

Chenni, Vs. Chellammal,

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Court : Chennai

Decided On : Aug-13-2004

Reported in : (2004)4MLJ172

Judge : M. Karpagavinayagam and ;M. Thanikachalam, JJ.

Acts : [Hindu Succession Act, 1956](#) - Sections 23

Appeal No. : Appeal Suit No. 291 of 1990

Appellant : Chenni, ;krishnan, ;kathirvel, ;guruvayee, ;rukmani and ;valli

Respondent : Chellammal, ;saroja, ;paramasivam and ;ramasamy Gounder

Advocate for Def. : M.M. Sundaresh and ;V. Bharathidasan, Adv.

Advocate for Pet/Ap. : A.K. Kumarasamy, Adv.

Disposition : Appeal dismissed

Judgement :

M. Thanikachalam, J.

1. Defendants 1, 2, 3, 5, 6 and 7, aggrieved by the judgment and decree passed by the trial Court in O.S.No.302 of 1986 on the file of the learned Subordinate Judge, Erode, have preferred this appeal.

2.1. Respondents 1 and 2 in this appeal, as plaintiffs, have filed a suit for partition and separate possession of their 2/9th shares in the suit properties.

2.2. According to the plaintiffs/respondents 1 and 2, all the suit properties belonged to their father Veeran, son of Siddhan. It is the further case of the plaintiffs that Veeran having acquired the properties, enjoyed the same and died in the year 1984 intestate, leaving behind him the plaintiffs and defendants 1 to 7 as his Class-I heirs, who are entitled to inherit the properties in equal shares. On that basis, according to the plaintiffs, when they demanded division of properties to their brothers and other sisters, it was refused, resulting in the filing of the suit for partition to declare their share of 2/9 in all the suit properties with other consequential reliefs.

2.3. The appellants/defendants 1, 2, 3, 5, 6, and 7, opposed the claim, contending that all the properties standing in the name of Veeran have been acquired out of joint exertion by all the joint family members and on acquisition, they have been treated as joint family properties, in which case, the plaintiffs are entitled to 1/45th share; that as far as the third item is concerned, the second defendant alone is entitled to 1/2 share, since this property was acquired by the second defendant and Veeran jointly, and that only in the remaining 1/2 share, the plaintiffs and other defendants are entitled to some shares.

2.4. On the above pleadings, the parties went on trial before the trial Court framing as many as five issues. In support of the plaintiffs' claim, six documents have been exhibited, seeking aid from the oral evidence of PW1, the first plaintiff and PW2, the fourth defendant. In order to nullify the effect of the above evidence and to substantiate the defence, the second defendant has been examined as DW1 and one third party by name Perumal has been examined as DW2. To buttress the oral testimony on behalf of the contesting defendants/appellants, eight documents have been produced and exhibited.

2.5. The learned II Additional Subordinate Judge, Erode, after scanning the above materials and applying the legal provision, came to the conclusion that items 1 and 2 belonged to Veeran as his self-acquired properties; that the third item had been purchased by Veeran and Krishnan, who is the second defendant, jointly

contributing equal funds and in this view, both are entitled to equal shares, that the plaintiffs are entitled to a share only in 1/2 share in the third item and that the daughters, viz., the plaintiffs, are entitled to have the division in the family house also, since that property belonged to their father as his self-acquired property. Thus declaring the share of the parties, granted a preliminary decree in favour of the plaintiffs, in order to demarcate 2/9th shares in items 1 and 2 and 2/18th shares in the third item, which is under challenge in this appeal.

3. Heard Mr.A.K.Kumarasamy and Mr.M.M.Sundaresh, learned counsel appearing for the appellants and respondents respectively.

4.1. The main thrust of Mr.A.K.Kumarasamy, learned counsel appearing for the appellants is that items 1 and 2 belonged to the family as joint family properties, since they have been purchased by the members of the joint family by their joint exertion and in fact, the properties were so treated and in that view, the conclusion of the trial Court that items 1 and 2 are the self-acquired properties of Veeran, is unsustainable.

