
(2011) 02 MAD CK 0284
In the Madras High Court
Case No : S.A. No. 523 of 1993

Govinda Naidu (died) and Others

APPELLANT

Vs

Krishnan and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0284

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

Bench : Single Bench

Advocate : S.V. Jayaraman for P. Devadas and Tamizh Selvi, for the Appellant; N.R. Anantha Ramakrishnan, for Respondents 2 to 5 and A. Madhumathi, for Respondents 6 to 10, for the Respondent

Final Decision : Allowed

Judgement

1. The Plaintiff in O.S. No. 332 of 1983 is the Appellant in the Second Appeal.
2. The suit was filed by the Appellant for declaration that he is the absolute owner of the suit property and for injunction. The case of the Appellant was that the suit properties and other properties belonged to him and his brother Somiah and 40 years prior to the filing of the suit, they orally partitioned their properties and were enjoying the properties allotted to them under the said oral partition and thereafter, his brother Somiah sold the properties which were allotted to him to the Plaintiff under a registered sale deed dated 3.7.1947 for valuable consideration and his brother Somiah was having only a house site with him after the sale of the properties to the Plaintiff and the Plaintiff became the absolute owner of the properties and he is enjoying the same. The 1st Defendant is the widow of his brother Somiah and as she issued a notice claiming her share in the suit properties and attempting to interfere with the Plaintiff's peaceful possession and enjoyment of the suit properties the suit was filed for declaration and injunction.
3. The 1st Defendant filed the written statement contesting that there was no

oral partition between the Plaintiff and his brother Somiah and in the year 1946 disputes and misunderstanding arose between her and her husband Somiah and the 1st Defendant was thrown out of the house and to defeat the rights of the 1st Defendant a fraudulent deed was executed in favour of the Plaintiff which was never acted upon and even after the execution of the said deed the Plaintiff and his brother continued to enjoy the properties as co-owners and thereafter the 1st Defendant and Somiah reconciled and started living together and after the death of Somiah also the Plaintiff and the 1st Defendant were enjoying the properties in common and the pattas also stand in the name of both the Plaintiff and the 1st Defendant and for some time they were enjoying certain properties exclusively by mutual arrangement and as the Plaintiff did not effect the partition, the 1st Defendant issued a notice and therefore the properties are the joint family properties belonging to the Plaintiff and the 1st Defendant and therefore the Plaintiff is not entitled to declaration as prayed for.

4. The trial Judge accepted the case of the Plaintiff and decreed the suit and the first appellate Court reversed the findings and held that the sale deed Ex.A1 was only a fictitious one and was not acted upon and the Plaintiff did not prove the oral partition and the pattas and kist receipts would prove that the properties were enjoyed by the Plaintiff and 1st Defendant in common and therefore the Plaintiff is only entitled to half share in the suit properties and granted a decree in respect of half share in favour of the Plaintiff and directed the Plaintiff to file a suit for partition and also declined to grant of injunction. Hence, the Second Appeal is filed.

5. The following substantial questions of law were framed at the time of admission of the Second Appeal by this Court:

- (1) Whether or not the finding of the first appellate Court not based on the legal evidence is vitiated by illegalities ?
- (2) Whether or not the first appellate Court committed illegality in giving a finding contrary to his own observation ?
- (3) Whether or not the first appellate Court committed illegality in arriving the title only on the basis of patta despite the registered sale deed under Ex.A1. ?

6. At the time of hearing the arguments of the Second Appeal the substantial questions of law were reframed as follows and the learned Counsel appearing for the parties submitted their arguments in respect of the following substantial questions of law:

- (1) Whether or not the first appellate Court committed illegality in arriving the title only on the basis of patta despite the registered sale deed under Ex.A1. ?
- (2) Whether the lower appellate Court has committed an error in holding that Ex.A1 is a fictitious document and was not acted upon ?
- (3) Whether the Respondents have proved reunion of the joint family after

Ex.A1 ?

