Mahaliamman Temple and Vigneswarar Koil

Vs

Vijayammal (dead) by L.Rs.

C. A. No. 8607 of 1983

(M. M. Punchhi, K. S. Paripoornan JJ)

01.03.1996

JUDGEMENT

PARIPOORAN, J. :-

1.The first defendant in O. S. No. 344 of 1967, Subordinate Judge's Court, Coimbatore, is the appellant herein. The plaintiff in the said suit is the respondent. The suit was laid for a declaration of plaintiff's title to plaint A and B Schedule properties. There are seven items in A Schedule and two items in B Schedule properties. The litigation had a chequered career. Thus suit O. S. No. 344/67 - was tried along with two other suits - O. S. No. 537 of 1967 and 538 of 1968, which are not relevant at this stage. Plaintiff claimed that she is absolutely entitled to A and B Schedule properties. The first defendant, Temple (Mahaliamman Temple and Vigneswara Temple represented by its Trustees) claimed that the properties have been dedicated to the Temple and the plaintiff has only a life estate in 'B' Schedule properties.

2. The short facts to understand the scope of controversy in the suit are as follows:

> Plaint A and B schedule properties belonged to one C. S. Arumugham Pillai. He had a son Manickam Pillai. One Sadachiammal was the wife of Arumugham Pillai. The plaintiff, Vijammal, is the wife of Manickam Pillai, Arumugham Pillai executed Ext. B-11, Will dated 29-8-1932 regarding plaint A & B schedule properties. The Will, Ext. B-11, is available at pages 140-147 of the printed paper book. Under the Will his wife Sadachaimmal was given a life estate over A schedule properties and the reminder was bequeathed to first defendant temple. The direction in Ext. B-11 was that Sadachimmal was to collect the entire income of A schedule properties and enjoy the same for her life time and after her life the entire income shall be spent for various vazhipadus (offerings) like Annadanam, vilakku, Naivethyam and other charitable purposes of the first defendant Temple. Similarly B Schedule properties were bequeathed to plaintiff (daughter-in-law) for her life and in the absence of any child to her the said properties shall vest in the first defendant. Temple for the various offerings (charities) mentioned herein above in the Will. Manickam Pillai, son of the testator, predeceased him. He died in 1934. Armugham Pillai died in 1946. His wife Sadachiammal died on 13-6-1957, after Hindu Succession Act. Armugham Pillai's daughter-in-law Vijayammal, the plaintiff, filed the suit for a declaration of her title to plaint A and B, Schedule properties. According to her, the properties dealt with in Ext. B-11 Will by Armugham Pillai dated 29-8-1932 were the joint family properties and so Armugham Pillai was incompetent to execute the Will. Armugham Pillai, being a coparcener in the family, was incompetent to execute Ext. B-11, and

dedicate the properties to the temples by Will dated 29-8-1932, when Manickam Pillai, his son, was alive. It was further contended that the life estate granted to Sadachiammal (A schedule properties) and the life estate granted to the plaintiff (B schedule properties) were so given, in lieu of their right to maintenance. Since Sadachiammal died after the Hindu Succession Act, 1956, her life estate enlarged into an absolute estate and on death of Sadachiammal on 13-6-1957, the plaintiff became absolutely entitled to plaint A and B schedule properties.

3. The first defendant in the suit pleaded that Armugham Pillai was the sole surviving coparcener when he died in 1946. Ext. B-11 became operative only then; and as sole surviving coparcener he was entitled to execute the Will, even if the properties dealt with; were joint family properties. According to the first defendant the properties mentioned in Ext. B-11 were the self acquired properties of Armugham Pillai, in which case he was fully competent to execute the document Ext. B-11 as he did. Defendant pleaded that there is dedication of A and B schedule properties to the Temple in Ext. B-11 and not a mere charge as pleaded by the plaintiff. Since Sadachiammal was given only a life interest in A schedule properties, on her death on 13-6-1957, the properties, vested in the Temple and plaintiff is incompetent to lay claim to A schedule properties. Defendant further contended that even with regard to B schedule properties, plaintiff was given only a life estate under Ext. B-11 and after her life, properties will vest in the first defendant Temple, for the charities mentioned in Ext. B-11.

