

(2011) 06 MAD CK 0028
In the Madras High Court
Case No : S.A. No. 808 of 1999

Dhandapani and Others

APPELLANT

Vs

Rukmani Ammal and Others

RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0028

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; Chitra Sampath, for R. Sunil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Defendant, who was successful in the trial Court and unsuccessful in the Lower Appellate Court is the Appellant.

2. The Plaintiffs filed the suit for declaration and for injunction. The case of the Plaintiffs was that the suit property belonged to the joint family of

Veerappa Gounder, Dhandapani, Sivalingam, Panneerselvam and Dharmalingam and Veerappa Gounder was the father and Ors. were his sons

and Veerappa Gounder died in the year 1970 and after his death, the suit property and the other properties were enjoyed as joint family properties

and though the properties were purchased in the name of the Defendant and other persons, those properties were treated as joint family properties

and as per the family arrangement that took place on 23.02.1970, the suit property was allowed to the share of Panneerselvam and ever-since the

same, the said Paneerselvam was enjoying the property and after his death, the Plaintiffs, who are his legal-heirs are enjoying the properties. Even

during the life time of Panneerselvam, the relationship between Panneerselvam and the Defendant Dhandapani was not cordial and on 14.09.1991,

the Defendant trespassed into the suit property along with henchmen and removed the movables worth Rs. 50,000/- and a complaint was given

and thereafter also the Defendant questioned the title of the Plaintiffs and therefore, the suit was filed for declaration and injunction.

3. The Defendant contested the suit stating that the suit property was purchased by him, out of his own earnings in the year 1961 and it was never

treated as a joint family property and he was enjoying the property as his own and even in the family division, the suit property was not included

and that was also accepted by the other sharers and his brother Panneerselvam or the Plaintiffs never enjoyed the suit property and therefore, the

Plaintiffs are not entitled to the relief prayed for.

4. The Defendant/1st Appellant also contended that the suit property was let out by him to Block Development Officer and thereafter, to Primary

Health Centre and after, they vacated the property, one Kothandapani Raman was put in possession and he was in possession and enjoyment of

the property and the Plaintiffs are not entitled to the relief of declaration.

5. The trial Court held that there was a family arrangement as alleged by the Plaintiffs on 23.02.1970, but in the family arrangement, the suit

property was not included and that was also spoken to by PW1, the brother of the Defendant and the suit property was treated as a separate

property of the Defendant and therefore, the Plaintiffs are not entitled to the decree and dismissed the suit.

6. The Lower Appellate Court set aside the findings of the trial Court and held that the suit property was included in the family arrangement and

that was allotted to the share of Panneerselvam and Panneerselvam was in possession and enjoyment of the property and the documents filed by

the Defendant to prove his possession were created for the purpose of the suit and the Defendant/1st Appellant has not produced any proof for

letting out the property to the Block Development Officer and to the Primary Health Centre or Kothandapani Raman and the receipts alleged to

have been executed by the Primary Health Centre was not properly proved and as the property was included in the family arrangement, dated

23.02.1970 under which the suit property was allotted to the share of

Panneerselvam, the Plaintiffs are entitled to decree and allowed the appeal and decreed the suit.

7. In this second appeal, the following substantial questions of law were framed at the time of admission:

1. Whether the findings of the Lower Appellate Court are opposed to the very evidence adduced on the side of Plaintiffs?

2. Whether the Plaintiffs have discharged the burden cast upon them with regard to the proof of the nature and character of the suit property?

8. Mr. V. Raghavachari, the learned Counsel appearing for the Appellants submitted that the Lower Appellate Court erred in holding that the suit

property was included in the family arrangement, dated 23.02.1970 without referring to the evidence of PW4, the brother of the Defendant/1st

Appellant and was a party to the family arrangement wherein he has stated that the Defendant objected to the inclusion of the suit property for

division and therefore, the suit property was not included in the family arrangement and admittedly, the suit property was purchased in the name of

the Defendant/1st Appellant and when a member of the joint family claims title to the property, which was purchased in his name and that was

disputed by other members stating that the property stands in the name of one of the members does not exclusively belong to that member and it is

not his separate property and it is the property belonging to the joint family, the burden is on him to prove the same and the Plaintiffs have not

discharged their burden and in the absence of any proof that the property also belonged to the joint family, the property, which was purchased in

the name of the Defendant/1st Appellant ought to have been held as a separate property and therefore, the judgment and decree of the Lower

Appellate Court is liable to be set aside.

