

CASE NO.:
Appeal (civil) 822 of 2000

PETITIONER:
S.Appadurai Nadar & Anr.

Appellants

RESPONDENT:
A.Chockalinga Nadar & Anr.

Respondents

DATE OF JUDGMENT: 13/12/2006

BENCH:
A.K.MATHUR & C.K.THAKKER

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against an order passed by learned Single Judge of the High Court of Madras in Second Appeal No.712 of 1987 on 1.4.1999 whereby learned Single Judge of the High Court of Madras has reversed the concurrent finding of fact by the two courts below and set aside both the judgments and granted a decree in a suit of the plaintiffs.

Brief facts giving rise to this appeal are that the plaintiffs filed a suit for permanent injunction, restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the suit property. Item No.1 of the suit property came in share of the 1st plaintiff while the 2nd item of the suit property in favour of the 2nd plaintiff in a partition that took place in 1965. It was alleged that ever since the plaintiffs were in possession and enjoyment of their lands and they had been paying the land revenue for the same. The 3rd defendant is the father of both the plaintiffs. The 1st plaintiff was employed in Madura Garments Mill at Vikiramsainghapuram from the year 1941 and the 2nd plaintiff was employed from the year 1944. Both the plaintiffs are the earning members of the family. It is alleged that out of the said earnings, certain joint family properties were purchased and the 3rd defendant being the head of the family i.e. father and head of the family, both the properties i.e. item Nos.1 and 2 were purchased out of this common pool on 17.5.1949 in his name. These properties were joint family properties till 1965. It was further alleged that the said item Nos.1 and 2 properties were divided between the plaintiffs and the defendants in the year 1965. Defendant No.3 was maintained by the plaintiffs till his life time. It was alleged that the 1st plaintiff had been paying the land revenue for item No.1 of the suit property while 2nd plaintiff was paying the land revenue for the item No.2 of the suit property. It was alleged that in the sale deed executed by the 1st plaintiff and the 3rd defendant in favour of one Dhiraviya Nadar on 9.9.1981, the 3rd defendant i.e. the father of plaintiffs had admitted the partition and character of the property. Apart from this, both the plaintiffs claimed properties by way of adverse possession. It was alleged that at the instigation of the mother of defendant Nos.1 & 2, the 3rd defendant, the defendant Nos.1 & 2 were attempting to interfere with the possession of the plaintiffs. Hence, the present suit was filed. It may be relevant to mention here some genealogy. Plaintiff Nos.1 & 2 are the sons of Defendant No.3 and Defendant Nos.1 & 2 are the grandsons of defendant No.3, being the sons of his daughter i.e. plaintiff

Nos.1 & 2 are the sons of Defendant No.3 and Defendant Nos.1 & 2 are the sons of sister of Plaintiff Nos.1 & 2. Defendant No.3 has sold the item Nos.1 & 2 of the suit properties to Defendant Nos.1 & 2, the grandsons. The plea of defendant Nos.1 and 2 was that the plaintiffs had no right over the suit property, defendant No.3 purchased both the properties out of his own funds and he was the sole owner of both the properties and he has sold these properties to defendant Nos. 1&2 for valuable consideration on 18.2.1982 and ever since the defendant Nos. 1 & 2 are in possession and enjoyment of the same. They have denied the so called partition as alleged by the plaintiffs in the year 1965. They also denied the plaintiffs have acquired title to the suit properties by way of adverse possession. It was also alleged that since the defendant No.3 refused to sell the properties to the plaintiffs, the plaintiffs have removed certain documents from the house of defendant No.3 and complaint to this effect was also filed.

Defendant No.3 also filed a written statement, though he did not appear in the witness box and in that written statement he has denied the factum of partition in the year 1965 and he has also asserted that the properties were never purchased as joint family properties. The properties were purchased by him out of his own funds and he was in possession of the suit properties in his own right and he sold the same in favour of defendant Nos.1 and 2 for valuable consideration and put them in possession. It was also alleged that in the sale deed dated 9.9.1981, the plaintiff No.1 has made a false recital. It is alleged that he came to know about it only after the filing of the suit. It is further alleged that since he declined to sell his land to one Rameshwaram, the plaintiffs with the help of one Sub-Inspector of Police, Alangulam P.S. trespassed into his house and removed certain valuable records. The defendant No.3 made a complaint to this effect on 18.2.1982 and the same is pending.

The District Munsif, Thenkasi, framed necessary issues and after the trial, dismissed the suit with costs. Aggrieved against that judgment, the plaintiffs preferred an appeal to the Sub-Court, Thenkasi in A.S.No.69 of 1984 and the same was also dismissed by the Subordinate Judge. Aggrieved against the order passed by the Subordinate Judge, a second appeal was preferred by the plaintiffs before the High Court. The second appeal was admitted and the following questions of law were framed.

