daughter by name, Bala who has been given in marriage and she is living in her husband's house. The patta was transferred in the name of the plaintiff and the house tax also stood in the name of the plaintiff.

(ii) According to the plaintiff, the defendant is the distant pangali of the plaintiff's husband. According to the plaintiff, the defendant has no interest whatsoever in the suit property. According to the plaintiff, the defendant is giving out in the village to the effect that she has got a share in the same and that she would dispossesses the plaintiff by force. Therefore, the plaintiff filed the suit.

5. The brief case of the defendant is as follows:

(i) According to the defendant, the suit property originally belonged to one Balakrishnaraju and it was not purchased by Kannan from out of his own funds. According to the defendant, the property was purchased from out of the joint family funds, since the plaintiff's husband Kannan was maintaining the family as his father became very old and that he was the elder son. The defendant denied the contention that Kannan was put in possession and he had constructed a house in the suit property. According to the defendant, the joint family property also being enjoyed by all joint family members without making partition. According to the defendant, the plaintiff's husband Kannan is also residing in the suit house. According to the defendant, the plaintiff's two sons Annandurai and Elumalai are residing at Bombay. There was no partition among the family members regarding the suit house and other properties.

(ii) According to the defendant, the plaintiff had a son by name Gandhi. The plaintiff's husband Kannan was at Bombay. Gandhi was enjoying his father's property jointly with the defendant's husband, Chinnapaiyan. Chinnapaiyan and Gandhi mortgaged their undivided joint family properties to one Munia Gounder to discharge their family debts. The defendant's husband died ten years back. According to the defendant, her husband and the plaintiff's husband are brothers and not distant pangalis as stated by the plaintiff. The suit property was purchased by plaintiff's husband, defendant's husband and their father Arumugam in the name of plaintiff's husband. Arumugam and his elder son jointly sold their joint family house at Su.Valavetti and the suit house was constructed from out of the sale consideration of the said house. According to the defendant, the plaintiff's husband had no independent source of income to purchase the suit property. The suit house was constructed jointly. Arumugam, Kannan and Chinnapaiyan were the members of the joint family and they treated and enjoyed the suit property as joint family property and after the death of Arumugam, his wife and two sons were jointly enjoying the suit house and other landed property by residing in the suit house and the defendant prayed for dismissal of the suit.

6. In the reply statement filed by the plaintiff, the plaintiff stated that her son

Gandhi died intestate as bachelor even prior to the filing of the suit. She further stated that the alleged mortgage deed 1.6.1982 in favour of Munia Gounder is totally false. The plaintiff reiterated that the suit property is the separate and self acquired property of the plaintiff's husband Kannan and neither the defendant nor her children have got any right over the suit property.

7. Before the trial court, the plaintiff examined P.W.1 to P.W.3 and marked 7 documents Exs. A1 to A7. On the side of the defendant, D.W.1 to D.W.3 were examined and 3 documents Exs.B1 to B3 were marked.

8. The trial court, after taking into consideration the oral and documentary evidence of both the parties, found that the suit property was not purchased by the husband of the plaintiff and it was purchased from the joint family nucleus and ultimately dismissed the suit.

9. Aggrieved by the judgment and decree of the trial court, the plaintiff filed an appeal in A.S. No. 73 of 1999 on the file of Additional District Judge, Tiruvannamalai and the lower appellate court after taking into consideration the oral and documentary evidence of both the parties found that the defendant, who set up a case of the joint family, failed to prove the same and found that the suit property was not purchased from the joint family nucleus and it was purchased only by the husband of the plaintiff. Therefore, the lower appellate court set aside the judgment and decree of the lower appellate court.

10. Aggrieved by the judgment and decree of the courts below, the defendant has filed the above second appeal.

11. Heard Mr. J. Ramakrishnan, learned Counsel appearing for the appellant and Mr. A. Gothaman, learned Counsel for the respondents.

