

Andiappan Vs. Palaniyandi

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Court : Chennai

Decided On : Oct-28-1997

Reported in : 1997(2)CTC609

Judge : K. Sampath, J.

Acts : [Evidence Act, 1872](#) - Sections 59 and 61

Appeal No. : S.A. No. 623 of 1984

Appellant : Andiappan

Respondent : Palaniyandi

Advocate for Pet/Ap. : G. Vasudevan, Adv. for ;R.T. Gopalakrishnan, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

K. Sampath, J.

1. The defendant who succeeded before the Trial Court and lost before the lower appellate Court is the appellant.
2. The suit O.S. No. 64 of 1978 was filed by the respondent before the District Munsif's Court, Kulithalai for a declaration that he was entitled to the suit

properties and for consequential relief of permanent injunction restraining the appellant, his men, agents and servants from any manner interfering with the respondent's peaceful possession and enjoyment alleging as follows:- The parties were brothers. Under the original of Ex. A1 dated 26.9.1960, the appellant and the respondent purchased certain properties for a valid consideration of Rs. 2,000, each contributing Rs. 1,000. In the re-survey joint pattas in patta No. 427, 1000, 211, 117, 258, 954 and 31 were issued to them. The mother of the parties also had separate properties of her own and after her death in 1967, the parties inherited those properties as her legal heirs. The mother's properties were comprised in S. Nos. 117 and 247. All the properties purchased by the parties and inherited from their mother were jointly enjoyed by them. There was an oral partition in October, 1973 in which the A Schedule properties were allotted to the share of the plaintiff. Eversince the date of the oral partition, the parties were in separate possession and enjoyment of their respective shares by paying kists separately, and raising loans from the co-operative credit society. B schedule properties belonged to the plaintiff as his separate and self-acquired properties. All the items in B Schedule excepting item 5, were purchased by the respondent from out of his own funds after the partition in the year 1973. Under a registered sale deed Ex.A2 dated 25.2.1974. Item 5 of B schedule property was purchased by the respondent in a Court auction sale and the consideration flowed from out of his own funds. Both the A and B schedule properties exclusively belonged to the respondent. He had raised loan by mortgaging the properties and offering them as securities. He had also installed an electric motor pumpset in the well. He had incurred loan to the tune of Rs. 20,000 for purchase of B schedule properties and for installation of the motor pumpset in the well. C schedule properties were in the possession and enjoyment of the respondent as a waramdar. While so, the appellant falsely claimed title to the properties and denied the title of the respondent due to misunderstanding and tried to interfere with his peaceful possession and enjoyment.

3. The defence raised by the appellant was as follows:- The parties constituted a joint family and the appellant was the manager. They were having ancestral nucleus from which the suit properties and other properties were acquired by them for the benefit of the joint family. A and B schedule properties were joint family

properties of the parties. B schedule properties were purchased from out of the joint family funds. Item 5 of B schedule was purchased from out of the joint family funds and for purchasing that item, one of the family properties was sold and the sale proceeds deposited in the Court. C schedule lands were lease-hold of the family and were being enjoyed by the members of the family in common. The appellant as family manager was in management of the C schedule property. In these circumstances, there could be no relief to the plaintiff. The division alleged and allotment of A schedule properties in favour of the plaintiff and his exclusive enjoyment of the same were all false. The suit had been filed on account of the enmity between the parties.

4. The Trial Court found that the suit properties were not the exclusive properties of the respondent, that he had not proved the oral partition alleged in the plaint, that B schedule properties were purchased from out of the joint family nucleus, that the respondent did not have exclusive possession of the suit properties, that the properties were purchased from out of the joint family funds and for the benefit of the joint family. So holding, the learned District Munsif, by his judgment and decree dated 29.4.1981 dismissed the suit.

5. The respondent filed A.S. No. 168 of 1981 before the Subordinate Judge's Court, Karur. The learned Subordinate Judge framed the necessary points for consideration and held that the suit properties were not the joint family properties of the parties, that they were not purchased from out of joint family funds and for the benefit of the joint family and that the oral partition alleged was true and that the plaintiff was the sole owner of A and B schedule properties. So far as C schedule properties were concerned, the learned Subordinate Judge held that they belonged jointly to the parties. So holding the learned Subordinate Judge, by his judgment and decree dated 19.1.1984 decreed the suit of the respondent as prayed for in respect of A and B schedule properties only and confirmed the decision of the Trial Court in other respects.

6. The present second appeal has been filed by the defeated defendant.

7. At the time of admission, the following substantial question of law was raised for consideration in the second appeal.

'Whether the purchase of a property by a junior member of the joint family could be presumed to be his separate property as has been held by the lower appellate court especially when the joint family had sufficient nucleus and when the other members of the joint family claimed the same to be the joint family property?'

8. Admittedly the respondent was a junior member, the appellant being the elder brother. Absolutely no material has been produced to show that the family possessed any joint family property except the allegations made by the appellant that the properties were acquired from out of joint family funds. No material was placed before the courts below to substantiate the contention that the family possessed adequate joint family nucleus that there was surplus available and out of the surplus the suit properties were acquired. On the contrary, there is material to show that the brothers had purchased properties from joint exertion. No doubt there is some material to show that the parties' mother inherited some properties from her parents and those properties on her death in the year 1967 came to be owned by the parties. But this does not, in any way, prove that there was any joint family property and that out of the income from joint family properties, the suit properties were acquired. I have been taken through the evidence of the plaintiff respondent as well as the defendant appellant and there is nothing to show that the family owned joint family properties.

