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Jayakumar Vs. Nithyanandam

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Court : Chennai

Decided On : Jun-20-2013

Judge : R.S.Ramanathan

Appellant : Jayakumar

Respondent : Nithyanandam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

20. 06.2013 C O R A M THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN A.S.No.720 of 1994 and Cross Objection No.133 of 1995 A.S.No.720 of 1994 1.Jayakumar 2.Ravichandran ... Appellants Vs. 1.Nithyanandam 2.Rajendran 3.Seran Senguttuvan 4.Thillaivana Mudaliar 5.Meenatchi Ammal 6.Sivagami 7.Jothilakshmi 8.Jayalalitha ... Respondents This appeal suit filed under Section 96 of Civil Procedure Code against the Judgment and decree of the learned Additional Subordinate Judge, Cuddalore made in O.S.No.62 of 1989 dated 30.04.1990. For Appellants : Ms.Chitra Maragatham for M/s.T.R.Rajaraman For Respondent : No appearance Cross Objection No.133 of 1995 1.Thillaivana Mudaliar 2.Meenatchi Ammal ... Cross Objectors -Vs- 1.Jayakumar 2.Ravichandran 3.Nityanandam 4.Rajendran 5.Seran Senguttuvan 6.Sivakami 7.Jothilakshmi 8.Jayalalitha ... Respondents Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code against the Judgment and decree of the learned Additional Subordinate Judge, Cuddalore made in O.S.No.62 of 1989 dated

30.04.1990. For Cross Objectors : No appearance For Respondents : Ms.Chitra Maragatham for M/s.T.R.Rajaraman

JUDGMENT

The plaintiffs in O.S.No.62/1989 before the Sub Court, Cuddalore, are the appellants herein. The suit was filed for partition of plaintiffs'/appellants 2/5th share in the suit properties and the suit was partially decreed and a preliminary decree was passed in respect of item No.3 and the claim for partition in respect of item Nos.1 and 2 was negatived. Aggrieved by the dismissal of the suit in respect of item Nos.1 and 2, the present appeal was filed by the plaintiffs.

2. The case of the plaintiffs as seen from the plaint, was, as follows: The first defendant is the father and plaintiffs and defendants 2 and 3 are his sons. Items 1 to 3 are the joint family properties of the plaintiffs/defendants 1 to 3. The first defendant had two daughters, namely Jothilakshmi and Jayalalitha and the first plaintiff gave six sovereigns of gold jewels belonging to his wife at the time of marriage of his sister Jothilakshmi to his father and when the same was demanded, dispute arose between him and the father and the second defendant married from another caste and therefore in the year 1987, the plaintiffs left the family and started living separately. The first defendant sold item 1 and 2 to defendants 4 and 5 under two documents dated 24.04.1988 and 27.04.1988 and the first defendant had no right to sell the plaintiffs 2/5th share in the items 1 and 2 and the third item was purchased out of the sale proceeds of items 1 and 2 and the first defendant had no independent income and therefore all the properties are joint family properties of plaintiffs and defendants 1 to 3 and therefore, the plaintiffs are entitled to 2/5th share in the suit property.

3. The 4th defendant filed a Written Statement and the same was adopted by the defendants 1 to 3 and 5. In the written statement filed by the 4th defendant, it was stated that items 1 and 2 were the separate properties of the first defendant and originally those properties were purchased by Arunachala Mudaliar, the grandfather of the plaintiffs and father of the first defendant and he purchased the same under a registered Sale Deed dated 07.06.1952 and Arunachala Mudaliar purchased a site and he constructed a thatched house and on 05.01.1954, the

said Arunachala Mudaliar executed a Will bequeathing items 1 and 2 in favour of the first defendant and thereafter he died in the year 1955 and therefore the first defendant got items 1 and 2 under the Will of Arunachala Mudaliar and therefore they were his separate properties and these properties cannot be characterized as ancestral properties in the hands of the first defendant. Therefore, the plaintiffs cannot claim any right over those properties. Further, the first defendant was running a cycle shop, sound service and from the income from those business, he purchased the third item. In respect of item No.2, the first defendant executed two mortgage deeds in favour of 5th defendant and received Rs.10,000/- and Rs.13,500/- and also received a sum of Rs.6,000/- from the 4th defendant and executed a promissory note and to discharge the loans payable to 4th and 5th defendants, he sold items 1 and 2 to defendants 4 and 5 and therefore, the sales are binding upon the plaintiffs and therefore the plaintiffs are not entitled to claim any partition.

4. The 4th defendant also filed an additional written statement which was also adopted by the defendants 1 to 3 and the 5th defendant and stated that even assuming that the properties in item Nos.1 and 2 were ancestral properties as contended by the plaintiffs, those properties were sold in discharge of the loans payable to defendants 4 and 5 and therefore, the sales are valid in law and are binding on the plaintiffs and therefore the plaintiffs are not entitled to the relief of partition.

5. The first defendant filed second additional written statement stating that the 3rd item also belonged to him and the same was purchased from the sale consideration of items 1 and 2 and he got items 1 and 2 under the Will executed by his father and he executed mortgages and pro-notes in favour of D4 and D5 and therefore the sales in favour of the defendant Nos.4 and 5 are binding on the plaintiffs and the item No.3 in the suit schedule properties was purchased from his own income and therefore the plaintiffs are not entitled to claim any share.