9. On the other hand, the learned Counsel appearing for the Respondents, Mrs. Chitra Sampath, submitted that the Lower Appellate Court having

regard to Exs.A1 and A2 and the admission of the Defendant, has rightly held that the suit property was stated as the joint family property and was

allotted to the share of Panneerselvam and when the Defendant admitted the family arrangement and in the family arrangement, the properties

situate in Mailam was allotted to the share of Panneerselvam and it was also admitted by the Defendant/ 1st Appellant that he was not allotted any

share in the properties situate in Mailam, the Lower Appellate Court has rightly held that the Plaintiffs have proved their title to the suit property and decreed the suit.

10. She further contended that in this case, even though the property was purchased in the name of the Defendant/1st Appellant, it was not in

dispute that the joint family possessed of sufficient nucleus and therefore, even as per law laid down by the Hon"ble Supreme Court, when the joint

family was found to be in possession of adequate nucleus, then the burden shifts to the co-parcener, who claims that the property purchased in his

name is his separate property and in this case, the Defendant/1st Appellant has not discharged that burden and therefore, the property was treated

as the joint family and was held as such by the parties and was allotted to the share of Panneerselvam in the partition that took place on

23.02.1970. In support of her contention, she relied upon the judgment reported in Arumugham (Dead) By Lrs. and Others Vs. Sundarambal and

Another, .

11. The learned Counsel appearing for the Appellants also relied upon the following judgments, in support of his contention:

1. AIR 2003 3800 (SC) .

2. P.S. Sairam and Another Vs. P.S. Rama Rao Pisey and Others, ; and

3. Makhan Singh (D) by Lrs. Vs. Kulwant Singh, .

12. Heard both sides.

13. It is admitted by the learned Counsel appearing for the Appellants, Mr. V. Raghavachari that admittedly the suit property was purchased in the

name of the Defendant/ 1st Appellant and PW4, who is one of his brother, has deposed that during partition, the Defendant objected to include the

suit property for division among the brothers stating that it is a separate property and the suit property was enjoyed by the Defendant as evident by

Exs.B2 to B17, B19 to B22 and having regard to the law laid down by the Hon"ble Supreme as stated above, a coparcener, who claims certain

property as his separate property, need not prove the same and the burden is upon the other co-parceners, who claimed that the property stands

in the name of one of the co-parceners also belongs to the joint family property and is not his separate property and that was not properly

discharged by the Respondents and considering all these aspects, the trial Court has rightly dismissed the suit and without properly applying the law

laid down by the Hon"ble Supreme Court regarding the burden of proof, the Lower Appellate Court erroneously allowed the appeal.

14. It is admitted that the suit property was purchased in the name of the Defendant/1st Appellant. It is contended by the Respondents that the suit

property though purchased in the name of the Defendant/1st Appellant, was treated as a joint family property and it was included in the family

arrangement and was allotted to the share of the Plaintiffs' predecessor in title. Therefore, we will have to see whether the suit property is the

separate property of the Defendant/1st Appellant or the joint family property of the Defendant/1st Appellant and his brothers.

15. As rightly contended by the learned Counsel appearing for the Appellants that there is No. presumption that the joint family possessed of

sufficient nucleus and the property purchased in the name of one of the co-parceners cannot be presumed to be the joint family property, merely

because of the existence of the joint family and the burden is on the person, who claims that the property belongs to the family property, to prove

that the family possessed of sufficient nucleus and with the aid of the said nucleus, the property was purchased in the name of the one of the co-

parcener. Once that burden is discharged by the other co-parceners, the burden is on the person, who claims exclusive right over the property to

prove that it was purchased, from his own funds.

16. In this case, admittedly, the joint family possessed of various immovable properties and buses, which were divided under the oral partition

deed, dated 23.02.1970. Therefore, it was proved by the Plaintiffs that joint family possessed of sufficient nucleus, which would have contributed

consideration for the purchase of the property in the name of the Defendant. Therefore, when the other coparceners discharged the burden and

proved that the joint family possessed sufficient nucleus, which would have provided the consideration for the purchase of the suit property, the

burden shifts to the Defendant/1st Appellant to prove that it was his separate property and he purchased the property out of his own earnings.

