

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

O.S.A NO.281 OF 2001

1. Mrs. Bagirathi
2. Mrs. Hamsaveni
3. Mrs. Premavathi
4. Mrs. Sarguna
5. Mrs. Saroja
6. Mrs. Suryakumari ... Appellants/Plaintiffs

Vs.

1. S. Manivanna
2. S. Venkatesan ... Respondents/Defendants

Appeal filed under Order 36 Rule 1 of the Original Side Rules and under clause the Letter patent against the judgment of the learned single Judge dated 10.4.2001 in C.S.No.911 of 1999.

For Appellants : Mr.K.S. Gnanasambandam

For Respondents : Mr.V. Avudainayagam

J U D G M E N T

P.K. MISRA, J

Plaintiffs are the appellants.

2. Plaintiffs are the daughters of one Sundaraja Naicker, whereas the defendants 1 and 2 are the sons and the third defendant is the widow of such Sundaraja Naicker. The suit was filed for partition and injunction. During pendency of the suit, third defendant died. After the death of Defendant No.3, the plaintiffs claimed 1/8th share each in the property and proportionate mesne profits. Sundaraja Naicker died on 9.8.1975. According to the plaintiffs, the disputed property was purchased by Sundaraja Naicker from out of his own earnings and thus his separate property, and the plaintiffs are entitled to equal share as that of the sons, namely, the defendants 1 and 2. The defendants in their written statement,

while not disputing the relationship between the parties, have contended that the property in question was the joint family property of the defendants along with their father and therefore after the death of Sundaraja Naicker, the plaintiffs together are entitled to 1/4th share and the defendants together are entitled to 3/4th share. It is stated by the defendants that the vacant land originally belonged to a landlord one Dorai Babu and the superstructure was constructed by Doraisamy Naaicker and Appadurai Naicker, who constituted a joint family. After the death of Doraisamy Naicker, his half share devolved on his widow Karpagambal. Appadurai Naicker had two sons, namely, Sundaraja Naicker through first wife and Ranganathan through second wife. Appadurai Naicker died leaving behind his two sons, Sundaraja Naicker and Ranganathan and his second wife Sundarambal and daughter Radhabai Ammal. All of them are entitled to 1/4th share of the half share of Appadurai Naicker. Subsequently, Karpagambal settled her half share in the property in favour of Sundaraja Naicker under a deed of settlement dated 3.10.1966. Thus, Sundaraja Naicker became entitled to 5/8th share in the superstructure. Thereafter, there was a partition on 1.2.1967, by which the property mentioned in 'D' schedule fallen to the share of Sundaraja Naicker. Subsequently the original landlord had initiated proceedings under the City Tenants Protection Act and ultimately by virtue of the order passed in such proceedings under Section 9, Sundaraja Naicker purchased the land on which the superstructure stood. Since Sundaraja Naicker did not have sufficient income, Defendant No.1, who was already serving, made major contribution for the purchase of such land.

3. On the basis of such pleadings, the trial court framed the following issues :-

"1. Whether the plaintiffs are each entitled to 1/8th share in the suit property ?

2. Whether the superstructure or building standing in the suit property is the ancestral property of the father and the defendants 1 and 2.

3. Whether the first defendant has contributed for the purchase of the land ?

4. To what reliefs the plaintiffs are entitled ?

4. Taking all the issues 1 to 3 together, the learned single Judge came to the conclusion that the superstructure belongs to the joint family and subsequently the entire properties of the joint family were divided along with the disputed land and the superstructure and Sundaraja Naicker, the father of the plaintiffs and the defendants, was allotted the suit building as against his share and, therefore, such property, even though obtained in partition, became the joint family property of Sundaraja Naicker and his two sons. Therefore, on the death of Sundaraja Naicker in 1975, his 1/3rd share devolved upon the daughters, sons and the widow, whereas the sons continued to retain 2/3rd share in their capacity as coparceners. On the aforesaid basis, the learned single Judge has held that the plaintiffs together are entitled to 1/4th share and the defendants together are entitled to 3/4th share as during pendency of the suit, Defendant No.3, the mother of the plaintiffs and the

defendants 1 and 2, had expired. Learned single Judge has also held that the plaintiffs are entitled to proportionate mesne profits which is to be determined at the time of final decree proceedings. This judgment and decree is being challenged by the plaintiffs. It is claimed by the plaintiffs that all of them should be given 3/4th share and the defendants 1 and 2 should be given 1/4th share.