9. The learned counsel for the appellant Mr.G. Vasudevan relied on the following decision. (i) Nagayasami Naidu v. Kochadai Naidu : (1970)1MLJ105 , (ii) Srinivasan v. Sundaramurthi : (1972)1MLJ141 and (iii) Narayanaswami Iyer v. Ramakrishna Iyer 1965 (1) MLJ 78 (SC) and contended that once there was sufficient joint family nucleus available, then, the presumption automatically followed that the properties standing in the names of individual co-parceners would be joint family properties. In the first of the decisions, a Bench of this Court succinctly stated the legal position as follows:-

'There is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, (*italics mine*)

the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such presumption in the case of properties standing in the name female members. In the latter case, it is for the party who claims properties as joint family properties to specifically plead the particulars and details, in the pleadings and establish the same, by adducing necessary evidence. If there is no pleading and if on the side of the plaintiffs there is no evidence, there is no need for detailed scrutiny of the case of the female members or persons claiming through them, as to the resources of the female members and as to how they acquired the properties in question. If the plaintiff on whom the burden lies adduces no evidence, no further question arises and the female member in whose name the property stands, must be held to be the beneficial owner of the property in question.'

In the second decision reported in *Srinivasan v. Sundaramurthi* : (1972)1MLJ141 , a Bench of this Court held as follows:-

'It is well established that if the property stands in the name of the co-parcener of a joint family, mere proof of the existence of the joint family owning some joint family property, does not give rise to any presumption and that it must be established that there was sufficient nucleus of the joint family for purchasing the property which stands in the name of the coparcener.'

The Bench also referred to the judgment reported in *Babubai v. Ujamlal*, AIR 1937 Bom. 446 where Beaumont, Chief Justice had summarised the position on this aspect as follows:-

'The law, I think, is clearly established that from the existence of a joint family, it is not to be presumed that there is any joint family property. There is no presumption that property which belongs to a member of a joint family is joint family property. The plaintiff in setting out to prove that property 'B' is joint family property must in the first instance discharge the burden of proving that fact. But it is also established that if there is a joint family, which possesses a nucleus of joint family property, then property acquired by a member of that family is presumed to be a

joint family property. But the question arises what is meant by a nucleus. In my opinion the nucleus of joint family property necessary to give rise to the presumption must be family property from which the purchase money for the property in suit might have been derived wholly, or, 'at any rate, in considerable part.....'. It would, I think, be unfortunate if the Court was bound to presume that something had occurred which on the evidence would not possibly have occurred, and if it be shown that the only joint family property existing at the date of the acquisition of the property in suit was of such a nature that it could not possibly have been the means of acquiring the property in suit, then in my opinion the presumption that the property in suit is joint family property does not arise.'

In the third decision reported in *Narayanaswami Iyer v. Ramakrishna Iyer* 1965 (I) MLJ (SC) 78 the Supreme Court stated the law on the subject as follows:-

'The legal position is well-settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown.'

10. There is absolutely no quarrel over the proposition of law. But the question is whether the ratio of the decisions will have application to the facts of the present case. The defendant/appellant set up a case that the properties, subject matter of the suit were joint family properties and had all been acquired from out of joint family income. Unfortunately, there is no iota of evidence to show that the family possessed any joint family property at any point of time. In the absence of such material evidence as to the availability of joint family nucleus it is not possible to come to a conclusion that the properties were acquired from out of joint family funds and were joint family properties. The lower appellate court has gone into the question thoroughly and had come to the conclusion that the A and B schedule properties, subject matter of the suit were the separate properties of the respondent. It has therefore to be held that the A and B schedule properties were the separate properties of the respondent. The next question is whether the partition set up by the respondent had been established. According to the

respondent it was only an oral partition in October, 1973. But documents have been produced in the case to show that there could have been a partition as contended by the respondent. The documents have been analysed by the lower appellate court in paragraph 13 of its judgment. The learned Subordinate Judge has adverted to the description contained in the documents for coming to the conclusion that the partition set up by the respondent was probablised. No other material has-been relied on and no other point has been argued by the learned counsel for the appellant for me to differ from the finding reached by the lower appellate court on the question of partition between the parties in October, 1973. The respondent had obtained loan from the bank and co- operative society and treated the properties under Ex.A22 dated 27.6.1976. The respondent has sold 1 acre 30 cents out of 2 acres 60 cents in favour of third party for Rs. 1,600 and in the description, one of the boundaries had been shown as the property of the appellant. The lower appellate court had also rejected the case of the appellant. The decision of the lower appellate court has been reached on an appreciation of the materials on record and the oral and documentary evidence. I do not think there is any question of law much less substantial question of law arising for consideration in the second appeal. Consequently, the question of law raised is answered against the appellant and the second appeal is dismissed. However there will be no order as to costs.