

C. Devaraj and anr. Vs. C. Radhakrishnan

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Court : Chennai

Decided On : Nov-27-2001

Reported in : (2002)1MLJ463

Judge : A. Ramamurthi, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27 and 27(1)

Appeal No. : S.A. No. 1410 of 1989

Appellant : C. Devaraj and anr.

Respondent : C. Radhakrishnan

Advocate for Def. : S. Venkateswaran, Adv.

Advocate for Pet/Ap. : C.S. Krishnamoorthy, Adv.

Disposition : S.A. dismissed

Judgement :

ORDER

1. The unsuccessful defendants in both the Courts below are appellants.
2. The case in brief is as follows: - The plaintiff filed a suit for declaration and permanent injunction, in the alternative for recovery of possession. The schedule mentioned properties belong to the plaintiff having purchased the same under two

sale deeds dated 5.5.1961 and 10.12.1975 for valid consideration. The plaintiff has been in possession and enjoyment of the suit properties from the dates of sale and he continues to be in possession. The plaintiff has been working as a Professor in a College at Cuddalore since 1968 and before that, he was working as a Research Assistant in State Fisheries in Muthupettai. He has been earning decently and he has been living with his family in Cuddalore. With regard to the purchase made in 1975, the sale consideration was provided by the plaintiff from out of his separate earnings. With regard to the purchase made in 1961, his grand father purchased the properties in his name out of love and affection for his benefit. The plaintiff is the absolute owner of the properties. The defendants are his younger brothers. Their father Chandrasekara Nainar died in 1974 and the family was possessed of some properties in Arasadikuppam and they are all dry lands not yielding any appreciable income. The negligible income was barely sufficient for the maintenance of the family. After the death of their father, the defendants have been living in village and they are in possession and enjoyment of the properties. As the plaintiff has been employed in Cuddalore and he had no occasion to go to the village to supervise the properties, he has left the entire thing in the hands of the brothers, who got the income and appropriated the same. The second defendant had executed a rental agreement in respect of a portion of the suit property on 6.5.1980. There was misunderstanding between the plaintiff and the defendants for the last two years and they have been not properly managing the properties. Taking advantage of the absence of the plaintiff from the village, they threatened to trespass into the properties and cause serious loss to the plaintiff and hence the suit.

3. The defendants resisted the suit and denied the averments in the plaint. The plaintiff is not the exclusive owner of the suit properties. The relationship of the parties is admitted. It is true that Chandrasekara Nainar died in 1974. They are members of joint family and the plaintiff was the manager of the same after the death of their father. It is not correct to state that items 1 to 3 were purchased for the benefit of the plaintiff. The plaintiff cannot claim exclusive title to any item. As the defendants were minors, the properties were purchased in the name of the plaintiff. They were also thrown into the common hotchpot and treated as joint family properties and blended with other items of the properties. The family owns

about 2 acres of properties in Arasadikuppam. Further, the family owns a house in which the plaintiff lives at Pudupalayam, Ramadoss Naidu Street, Cuddalore. The income from those lands has been utilised for purchase of items 1 to 3 also. The joint family is possessed of sufficient and productive ancestral nucleus to purchase the properties in 1975, The rental deed was not executed by the second defendant in the manner as stated in the plaint. It will not confer any title in his favour. The defendants have leased out items 1 to 3 in favour of one Sivaprakasam under a registered rental deed to run a theatre. The joint family had installed the electric motor in item 2 of the property and the service connection stands in the name of the plaintiff. The defendants alone are paying the electricity consumption charges. The plaintiff had set up his wife to file a suit in O.S. No. 60 of 1983. Even today the defendants are in possession of all items and the plaintiff is not entitled to the relief of permanent injunction.

4. The trial Court framed 5 issues and on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-49 were marked and on the side of the defendants, D.W.1 was examined and Exs.B-1 to B-5 were marked. The trial Court decreed the suit for declaration and recovery of possession and also future mesne profits. Aggrieved against this, the defendants preferred A.S. No. 191 of 1988 on the file of District Court, Cuddalore and the teamed Judge after hearing the parties, dismissed the appeal and aggrieved against this, the present second appeal is filed.

5. At the time of admission of this second appeal, this Court framed the following substantial question of law for consideration:

'Whether the finding of the lower Appellate Court under issue No. 4 refusing to admit the additional documentary evidence is not in clear violation of the scope of Order 41, Rule 27(1) (aa) of the Code of Civil Procedure, in that Sub-rule (1) (aa) is independent and not controlled by Sub-rule 1(b). In other words, the question of admission of additional evidence under Sub-rule (i)(aa) does not depend upon the requirement of the Appellate Court. This Sub-rule (1) (aa) enables a party to adduce additional evidence if he satisfies the Court that he exercised due diligence and the new evidence was not within his knowledge or it could not be

produced by him at the time when the decree under appeal was passed. The above ratio was held in 2 CWR 357 followed in : AIR1981 Ori50 '.

