

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7470-7471 OF 2004

S. SHANMUGAM

.... APPELLANT

VERSUS

K. RAJASEKARAN

....RESPONDENT

O R D E R

These appeals arise out of final judgment and order dated 30.06.2003 passed by a learned single Judge of the Madras High Court in Second Appeal Nos.937-938 of 1992.

Appellant herein was the plaintiff in OS 544 of 1985 and OS 264 of 1988 before the Sub-judge, Sangagiri. OS 264 of 1988 (originally OS 104/1984) was filed seeking an order for permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit properties and OS 544 of 1985 (Originally OS 413 of 1985) was filed for partition and separate possession of half of the suit property and also for other consequential reliefs. Both the suits were tried together by the

sub-judge, Sangagiri and it was ordered that the plaintiff would be entitled to only 1/4th share of the suit property and the decree was passed accordingly. Aggrieved by the same the plaintiff filed AS

135 of 1990 against the judgment and decree in OS 544 of 1985 and

AS No. 136 of 1990 against judgment and decree in OS 264 of 1988

before the District Court, Salem.

The District Court, Salem

rendered a common judgment on 8th March, 1991 granting a decree in

favour of the plaintiff and to effect the partition of half of the

2

suit property as prayed for by the plaintiff and also granted a

declaration of title to half of the share of the property.

Aggrieved by the said order, defendant filed second appeal nos. 937

and 938 of 1992 and the High Court allowed both the appeals and

restored the judgment and decree passed by the trial court.

Aggrieved by the same these appeals have been preferred.

Shri R. Balasubramaniam, Senior counsel appearing for th  
e

plaintiff-appellant submitted that the High court has committed an error in re-appreciating the evidence and setting aside findings of facts recorded by the first appellant court. Learned senior counsel elaborately took us to the oral and documentary evidence adduced by the parties and submitted that Nanjappan had no income of his own and the purchase of half of the suit property in Ex.B-3 was only from the income from the lands belonging to the joint family. Learned counsel submitted that the joint family had possessed 9 acres of lands and from the income derived from the joint family properties, and the cash received by him towards his share in the properties between Sengoda Gounder and her brothers in August 1969 as Ex.A-1 and A-2, he had purchased one half by way of Ex.B-3 in the name of Nanjappan and another half share by way of Ex.A-4 in the name of Sengoda Gounder. Learned counsel submitted that half share of the suit property had been purchased under Ex.B-3 from the agricultural income and the purchase is from the income derived from the lands belonging to the joint family. Learned Counsel submitted that the findings recorded by the lower appellate court on the basis of oral and documentary evidence are in

3

accordance with law and called for no interference by the High Court.

Shri Gurukrishna Kumar, learned counsel appearing the respondent - defendant, on the other hand, supported the findings recorded by the High Court and submitted that the plaintiff is entitled only to 1/4th share of the suit property and was so rightly declared by the trial court.

We have heard learned counsel on either side at length and have also gone through the oral and documentary evidence adduced by the parties. We find that though the High Court had framed two questions of law, the parties highlighted only the following question of law :-

Whether the court was right in the view it took that the character of the properties purchased was that under

Ex.B-3 and Ex.A-4 with joint family property and not the separate property of the respective vendees?

Sengoda Gounder had two sons by name Nanjappa Gounder through his first wife and the respondent Shanmugam through his second wife. Nanjappa Gounder had a wife by name Pavayammal and a daughter by name Palaniammal and a son by name Kandasamy. Nanjappa Gounder died intestate in the year 1970. Sengoda Gounder also died intestate in the year 1978. Ex.A-1 dated 29.8.1969 and Ex.A2 dated 1.9.1969 were registered partition deeds executed in between Sengoda Gounder and his sons viz., Nanjappa Gounder and Shanmugam and the brothers of Sengoda Gounder and their children. A perusal

4

of the above said partition deeds would disclose that about 9 acres of land in Kailasampalayam village was allotted to the share of Sengoda Gounder and his children and to compensate the excess land given to the other sharers. Sengoda Gounder and his branch were paid a sum of Rs.14000/- in cash as seen from Exs.A-1 and A-2. Exs.A-1 and A-2 would show that the sharers had taken note of the purchase property by the parties to the above said partition deeds and had agreed that such purchasers will be entitled to the properties standing in their names as their separate properties.