5. If the disputed property is considered to be the separate property of Sundaraja Naicker, the father of the parties, the contention of the appellants would be acceptable, whereas if such property is considered to be the joint family property, the decree of the learned single Judge would require no interference.

6. Learned counsel appearing for the appellants submitted that even though the superstructure in question was once the joint family property, as there was a partition, wherein such superstructure was allotted to Sundaraja Naicker and, therefore, it must be considered at that stage that such property became the separate property of Sundaraja Naicker.

7. Such a submission, even though found attractive on the face of it, cannot be accepted in view of the well settled principle of law that the property obtained by a co-parcener, even though becomes the separate property qua the quondam co-sharers, if such separated co-sharer has male progeny, such property retains the characteristics as ancestral property so far as his male issues are concerned.

8. In para 295 of the Mulla's Precise on Hindu Law, the position of law has been described as under :-

"Where ancestral property has been divided between several joint owners, there can be no doubt that if any of them have male issue living at the time of the partition, the share which falls to him will continue to be ancestral property in his hands, as regards his male issue, for their rights had already attached upon it and the partition only cuts off the claims of the dividing members. The father and his male issue still remain joint."

9. In view of this well settled principle, when the disputed superstructure fell to the share of Sundaraja Naicker whose two sons, namely, the defendants 1 and 2, are admittedly alive, it must be taken that such separated share continued as joint family property so far as Sundaraja Naicker and his two sons are concerned.

10. Faced with the aforesaid well settled law, learned counsel appearing for the appellant advanced an ingenious contention to the effect that even though the superstructure can be considered as a joint family property, the land on which such superstructure stood was only a lease-hold property and subsequently in a proceedings under Section 9 of the City Tenants Protection Act, such property was purchased by Sundaraja Naicker from out of his own earnings and, therefore, such land on which the superstructure stood

must be considered as the self-acquired property of Sundaraja Naicker and consequently the entire property including the superstructure standing on such land should be so treated.

11. This submission ignores the basic principle that the superstructure was a joint family property so far as Sundaraja Naicker and his two sons are concerned. Even though Sundaraja Naicker was sued as the ostensible tenant it must be taken that he was being sued on behalf of the joint family consisting of himself and two male members as well as other male members of the family and, therefore, the purchase of land under Section 9 of the City Tenants Protection Act by the father, who was obviously representing the family, must be treated as purchase on behalf of the entire joint family and not in his individual capacity. Therefore, the purchase of such land under City Tenants Protection Act ensured to the benefit of the entire joint family and it cannot be said that Sundaraja Naicker had become the separate owner of the land and the members of the joint family continued to be joint owners in respect of the superstructure standing on the land. This submission is therefore destined to be rejected.

12. Apart from the above, even the finding of the learned single Judge is that such purchase under Section 9 of the City Tenants Protection Act was made by utilising the contribution coming from the income of the other joint family property, which had been rented out to the tenants, the contribution made by the first defendant himself and some of the contribution made by Sundaraja Naicker. This finding is based on the discussion of available materials on record and we do not find any cogent reason to differ from such conclusion. As a matter of fact, it can be said that the learned counsel for the appellants has not made any serious effort to challenge such factual finding that such consideration money proceeded from some income of the joint family property and some contribution from the first defendant as well as from Sundaraja Naicker. In other words, the property was purchased on account of the joint efforts made by the members of the joint family. Thus, in any view of the matter, the conclusion of the learned single Judge cannot be interfered with.

13. In the result, the appeal fails and the same is dismissed. However, there would be no order as to costs.
dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub Assistant Registrar, Original Side, High Court, Madras.
2. The Record-keeper, V.R. Section, High Court, Madras.

+ one cc to Mr. V. Avudainayagam, Advocate sr no. 46389
+ one cc to Mr. K.S. Gnanasambandam, Advocate sr no. 46329

NG(CO)
NM(30.10.2006)

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