17. In this case, a reading of evidence of the Defendant/1st Appellant would not justify that the Defendant/1st Appellant has discharged that

burden. He has stated that he saved money whenever his father gave him money and out of the savings, the suit property was purchased. In other

words, from and out of the money given by his father, he saved some money and purchased the suit property. Though, he has stated that he was

running a Brick-line business and Rice Mill and out of the income from those, the property was purchased, No. proof was adduced by him.

Therefore, in the absence of any proof filed by the Defendant/1st Appellant to prove that he had independent source of income and from that, the

suit property was purchased by him in his name and having regard to the fact that the joint family possessed of sufficient nucleus and purchased the

suit property, the suit property can be stated to be the property of the joint family.

18. Further, the mother of the Defendant/1st Appellant filed a suit for partition and in that suit, the suit property and the other properties were

included. To be precise, the properties in Mailam were described as Item Nos. 101 to 103 in that suit viz., Ex.A1. It is not in dispute that the suit

property is in the village Palayam and Mailam and that property has been included as Item No. 103 in Ex.A1 and that suit was contested by the

Defendant/1st Defendant and he filed a statement stating specifically that all the properties are the joint family properties of himself and his brothers,

except Item Nos. 66 and 99. Therefore, while contesting the suit filed by the mother, the Defendant/1st Appellant has accepted that the suit

property which was Item No. 103 in that suit was the joint family property.

19. Further, in the family arrangement, dated 23.02.1970, Ex.A21 = Ex.A41 = Ex.B25, it has been stated clearly that the property in Cuddalore

purchased in the name of the Defendant/1st Appellant alone was allotted to the share of the Defendant and the properties in Mailam village were

allotted to the share of Panneerselvam. If really, the suit property which was purchased in the name of the 1st Appellant/Defendant was treated as

a separate property, it would have been stated clearly in the said arrangement, when it was stated specifically that the property in Cuddalore,

which was purchased in the name of Dhandapani has been allotted to Dhandapani. If the suit property had been treated as a separate property, it

would have also been stated so and would have been allotted to the share of Dhandapani, the 1st Appellant/Defendant. Therefore, having regard

to the recitals in Exs.A21 and B25, the Lower Appellate Court has rightly held that the suit property was treated as joint family property and was included in the said family arrangement and it was allotted to the share of Panneerselvam.

20. Further, PW4 the brother of the 1st Appellant/Defendant has only stated that the suit property was not included in the family arrangement and

Panneerselvam wanted the suit property to be allotted to his share and that was objected to by the 1st Appellant/Defendant. This was taken

advantage of by the learned Counsel appearing for the Appellants to contend that one of the brothers, has admitted that the suit property was not

included in the partition. According to me, having regard to the admission of the 1st Appellant/Defendant in the earlier suit filed by his mother,

wherein he has admitted that the suit property also belonged to the joint family and all the properties in Mailam village was allotted to

Panneerselvam as per the family arrangement and the joint family was possessed of sufficient nucleus, which would have provided consideration for

the purchase of the properties in the name of one of the co-parcener and the Appellant/Defendant failed to prove that he had sufficient means to

pay the consideration for the purchase of the suit property, the Lower Appellate Court has rightly held that the suit property was treated as a joint

family property and the Defendant/1st Appellant has failed to discharge his burden and the property was included in the share of Panneerselvam

and after him, the Plaintiffs enjoyed the property. The Lower Appellate Court has also rightly rejected the exhibits filed by the Defendant and has

given concrete reason for rejecting those exhibits and hence, I do not see any reasons to interfere with the order of the Lower Appellate Court.

Hence, the finding of the Lower Appellate Court is not against the evidence and the Lower Appellate Court rightly applied the law regarding the

burden of proof and the Plaintiff/Respondent proved that the joint family possessed of sufficient nucleus and the Defendant/1st Appellant failed to

discharge the burden and both the substantial questions of law are answered against the Appellants.

21. In the result, the second appeal is dismissed and the judgment and decree of the Lower Appellate Court is confirmed. No. costs.