

M. Krishnan Vs. Ramaswami and ors.

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SooperKanoon Citation : sooperkanoon.com/800740

Court : Chennai

Decided On : Jan-03-1984

Reported in : (1984)2MLJ133

Appellant : M. Krishnan

Respondent : Ramaswami and ors.

Advocate for Pet/Ap. : Mr. S. Jagadeesan

Judgement :

ORDER

S. Natarajan, J.

1. The unsuccessful plaintiff in the courts below is the appellant. The suit was for obtaining the reliefs of declaration of title and injunction.

2. The brief facts which require to be noticed are as under: The appellant and respondents 1 to 5 are brothers and the sixth respondent is their sister. All of them are the issues of the deceased Mari Mudaliar and the seventh respondent herein. Mari Mudaliar purchased the suit property of an extent of 4.79 acres under Exhibit A. 2 dated 18.4.51. He executed an unregistered will Exhibit A. 14 on 15.3.1965 bequeathing the suit property in favour of the appellant herein. Mari Mudaliar died in 1970, and after his death, the appellant claimed exclusive title to the suit property on the strength of the will.

3. Respondents 1 to 3 did not concede the genuineness of the will and the appellant's claim of exclusive title over the suit property. Respondents 4, 7 remained ex parte.

4. The principal defence of respondents 1 to 3 was that the suit property had been purchased from out of the income derived from the joint family properties and as such, the suit property constituted an item of joint family property and consequently the father Mari Mudaliar had no right to make the property the subject-matter of a bequest under the will. They also raised the defence that the will itself was not genuine.

5. The trial Court and the lower appellate Court have held that the will is a genuine one. Even so, they have held that the appellant is not entitled to the reliefs asked for by him in the suit because the suit property was joint family property, and not the self-acquired property of Mari Mudaliar as contended by the appellant. Consequently, they have held that the appellant was not entitled to the reliefs asked for by him in the suit. It is as against the concurrent findings of the courts below, the appellant has preferred this appeal.

6. The principal contention of Mr. S. Jagadeesan, learned Counsel for the appellant is that the Courts below have wrongly cast the onus of proof on the appellant by calling upon him to show that the property constituted the self-acquired property of Mari Mudaliar and that the will though valid would not confer any benefit on the appellant, that is, even with regard to the share of Mari Mudaliar.

7. The evidence in this case discloses that Mari Mudaliar originally owned lands in Mettur and those lands were acquired by the Government for the construction of the Mettur Dam. Mari Mudaliar had been paid compensation for the lands. Some evidence was sought to be adduced to prove that Mari Mudaliar was offered substitute lands as compensation and not cash payment. But the question whether alternative land was given or cash payment made is not an important issue in this case. All that has to be noticed is that Mari Mudaliar originally owned some lands and when those lands were taken away by the Government he was given compensation in the shape of cash or lands.

8. Under EX.A. 2 dated 18.4.51 Mari Mudaliar had purchased the suit land from one Venkatammal for Rs. 2,500/-. The question for consideration is whether the land was purchased by Mari Mudaliar from out of the joint family funds. According to Mr. Jagadeesan, the burden of proof is on the respondents and it is for them to show that the land was purchased from out of joint family funds. He would say that the respondents have to prove that the joint family owned properties, that the suit properties were capable of generating income and the income so generated was sufficient to leave a surplus in the hands of Mari Mudaliar after meeting the expenses of the joint family for purchasing the suit property. It is the contention of the learned Counsel that the respondents have not at all discharged the onus of proof cast upon them by law. But nevertheless the courts below have rendered' a finding in favour of the respondents because of the wrong approach made by them, namely, placing the burden on the appellant to show that the property was purchased from out of the self-acquired funds of Mari Mudaliar. In support of his argument.- Mr. Jagadeesan cites the ratio in *Kandasamy Chettiar v. Gopal Chettiar* : (1975)2MLJ184) where it was observed that 'if a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same but also establish the existence of such joint family funds or nucleus'. It was further observed that 'even if the joint family nucleus is so established, the presumption that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus'. The next decision cited by the learned Counsel for the appellant is *Pattusami Padayachi v. Mullaiammal* : (1976)2MLJ225 wherein it was observed as follows:

It has now become almost axiomatic that properties purchased by one or the other of the members of a coparcenary or joint family when the family is joint cannot as a matter of course be treated as joint family property. The coparcener who challenges such title in the member and pleads that they should also be brought to the hotch-pot, ought to establish by cogent and mature evidence that there was enough surplus income which was available in the joint family and which positively

could be the foundation for such annexures made by one or the other members of the joint family.