4.2. It is the further submission of the learned counsel for the appellants, that since the first item is the joint family dwelling house, since the male heirs have not taken any step to divide the dwelling house; under Section 23 of the [Hindu Succession Act, 1956](#), the right of claiming share upon a dwelling house by the female heirs does not arise. On the above basis, the learned counsel argued that the share declared by the trial Court has to be modified.

5. Mr.M.M.Sundaresh, learned counsel appearing for the respondents, opposing the above claim, submits that the trial Court has properly considered the evidence available on record, which brought to surface the character of the property as the self-acquired property of Veeran, to modify the same, practically there is nil evidence and in this view, the findings of the trial Court require affirmation.

6.1. From the pleadings and submissions made by the learned counsel for the parties, the points that arises for consideration are:

(a) whether the suit properties (items 1 and 2) are the joint family properties of the appellants and their father Veeran?

(b) whether respondents 1 and 2/plaintiffs, are entitled to a share, including the dwelling house? If so, to what share?

6.2. The subject matter of the suit is a tiled house described as item 1 and some cultivable lands, described as items 2 and 3, situate at Erode and Thuyyampoondurai Village. Veeran is the son of Siddhan. The plaintiffs and defendants 5 and 6 are the daughters of the said Veeran, through the seventh defendant. Defendants 1 to 4 are their sons. The first item of the suit property, was purchased in the name of Veeran, as evidenced by Ex.A1. It is conceded by the appellants/defendants, though the document had not been filed, that the second item of the suit property was also purchased in the name of Veeran. The third item was purchased in the name of Veeran and the second defendant, on 17.9.1975, as evidenced by Ex.A2. Veeran, in whose name the properties stood, died intestate elsewhere in the year 1984, leaving behind him the plaintiffs and defendants 1 to 7 as his Class-I heirs. As far as the above facts are concerned, we find no dispute.

6.3. As seen from Ex.A4, the plaintiffs/two daughters of Veeran, demanded division of the properties from the defendants, after the death of their father, who failed to divide the properties, which elicited only a reply under Ex.A5, denying the division claimed by the plaintiffs. The plaintiffs having failed in their attempt to have their shares carved out in the suit properties, outside the Court have filed the suit and succeeded to the major extent, which is challenged as aforementioned.

6.4. In the third item, the plaintiffs claimed each 1/9th share branding the same as self acquired property of father, which was not accepted by the trial Court. The trial Court, accepting the oral evidence of DW1 as well as considering the fact that Ex.A2 stands in the name of Veeran and the second defendant, had come to the conclusion that this property was purchased jointly and therefore, the second defendant is entitled to 1/2 share independently and Veeran is entitled to the remaining 1/2 share. In this view, the trial Court has granted a preliminary decree in respect of the third item, declaring the share of the plaintiffs as 2/18 (for both).

Aggrieved by this, the plaintiffs have not preferred any appeal independently or any cross objection in this appeal. Here also no attempt is made on behalf of the plaintiff to dislodge the said findings. Therefore, the finding as far as the third item is concerned, is unchallenged. Thus, the properties available for partition are, items 1, 2 and 1/2 share in item 3.

6.5. The family of Veeran had not owned any ancestral property, admittedly. The father of Veeran, by name Siddhan, admittedly, had not left any property to be inherited by his son Veeran or by his grandsons, viz., the sons of Veeran. As aforementioned, all the properties are standing, as per the title deeds, only in the name of Veeran. Therefore, the general presumption is, that the person in whose name the documents stand is the owner of the property. If any contra view is to be taken, it is for the person who asserts so, to plead and prove the same. It is the trite law that there may be presumption that there is a Hindu joint family. But there can be no presumption, that the joint family possesses joint family properties, as ruled by the Apex Court in *K. Obul Reddy v. B. Venkata Narayana Reddy* AIR 1984 SC 1171, wherein it is held:

'There may be presumption that there is a Hindu Joint Family but there can be no presumption that the joint family possess joint family properties.'

The Hindu Law permits, members of a joint family, even co-parceners, to acquire separate property, without disturbing the status of the joint family, by running independent business even living within the joint family without partition. The only criterion is that for the acquisition of the property, no amount should have been emanated from the income of the joint family property, if any. Thus, it is evident, a property acquired by the members of a joint family independently, without reference to joint family income, would not come within the meaning of the joint family property, unless, it is stated that the property so acquired was thrown into the common stock or enjoyed by the family, thereby extinguishing the individual right said to have been acquired.