Ex.A-5 dated 10.10.1969 is a registered sale deed executed by one Perumal, son of Athi Vannan in favour of Nanjappa Gounder. According to the plaintiff, the above said property was purchased from and out of the joint family nucleus, viz., out of Rs. 14,000/- given in the partition covered under Exs. A-1 and A-2 by Sengoda Gounder and therefore, the 83 ½ cents purchased in the name of Nanjappa Gounder under Ex.A-5 dated 10.10.1969 is the joint family property of Sengoda Gounder and his sons.

A perusal of Ex.A-5 would disclose passing a consideration for execution of the deed which discloses that 83 ½ cents was sold for Rs.5000/-. Further, the vendor Perumal had received a loan, out of which Rs.3450/- was due by executing a registered mortgage deed which is evident from Ex. B-4 dated 25.9.67. Further, it is also

seen, that Perumal had borrowed a sum of Rs.1500/- on 15.4.69 executing a promissory note agreeing to repay the said amount on demand. Therefore, on the date of execution of the sale deed dated 10.10.1969 a sum of Rs. 4950/- was already due and payable by

5

Perumal to Nanajappa Gounder and the balance of Rs. 50/- alone was paid in cash at the time of executing the registered sale deed Ex.A-5.

We are of the view that the above facts speaks for itself and, therefore, the case put up by the plaintiff appellant herein that the sale consideration was paid from and out of Rs.14000/- received by Sengoda Gounder at the time of execution of the partition deed Exh.A1 and A2 on 29.8.69 and 1.9.69 has no basis and was rightly rejected by the High Court.

We are of the view that the lower appellate court has completely ignored those vital facts. Further, High court has rightly pointed out that there was no pleadings in the plaint that 83 ½ cents referred to in Exh.A5 were blended with other joint family properties by Nanjaoppa Gounder to treat the same as joint family property and the said property was enjoyed by Sengoda Gounder and his heirs as joint family property.

We may also point out that Sengoda Gounder purchased 83½ cents from Adhi Vannan, the father of Perumal in Survey No. 4/I-A on 29.5.74. In the sale deed Exh.A4 a mention have been made with regard to the purchase of 83 ½ cents by Nanjappa Gounder from Perumal and there is no mention that the said property was purchased by Sengoda Gounder in the name of Nanjappa Gounder for joint family purpose. The above facts would also indicate that Sengoda Gounder himself had admitted that the property covered by Exh. A5 dated 10.10.69 was purchased by Nanjappa Gounder out of his own funds as his separate property.

6

We are of the view the above issues are substantial questions vitally affect the rights of parties and were completely overlooked by the lower appellate court. The findings recorded by the lower

appellate court were perverse and illegal and were rightly

interfered with by the High Court. In the said circumstances, we find no reason to interfere with the judgment rendered by the High Court. The Appeals are accordingly dismissed and the parties shall bear their own costs.

.....J.

.....  
(G.S. SINGHVI)

.....J.

.....  
(K.S. RADHAKRISHNAN)

NEW DELHI  
13th April, 2011

7

ITEM NO.105

COURT NO.9

SECTION XII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 7470-7471 OF 2004

S. SHANMUGAM

Appellant (s)

VERSUS

K. RAJASEKARAN

Respondent(s)

(With office report)

Date: 13/04/2011 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Appellant(s) Mr.R.Balasubramaniam, Sr.Adv.  
Mr. T. Harish Kumar,Adv.  
Mr.P.Prasanth, Adv.  
Mr.V.Vasudevan, Adv.

For Respondent(s) Mr.Gurukrishna Kumar, Adv.  
Ms. Srikala Gurukrishna Kumar,Adv.  
Mr.Akshat Hansaria, Adv.  
Ms.Mamta Chandel, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeals are dismissed in terms of the signed order and the parties shall bear their own costs.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

( Signed order is placed on the file )