12. At the time of admission of the above Second Appeal, the following substantial questions of law arose for consideration:

i) Whether the Lower Appellate Court is correct in law in not drawing the necessary presumption regarding the sufficiency of the nucleus for the purchase of the property, the existence of the nucleus has been proved and no other source of income is disclosed by the plaintiff?

ii) Whether the lower appellate court is correct in law in casting the burden of proof regarding the source of purchase money on the defendant when the purchase was made by the husband of the plaintiff who was the manager of the joint family and in such a situation and presumption in law is that the property is joint family property and the person who claims it as a separate property must prove the same?

13. Learned Counsel for the respondents relied on a judgment reported in 2000(3) MLJ 660 (Kanakaraj v. Sivakozhundu and Ors.). In the said judgment of this court it is held that there is no presumption in law that the property is a joint family property, unless it is proved by sufficient evidence that the joint family

owned certain properties which yielded sufficient income to purchase other properties.

14. Learned Counsel for the respondents further relied on a judgment reported in *S. Chinnayyan and Others Vs. C. Chithambaram and Others*, in which, it is held that if there is no proof of joint family nucleus or sufficient income from the joint family properties to enable purchase of other property, onus of proof is only on the person making such a plea.

15. Learned Counsel for the respondents also relied on a judgment reported in *Ranganayaki Ammal and Others Vs. S.R. Srinivasan and Others*, , in which it is held as follows:

...The burden is very heavy on the plaintiff to establish the existence of joint family nucleus. The mere lapse of time will not relieve him from discharging his obligation. The march and passage of time cannot be taken advantage of by the challenging co-parcener and this by itself would not enable him to relieve himself of his legal duty to prove the obvious, namely, that the family was possessed of funds and that there was sufficient joint family nucleus from which the further accretions were made by the member managing the same.

16. Learned Counsel for the respondents also relied on another judgment reported in *Makhan Singh (D) by Lrs. Vs. Kulwant Singh*, , it is held as follows:

...The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

17. On a careful consideration of the materials available on record and the submissions made by both the learned Counsel, it could be seen that the respondent/plaintiff is claiming title under Ex.A1 sale deed in favour of her husband, Kannan dated 25.5.1967. The appellant/defendant raised the defence that the suit property is the joint family property purchased in the name of Kannan, since he is the elder member of the family and out of the income derived from the joint family properties. It is well settled law that the person, who pleads the property is the joint family property, the initial burden is upon him to prove the same. It is also admitted that at the time of purchase under Ex.A1, the said Kannan and his father Arumugam were alive. The appellant/husband/defendant's husband Chinnapaiyan is the brother of Kannan. Further, the senior male member of the family namely Arumugam was alive on the date of the purchase under Ex.A1. The necessity to purchase the property in the name of Kannan from the joint family funds was not proved by the appellant/defendant. In the written statement, the appellant/defendant stated that Ex.A1

property was purchased in the name of Kannan by selling another joint family property. But the appellant/defendant did not produce the sale deed to prove the said contention. Further there is also no evidence to show that the income was derived from the joint family properties and were utilised for acquisition of the Ex.A1 property and also mere existence of nucleus alone is not enough and it must be proved that there was surplus income for the purchase of other properties. In the case on hand, the defendant failed to prove that the property purchased under Ex.A1 was purchased from the joint family income. With regard to the possession, the respondent/plaintiff filed Ex.A2 patta and tax receipts Exs. A3 to A7. The said documents will prove the possession of the respondent/plaintiff. Further as already found Kannan is the owner of the property, possession follows the title. Since the whereabouts of the said Kannan is not known for more than seven years, he is presumed to civil dead. Hence his legal heirs are entitled for declaration and injunction. The lower appellate court has - 9 rightly set aside the judgment and decree of the trial court and allowed the appeal.

18. Applying the principles laid down in the above referred judgments, I find no ground much less substantial questions of law to interfere with the findings of the courts below. The above second appeal is liable to be dismissed. Accordingly, the above Second Appeal is dismissed. However, there will be no order as to costs.