6.6. In this case, against the tenor of the documents, the appellants would contend that the properties belonged to the family, as joint family properties. Therefore, the burden is very heavy upon their shoulder to prove that there was joint family

property; that the property had the capacity to generate the income; that after meeting out the day-to-day family expenses, the income was surplus in hands of the joint family Manager, so as to say that the joint family Manager would have purchased the property, from that surplus income, for the benefit of the joint family. If these things are proved, on the basis of the presumption, that there is a Hindu joint family, the Court could draw a presumption, considering the existence of the joint family, that the subsequent acquisition might have been made by the karta of the family, in his name for the benefit of the joint family. Neither the oral evidence of DW1, is sufficient to establish the above facts nor the documents relied upon by the appellants were sufficient to draw that kind of presumption. It is admitted by DW1 himself, that the family had no ancestral property and in fact Veeran had not inherited any property from his father Siddhan. Thus we find nil evidence, to dislodge the presumption, that the property belongs to the person, in whose name the title deed stands.

6.7. In the written statement of the second defendant, it is stated that the suit properties were purchased in the name of Veeran, as the grand father became very old, out of the joint family exertion. It is further stated, that the said Veeran had no independent source of income to purchase the properties. The second defendant would further contend that the entire properties, are the properties of joint family, in which the plaintiffs are entitled to each 1/45th share.

6.8. As far as the third item is concerned, the appellants would contend, that the second defendant is entitled to 1/2 share, as his self-acquired property. If all the properties had been acquired by joint exertion of all the joint family members, then the third item should also have the character of joint family property. But, the second defendant's case, in respect of third item, is that he is entitled to 1/2 share as his self-acquisition and the remaining 1/2 share belongs to Veeran. When it comes handy, to claim more share, the second defendant has come up, as far as the third item is concerned, as if it is his self-acquisition, taking advantage of the sale deed standing in his name along with his father. But, at the same time, for the properties standing in the name of Veeran, the second defendant took a different stand, labelling the properties as joint family properties, so as to reduce the share of the sisters.

6.9. In our considered opinion, the defence taken by the appellants, for the third item, is in a way, destroy the theory of joint family property, for items 1 and 2 also. To substantiate the theory of joint family exertion, and treating the properties as joint family properties, we find no acceptable evidence, except the ipsi dixit of DW1. In the first item, there is a house, which is assessed independently in the name of Veeran, as seen from Ex.A3. No evidence acceptable in nature is available to say emphatically, that the members have contributed any amount, for the construction of the house. All the revenue records also would indicate that Veeran had been recognised as the owner of the properties, purchased by him, thereby, in a way, proving the character of the property, as his self-acquired property. One of the daughters of Veeran as PW1 and one of the sons of Veeran as PW2, have categorically deposed, before the trial Court about the acquisition made by their father, having separate funds, which is in tune with the recitals found in the document. We do not find any reason to discard the oral testimony of PWs.1 and 2, which is supported by legal presumption, not rebutted by the contesting defendants/appellants. The trial Court, considering all the materials available on record as well as the acquisition of properties, applying the trite law, had given an unerring conclusion, in concluding that items 1 and 2 and half share in item 3 belonged to Veeran, as his self-acquired property, which finding deserves acceptance, not warranting any interference by this Court.

6.10. In view of our conclusion that item 1 does not belong to the joint family, the question of applying Section 23 of the [Hindu Succession Act, 1956](#), does not arise for consideration. The first item also belonged to Veeran as his self-acquired property, in which the plaintiffs being Class I heirs, are entitled to carve out their shares and it could not be described as the dwelling house belonging to the joint family, attracting Section 23 of the Act. In this view, item 1 of the suit properties is also divisible. The points are answered accordingly.

7. For the above reasons, we find no merit in the appeal and the same is devoid of merits and we would thus dismiss the same. Accordingly, the appeal is dismissed, but considering the facts and circumstances of the case as well as relationship between the parties, they are directed to bear their respective costs in the appeal.