9. Yet another decision cited by the learned Counsel for the appellant is the one in *Ranganayaki Ammal v. Srinivasan* : (1978)1MLJ56). The relevant passage occurs in paragraph 5, and the ratio laid down is almost the same as the ones referred to above,

10. As a general proposition of law, the argument put forward by Mr. Jagadeesan is an incontrovertible one. But the application of the principle of law to a particular case will have also to be done with reference to the facts of each case. In the case on hand, it is not in dispute that the joint family was originally owning lands in Mettur. Those lands were acquired by the Government and compensation was paid to Mari Mudaliar, either in the form of cash or lands. Therefore, this is a case where the joint family was possessed of property at the time when the suit land was purchased. Though Mari Mudaliar had purchased the property in his individual name, the fact remains that he was the manager of a joint family at the time of the purchase. Therefore, this is not a case where the property has been purchased by a junior member of a Hindu joint family in his name or by a female member of a joint family in her names. That is an important fact which has to be taken note of. Two things emerge from the evidence, namely, that Mari Mudaliar was the head of the family and second, the family was possessed of certain items of properties. Obviously, -those properties must have been yielding income as otherwise, it would not have been possible for Mari Mudaliar to maintain a family consisting of seven or eight members. Therefore, even though the respondents have not proved what was the income derived from the joint family property and what amount would have remained as surplus after the expenses of the joint family had been met, there is a high degree of possibility that there must have been some surplus and that the properties must have been yielding adequate income for supporting all the members of the family. In such circumstances, there is certainly scope for inferring that there should have been a certain amount of surplus and from out of the surplus, the suit property might have been purchased.

11. In this connection, it will be apposite to refer to two other decisions where the facts are more akin to the case on hand than the decisions cited by Mr. Jagadeesan. *M. Bande pa Desai v. Desai Mallappa* (1962) 2 M.L.J. 154 is a case where an item of property had been purchased by the manager of a joint family in his personal name. The bone of contention in the case was that the item of property was also a joint family property. Naturally the question arose regarding the burden of proof and the degree of proof required to establish the claim that the property was joint family property. The Supreme Court held as follows:

The onus of proof must in such a case be placed on the manager and not on his coparceners.

It was further observed that 'where a manager claims that any immovable property has been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by dear and satisfactory evidence his plea that the purchase money proceeded from his separate fund'. The above ratio has been applied by a Division Bench of this Court in *Ramiah v. Pechi Ammal* 1977 T.L.N.J. 7 and the Division Bench held that if the properties are acquired by the manager of a Hindu joint family in his name and such acquisition had been made in the course of his management as manager of the joint family, then the burden shifts on to him to establish that such properties are his own and they are not joint family properties. The ratio contained in the above two decisions will directly apply to the facts of the instant case.

12. While on the question of proof it has also to be noticed that the appellant did not have a consistent case when he tried to plead that it was the self-acquired property of his father. He examined his mother, the seventh respondent herein, as P.W. 5 and she tried to make it appear that she sold her jewels and gave the money to Mari Mudaliar and from out of that money, he purchased the property in his name. It was therefore sought to be made out that the property belonged to the seventh respondent but purchased benami by her in her husband's name. This plea has been rightly rejected by the courts below. Apart from saying that the property was the self-acquired property of his father, the appellant has not been able to show that his father was possessed of any separate funds at all.

Therefore,- while assessing the merits of the case put forward by both the sides, the Courts below have taken into account the positive materials on the side of the respondents and the total lack of evidence on the side of the appellant and held that the property was purchased from the joint family funds. The claim that the courts below have wrongly cast the onus of proof on the appellant is not correct. Issue No. 2 framed by the trial Court and point No. 1 framed by the lower appellate Court have cast the onus of proof squarely on the respondents. In any event, when the entire evidence was before the Court, the question of strict adherence to casting the onus of proof on a particular party gets relegated to the background. Thus on a careful consideration of the materials on record, I find that the Courts below have not committed any error either in the appreciation of evidence or in the application of the legal principles and they have rightly held that the appellant is not entitled to the suit property on the basis of Exhibit A.14.

13. That leaves out for consideration the second contention of Mr. Jagadeesan. In view of the finding of the courts below that Exhibit A. 14 is a genuine will, it follows that that even if the entire bequest cannot stand, the bequest in so far as it related to the share of the testator is concerned can be sustained in favour of the appellant. Therefore, there can be a declaration of title to the limited extent, in that, in addition to his own share in the property, the appellant will also be entitled to the share of his father in the suit property. On the basis of this declaration, the appellant has to work out his rights in a separate suit for partition.

14. Inasmuch as it has been held that the appellant cannot claim title to the entirety of the suit property, he cannot also be granted an injunction against the co-owners. In the result, the judgments and decrees of the Courts below will stand confirmed except in so far as the declaration of the limited title of the appellant is concerned. The second appeal will stand allowed to the extent indicated above and in other respects it is dismissed. The parties will bear their respective costs in this appeal.