6. On the basis of the pleadings, the following issues were framed. 1) Whether the Will is true and valid?. 2) Whether the plaintiffs are entitled to claim 2/5th share in the suit properties?. 3) Whether the plaintiffs are entitled to mesne profits?. 4)

Whether defendants 2 and 3 are not necessary parties?. The following additional issues were framed:

1. Whether the 3rd item of property is the joint family property of plaintiffs and defendants 1 to 3?. 2) Whether the plaintiffs are entitled to claim any share in the third item of property?. Further additional issues were framed as follows:

1. Whether the sales by first defendant are true and binding on the plaintiffs?. 2) Whether the debts incurred by the first defendant are true and are binding on the plaintiffs on the ground of pious obligation?.

7. The trial court held that the Will was not true and valid. The trial court further held that the sale of items 1 and 2 by the first defendant in favour of defendants 4 and 5 are valid and for valuable consideration and answered the second additional issue No.1 in favour of the first defendant. The trial court also held that item No.3 was purchased from the sale proceeds of item Nos.1 and 2 and therefore, the third item was also to be construed as joint family property. As item Nos.1 and 2 are construed as joint family properties, the trial court also held that the defendants 2 and 3 are necessary parties and the plaintiffs are entitled to claim 2/5th share only in respect of item No.3. Aggrieved over the judgment denying the reliefs in respect of item Nos.1 and 2, the present appeal was filed by the plaintiffs.

8. The defendants 4 and 5 filed Cross Objection in Cross Objection No.133/1995 against the finding regarding the Will.

9. It is submitted by the learned counsel for the appellants that the trial court having held that items 1 and 2 are the joint family properties of plaintiffs and defendants 1 to 3, ought to have granted decree in respect of item Nos.1 and 2 and the sale by the first defendant in favour of defendants 4 and 5 of items 1 and 2, cannot bind the shares of the plaintiffs and therefore, the trial court ought to have decreed the suit in respect of item Nos.1 and 2 also. Learned counsel for the appellants further submitted that, even according to the defendants 4 and 5, the mortgages and pro-note were for a sum of Rs.10,000/-, Rs.13,500/- and Rs.6,000/- and for that purpose item Nos.1 and 2, which were worth more than Rs.80,000/-, need not have been sold and it was stated in the pro-note (Ex.B8)

that the pro-note was executed for the marriage expenses of the daughter of the first defendant and the daughter of the first defendant was married only in the year 1988 and at the time of Ex.B8, the daughter of first defendant was not married and therefore, the pro-note was not executed for family necessities and unless the kartha of the joint family sells the property to discharge the antecedent debts which are not avyavaharika or for family necessities, those sales will not bind the sons and therefore, having regard to the loan incurred by the first defendant and the consideration for which items 1 and 2 were sold, the sale in favour of the defendants 4 and 5 cannot be construed as for family necessities and to discharge the antecedent debts and therefore those sales will not bind the shares of plaintiffs and therefore, the trial court ought to have decreed the suit in respect of item Nos.1 and 2 also.

10. The Cross-Objection was filed only against the finding regarding the Will.

11. On the basis of the arguments of the learned counsel for the appellants, the following point for consideration arises in this appeal. ". Whether the sales in favour of defendants 4 and 5 of item items 1 and 2 are for family necessities and to discharge the antecedent debts and whether those sales were binding on the appellants?.".

12. It is seen from Ex.B5 that the first defendant executed a mortgage in favour of the 5th defendant and received a sum of Rs.10,000/-. It is also seen from Ex.B7 that the first defendant has also executed another mortgage in favour of the 5th respondent and received a sum of Rs.13,500/-. It is not the case of the appellants that there was no necessity for the first defendant to create mortgages in respect of items 1 and 2 and those debts were incurred for some immoral purpose and therefore the sales in favour of the defendants 4 and 5 to discharge those loans will not bind the appellants. It is admitted that the family possessed of the two items and according to the appellants, the first defendant was not having any income. Therefore, to run the family, the first defendant incurred some debts and for that purpose he executed mortgage deeds under Exs.B5 and B7 in favour of the 5th defendant and when those debts were not avyavaharika and properties were sold to discharge those debts, those sales are binding on the family

members. The trial court relied upon the judgment reported in (1983) 1 M.L.J.

4 in a case between Prasad and other vs. V.Govindasami Mudaliar and Others and held that the sales were for valid consideration to discharge the antecedent loans, which were not avyavaharika and therefore under the theory of pious obligation, the sons are bound by the sales. The trial court also relied upon the judgment reported in 1978 (91) Law Weekly, page 174 in a case between Venkatesh Dhonddev Desh Pande vs. Sou.Kusum Dattatraya Kulkarni and others. I am in complete agreement with the finding of the trial court regarding the sale of items 1 and 2 in favour of defendant Nos.4 and 5 by the first defendant and I also hold that the sales were effected to discharge the antecedent debts, which were not avyavaharika and the sales are binding upon the appellants under the theory of pious obligation and therefore, the appellants cannot claim any share in item Nos.1 and 2 of the suit properties. Therefore, the point for consideration is answered against the appellants.

13. As I held that the appellants are not entitled to challenge the sale deeds and the sales are binding upon the appellants, there is no need to give any finding regarding the Will as raised in the Cross-Objection. Hence there is no need to give any finding on the Cross-Objection and the Cross-Objection is closed.

14. As the appellants are not entitled to claim any share in item Nos.1 and 2 of the suit properties, the appeal is dismissed. The judgment and decree of the trial court made in O.S.No.62 of 1989 dated 30.04.1990 are confirmed. However, there shall be no order as to costs. 20.06.2013 Index : No Internet :No asr To The Additional Subordinate Judge, Cuddalore R.S.RAMANATHAN, J.

asr A.S.No.720 of 1994 Dated :

20. 06.2013

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