6. Heard the learned counsels of both sides.

7. The plaintiff and the defendants are the children of one Chandrasekara Nainar, who died in 1974. The plaintiff was employed as an Assistant Professor in a College at Cuddalore since 1968 and previously he was working as a Scientific Assistant. The plaintiff has come forward with a specific case that item 4 of the suit property was purchased in his name by the grandfather and the grandmother when he was major out of love and affection for his benefit. Ex.A-1 is the sale deed relating to item No. 4. Subsequently, under Ex.A-2 the plaintiff had purchased items 1 to 3 of the properties out of his own funds. Thus, the plaintiff claimed that he is the absolute owner of the suit properties and as he was employed in Cuddalore, the agricultural operations were looked after by his brothers and they were appropriating the income. However, the plaintiff has paid the kist and produced the kist receipts and he had been sending money to the family and the money order coupons were also filed into the Court. The revenue records stood only in the name of the plaintiff.

8. The defendants took a stand that all the properties are only joint family properties and they were not acquired out of the self acquired funds of the plaintiff. Item 4 of the property was also purchased in the name of the plaintiff since he was major at that time and the defendants were only minors in the year 1961. It is pertinent to state that their father died in 1974 and if really the grandfather and grandmother wanted to purchase the property for the benefit of the family, they would have purchased the same in the name of the father of the parties and not in the name of the plaintiff, who was then aged about 19. This would only indicate that item 4 of the property was purchased under Ex.A-1 out of love and affection only for the benefit of the plaintiff.

9. Items 1 to 3 of the properties were also purchased by the plaintiff in the year 1975 under Ex.A-2. Admittedly, the plaintiff was employed in a College as Professor and therefore, it is not difficult for him to purchase the properties. In fact, there is no serious dispute relating to purchase of items 1 to 3 by the plaintiff.

However, the learned counsel for the appellants/defendants contended that the joint family owns some properties and there would be considerable income from them, which will provide as a nucleus to acquire the other properties. Unfortunately except, the interested testimony of D.W.1, there is no other independent evidence to come to the conclusion that the family was possessed of lot of properties and they were able to get substantial income. In fact, the documents filed on the side of the plaintiff clearly establish that there was necessity to sell some of the family properties for sustenance, thereby establishing that the case of the defendants could not be true.

10. Learned counsel for the appellants/defendants raised the substantial question of law, namely, that the additional documentary evidence has not been properly considered by the first Appellate Court and they were not given chance to canvass the correctness of the order made in the application independently. It is seen from the records that the adangal extracts Exs.A-8 to A-16 have been filed and chitta extracts have been filed under Exs.A-17 to A-23 by the plaintiff. The abovesaid documents stand only in the name of the plaintiff. The electricity service connection also stands in the name of the plaintiff as seen from Exs.A-41 to A-43. P.W.2 also supported the case of the plaintiff. The additional document sought to be produced by the appellants before the first Appellate Court relates to only patta book standing in the name of the father of the parties and one Ayyadurai Nainar. No valid and sufficient reason has been given by the appellants for not producing the document earlier. The lower Appellate Court came to the conclusion that the patta book will not improve the case of the defendants in any way and therefore, rightly rejected the same. Now only it is canvassed by the appellants as if it will improve their case. When there is clinching oral and documentary evidence to show that the properties were purchased by the plaintiff and they are the self acquired properties, the plaintiff is naturally entitled to get the relief of declaration as well as recovery of possession.

11. Learned counsel for the respondent/plaintiff relied on the decision reported in *Puthiavinayagam Pillai v. Sivasankaran Pillai*, 1997 (1) L.W. 482 relating to acquisition of property by a member of joint family. The burden of proof rests on the person who asserts to that effect. Presumption as to joint family acquisition

would arise where the acquisition is with the help of a nucleus. There is no dispute about this proposition, but it has no application to the case on hand since there is no positive material to come to the conclusion that the family owned considerable extent of properties and they were getting substantial income. Both the Courts below rightly came to the conclusion in favour of the plaintiff and as there is no erroneous appreciation either in law or on facts, no interference is called for.

12. For the reasons stated above, the Second Appeal fails and is dismissed. No costs.

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