" (i) Whether the Courts below are right in brushing aside the admission made in Exs.A 24 and A25, that the property is a joint family property, in view of the decision of the Supreme Court in AIR 1960 SC 100 at page 105 ?

(ii) Whether the judgments of Courts below are vitiated by placing the onus wrongly on the appellants in view of the decisions of the Supreme Court in AIR 1963 SC 1279 and AIR 1974 SC 1170 ?

(iii) Whether the Courts below are right in their legal inference drawn from the documentary and oral evidence that the property is not a joint family property ?

(iv) Whether the Courts below are right in their construction of the documents Exs. A24 and A25 ?

(v) Whether the courts below are right in

rejecting the plea of adverse possession without considering the documentary evidence filed by the appellant ?"

Learned Single Judge after reviewing the whole evidence allowed the second appeal primarily on the basis of the documents, Exts. A24 & A25 and held that the important material was not looked into by the trial court and disbelieved Ext.A1, purchase of the properties by defendant No.3 and held that the plaintiffs were aged 24 and 20 respectively on the date of acquisition of Ext.A1, they were earning members of the family, therefore, both the properties had been purchased in joint family property and as such defendant No.3 had no right to sell these properties in favour of defendant Nos.1 & 2. Hence, after appreciating the whole evidence, learned Single Judge of the High Court of Madras has allowed the second appeal and decreed the suit of the plaintiffs. Hence, the present appeal.

We have heard learned counsel for the parties and perused the papers. The first and foremost question is whether these two properties were purchased from out of the contribution made by the plaintiffs or all these properties were purchased by defendant No.3 in his own right. A perusal of the document, Ext.A1 clearly shows that the properties were purchased by defendant No.3 and it nowhere shows that the properties were purchased jointly with Plaintiff Nos.1 & 2. This document, translated copy of Ext.A.1 dated 17.5.1949 had been placed on record and on perusal of the same it clearly transpires that the properties had been purchased by defendant No.3 and it does not mention anywhere that the properties were purchased jointly with plaintiff Nos.1 & 2. So far as this document is concerned, which is one of the subject matter of the suit, nowhere evidenced that the properties had been purchased out of the common pool. Learned Single Judge has tried to draw inference on the basis of the two documents i.e. Exts.A 24 & A 25. These two documents, Exts.A24 & A25, the sale deeds produced by plaintiffs in which the names of the sons find mentioned, one of his sons has been mentioned as Chokalinga Nadar which only evidenced that the property in question was sold to a third party along with his father, defendant No.3. The second document i.e., Ext.A25 which is also evidenced that another property was sold by defendant no.3 in which the names of his both the sons i.e. Plaintiff Nos.1 & 2 find mentioned. From these two documents, the learned Single Judge has jumped to the conclusion that the property mentioned in Ext.A 24 & A 25 was the joint family property, firstly no such issue with regard to Exts. A24 & A25 was framed by the trial court nor these two documents in any manner show that the property sold by defendant No.3 to his grandsons, Defendant Nos. 1 & 2 was his joint family property. The sale of some property in the family does not necessarily lead one to infer that all the properties were in common pool in which contribution was made by both the sons. We regret that the finding of fact recorded by the learned Single Judge on the basis of the documents, Exts.A 24 & A25 is not correct. Normally, when such emphasis was placed on the documents, then learned Single Judge should frame issues to that effect and remanded the matter to the trial court. But that was not done. Learned Single Judge himself has entered into the area of finding of fact and tried to jump to the conclusion on the basis of the two documents that the properties were of joint family properties. Learned Single Judge has observed that the recital is very important and these documents had been glossed over

or brushed aside by the courts below in a very flippant manner but at the same time no issue was framed on the basis of Exts.A 24 & A 25 & inference was drawn that the properties belonged to the joint family. The properties were purchased as per Ext.A-1 in the year 1949 and there is no mention in that document that the said property was purchased out of the common pool by Plaintiffs. Therefore, inference drawn by learned Single Judge on appreciation of evidence does not appear to be correct. We are satisfied that the inference drawn by learned Single Judge in the facts and circumstances of this case, cannot be sustained. Therefore, we are of opinion that the reversal of finding of fact of both the courts below by learned Single Judge in Second Appeal does not appear to be correct. High Court should be slow in reversing finding of facts unless there are compelling reasons for doing so. The inference drawn by learned Single Judge on the basis of Exts.A 24 & A25 that the suit property was joint family property is erroneous and that cannot be sustained. Consequently, we allow this appeal, set aside the judgment and decree passed by learned Single Judge and we confirm the order passed by the learned trial court, affirmed by the first appellate court. There would be no order as to costs.