7. Mr. S.V. Jayaraman, the learned Senior Counsel appearing for the Appellants submitted that it is the specific case of the Appellant that 40 years prior to the filing of the suit there was a oral partition between the Appellant/Plaintiff and his brother Somiah and the same was evidenced by the recitals in Ex.A1 and under Ex.A1 the properties which were allotted to the share of Somiah were sold by him to the Plaintiff and therefore it cannot be held that there was no oral partition between the brothers and the sale deed Ex.A1 is a fictitious one. He further submitted that the factum of oral partition was evidenced by the recitals in Ex.A1 and once there was a oral partition there is a severance of status among the members of the joint family and when the Respondents pleaded that there was a reunion, it is for them to prove the same by convincing evidence and merely because the pattas, chittas and kist receipts are in the joint names of both parties, a reunion cannot be presumed under law and relied upon the judgment reported in Bhagwan Dayal Vs. Mst. Reoti Devi, .

8. On the other hand, the learned Counsel for the Respondents submitted that even after the sale deed Ex.A1 the properties were enjoyed in common by the Appellant/ Plaintiff and the 1st Defendant and that is evidenced by Exs. A3, A4 the pattas filed by the Plaintiff and if really Somiah had sold the properties in favour of the Plaintiff, there is no need to include the name of the 1st Defendant in the pattas and the various kist receipts Exs.B1 and B2 would also prove that the properties were enjoyed in common by the Plaintiff and the first Defendant and therefore Ex.A1 has been rightly held to be a fictitious document and it was not acted upon and therefore the Plaintiff is not entitled to the relief of declaration.

9. The learned Counsel for the Respondents also relied upon the judgment reported in AIR 1977 Mad 83 (Manickathammal and Ors. v. Nallasami Pillai and Ors.) to the effect that the recitals in the document should not be presumed to be true if a genuine doubt is raised and having regard to the circumstances and the evidence let in if it is proved that the recitals cannot be true, the Court should not rely upon the recitals in the document and considering the same, the lower appellate Court rightly held that Ex.A1 was not acted upon and the Plaintiff has not proved the oral partition and the properties were enjoyed in common by the Plaintiff and the 1st Defendant.

10. Heard both side counsel.

11. It is the specific case of the Appellants that the properties were the joint family properties of Plaintiff and his brother Somiah and there was a oral partition and thereafter his brother Somiah sold the properties which were allotted to him under the partition to the Plaintiff and since then the Plaintiff is enjoying all the properties as his exclusive properties. In Ex.A1 it has been stated the properties were ancestral properties and were allotted to the share of Somiah and that was sold to the Plaintiff. Therefore, a reading of Ex.A1 would

make it clear that there was a oral partition between the Plaintiff and his brother and in the oral partition some properties were allotted to Somiah and the same was conveyed to the Plaintiff. Nevertheless, the pattas and chittas in respect of the suit properties stand in the name of the Plaintiff and the 1st Defendant. The contention of the learned Counsel for the Respondents is that if under Ex.A1 the Plaintiff had become the absolute owner of the property the pattas will not contain the name of the 1st Defendant and the fact that the 1st Defendant is also recognized as a joint pattadhar by the Revenue Authorities along with the Plaintiff and the 1st Defendant has also paid kist receipts and these would prove that the properties could not have been enjoyed by the Plaintiff as a exclusive owner and even after the alleged sale deed Ex.A1 the properties are enjoyed in common by both parties. Therefore, we will have to see whether there was a oral partition between the brothers and thereafter under Ex.A1 Somiah had sold his share of the properties to the Plaintiff.

12. It is stated by the 1st Defendant in the written statement that there was misunderstanding between her and her husband and she was driven away from the house and apprehending action may be taken by the 1st Defendant and to defeat her rights, Ex.A1 was executed and the document was not acted upon. In Ex.A1 it has been stated that there was a oral partition between the brothers and the properties allotted to Somiah was sold by the brother Somiah to the Plaintiff. On the other hand, the 1st Defendant has come forward with the case that to defeat her maintenance rights Ex.A1 was executed and it was not acted upon and later she joined with her husband and both the brothers were enjoying the properties in common. Unfortunately, except the evidence of DW1 the 1st Defendant, no evidence has been let in by the 1st Defendant to prove that she was living separately from her husband and apprehending action by her, the document was executed by Somiah. Ex.A1 document was executed in the year 1947 and at that time the 1st Defendant had only a right of maintenance against her husband and she could not have claimed any right in the properties and it is not her case that she was taking steps to file a suit for maintenance and to defeat that the document was sought to be executed by her husband. Therefore, in such circumstances, there was no necessity for Somiah to execute a sale deed in favour of the Plaintiff to defeat her claim. The case of the Plaintiff is that there was a oral partition between the brothers and Somiah sold his share of the properties to the Plaintiff under Ex.A1 and the case of the Appellant is more probable than the case put forward by the 1st Defendant. Further, as stated supra, the 1st Defendant did not also prove that she was living separately and during that period the document Ex.A1 was executed and later she rejoined with her husband. In Ex.A1 also the earlier partition was mentioned and that also supported the case of the Plaintiff. No doubt, the Division Bench of this Court, in the judgment reported in AIR 1977 Mad 83 (Manickathammal and Ors. v. Nallasami Pillai and Ors.), has held that the Courts ought not to accept the recitals in the document as genuine if the circumstances are otherwise. There is no doubt about the proposition of law laid down in that judgment and as held in

the same judgment while deciding a case the facts appearing on each side have to be borne in mind before adopting, as a matter of course, the rule that the contents of a document which has been admitted should be taken as true and proved conclusive. Only when a genuine doubt is raised about the truth of the recital, the Court has to make a further probe into the truth or falsity of the recital. As stated supra, in the absence of any proof of the case alleged by the 1st Defendant that she was driven away by her husband and to defeat her rights, Ex.A1 was executed and later she rejoined with her husband, the case of the Plaintiff is more probable and as per Ex.A1 the oral partition between the brothers was confirmed and Somiah sold his share of the properties to the Plaintiff. Therefore, the Plaintiff became the absolute owner of the suit properties.

13. It is contended by the learned Counsel for the Respondents that there cannot be any explanation by the Plaintiff for the joint pattas in the name of the 1st Defendant along with the Plaintiff and if the Plaintiff had become the absolute owner of the entire property, there is no need to mention the name of the 1st Defendant in the pattas and the 1st Defendant would not have paid kist in respect of the properties.

14. Mr. S.V. Jayaraman, the learned Senior Counsel appearing for the Appellants submitted that once there was a division in the joint family the burden is on the other side to prove that there was a reunion and merely because the revenue records stand in the name of both parties a reunion cannot be presumed. The learned Senior Counsel further submitted that it is not the case of the Plaintiff that the 1st Defendant was living away from her husband and she later joined with her husband. It is the case of the Plaintiff that the properties were the ancestral properties of the Plaintiff and Somiah and there was a oral partition and later under Ex.A1 his brother sold his share of property to the Plaintiff. Therefore, in the absence of proof of any misunderstanding between the 1st Defendant and her husband it can be presumed that as a member of the family the 1st Defendant would have also been residing with her husband and that would not prove that she has got any right over the property. In the judgment reported in Bhagwan Dayal Vs. Mst. Reoti Devi, , the Hon"ble Supreme Court has stated in detail about the law on reunion by the members of the joint family after partition as follows:

It is also quite clear that if a Hindu family separates, the family or members of it may agree to reunite as a Hindu family, but such a reuniting is obvious reasons, which would apply in cases under the law of the Mitakshara, very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct

must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion.

Therefore, once there was a partition between the Plaintiff and his brother Somiah the burden is on the 1st Defendant to prove that there was a reunion and except the oral evidence of DW1 no other evidence has been let in by her to prove the reunion. Further, the Hon"ble Supreme Court relied upon the Division Bench judgment of our High Court reported in Mukku Venkataramayya Vs. Mukku Tatayya alias Vasudevudu and Others, and held that mere jointness in residence, food or worship or a mere trading together will not prove the reunion. Therefore, merely because the revenue records also stand in the name of the 1st Defendant, it cannot be considered as a proof of reunion among the members of the joint family when once partition was proved. As I have held that there a partition between the Plaintiff and his brother Somiah which was also mentioned in Ex.A1, after Ex.A1 the Plaintiff became the absolute owner of the property and therefore he is entitled to the relief as prayed for. I further hold that Ex.A1 is a genuine one and was acted upon and the 1st Defendant cannot claim any right on the basis of the entries in the revenue records in respect of the suit properties. Hence, the substantial question of law No. 1 is answered against the 1st Defendant and the 1st Defendant will not get any title to the suit property on the basis of patta and the substantial questions of law Nos. 2 and 3 are answered in favour of the Appellant and Ex.A1 was acted upon and the Appellant became the absolute owner of the suit properties.

15. Hence, the judgment and Decree of the first appellate Court are set aside and the judgment and Decree of the trial Court are confirmed and the Second Appeal is allowed. No costs.