4. At the outset, we should state, we are not concerned with the connected suits O. S. No. 537 of 1967, and O. S. No. 538 of 1968 which were tried along with the present suit O. S. No. 344 of 1967. Nor are we concerned with the claims put forward by certain other persons on the basis of alleged Will of Armugham Pillai dated 20-5-1946 and 29-8-1932, which were found to be fabricated. The trial Court found that the Armugham Pillai and his son Manickam Pillai were living as members of joint family, they were jointly doing business; that the suit properties belonged to the said joint family and are not the self-acquired properties of Armugham Pillai. In coming to the aforesaid conclusion, the trial Court relied on voluminous oral and documentary evidence and, in particular, Ext. B-10,decree, dated 26-10-1938, (O. S. No. 191 of 1937) whereby the plaintiff obtained a decree for maintenance against Armugham Pillai charged on the properties. On the above premises, and holding that at the time when Armugham Pillai wrote Ext. B-11 date 29-8-1932, he was not the sole surviving coparcener, the trial Court found that Armugham Pillai was not competent to bequeath the suit properties by Will. The trial Court, however, opined that in Ext. B-11 the suit properties have been dedicated to the first defendant Temple and it was not a mere charge created over the suit properties for the purpose of the charities mentioned in Ext. B-11. Since it was held that Armugham Pillai was incompetent to execute Ext. B-11, it was also held that the first defendant obtained no right in the suit properties.

5. In the appeal filed by the first defendant before the High Court of Madras, AS 12 of 1977, the High Court made a slightly different approach and did not adjudicate the question as to whether the properties dealt with in Ext. B-11 were the joint family properties or acquired properties of Armugham Pillai. According to the High Court the life estate given to Sadachiammal (wife of Armugham Pillai) enlarged into an absolute estate in view of Section 14 of Hindu Succession Act, as she had a pre-existing right to maintenance. Similarly it was held that the B schedule properties were bequeathed to the plaintiff for life in view of her pre-existing right of maintenance as evidenced by Ext. B - 10 maintenance decree passed against Armugham Pillai, charged on the properties. So the properties, A and B Schedule, bequeathed to Sadachiammal and plaintiff, under the Will, enlarged into an absolute estate, and the first defendant cannot lay claim over the said

properties. It was held that the plaintiff is entitled to the declaration of her title over A and B schedule properties. Aggrieved by the said judgment, in AS 12 of 1977, dated 17-1-1983, the first defendant has filed the above civil appeal.

6. We should state that it has come out in the case, that Sadachiammal died leaving a Will dated 8-6-1957. During the pendency of the appeal in this Court the plaintiff died and her legal representatives were impleaded as respondents 1 to 16 as per order of this Court dated 12-3-1991. It was on the ground that plaintiff has also bequeathed her properties by Will and so her legal representatives aforesaid were brought on record. In this appeal, we are not called upon to decide the validity or nature of the bequests in the Wills executed by Sadachiammal dated 8-6-1957, or of the plaintiff said to have been executed during the pendency of this appeal. The nature and validity of the Wills, if any executed by Sadachiammal and the plaintiff, will take effect on their own terms and according to law. We make this position clear. We are not pronouncing upon the validity and the extent and nature of bequests made in the aforesaid two Wills. We were also informed that the beneficiaries under the two Wills are substantially total strangers to the family.

7. We heard Shri A . T . M. Sampath counsel, who appeared for the appellants and Mr. K. Ram Kumar, counsel for the respondent. The arguments covered a wide range. In brief, it is the plea of the appellant's counsel that in Ext. B-11 there was a dedication of the properties to the first defendant Temple and Sadachiammal and the plaintiff, obtained only life estates. Ext. B-11 came into effect only on the demise of Armugham Pillai in 1946, and on that day since he was the sole surviving coparcener, the bequest made in Ext. B-11 is valid. It was also contended that the High Court was in error in holding that Sadachiammal and plaintiff were given life estate in A and B schedule properties in lieu of their antecedent right of maintenance. There is no tangible material to hold so. In this view, the Court should have held that the suit for declaration of title of A and B schedule properties by the plaintiff is unsustainable. On the other hand, counsel for the respondent contended that the properties dealt with in Ext. B-11 are admittedly joint family properties; that the Will Ext. B-11 was executed on 29-8-1932, when Armugham was not the sole surviving coparcener; that the life estates given to Sadachiammal and the plaintiff over A and B schedule properties were in lieu of their antecedent right of maintenance; that since Sadachiammal died on 13-6-1957, after the Hindu Succession Act, the life estate obtained by her over A schedule properties, enlarged into an absolute estate. Similarly, Ext. B-10, maintenance decree, obtained by the plaintiff in O. S. 191 of 1937, against Armugham Pillai, charged on the plaint properties is proof positive to show that she was given a life estate in lieu of her antecedent right of maintenance and the life estate so given to the plaintiff regarding B schedule properties also got enlarged into an absolute estate. So the bequest made regarding A and B schedule properties in favour of the first defendant could not and did not take place at all. The suit filed by the plaintiff was rightly decreed by both the Courts below.

8. The findings of the trial Court that the plaint properties were dedicated to the first defendant Temple as per Ext. B-11 and it was not a case of creation of mere charge over the suit properties, was not adjudicated but was left open by the High Court. The scope and effect of Ext. B-11 document called for discussion of alternative views. The further question whether the properties dealt with in Ext. B-11 were joint family properties or separate properties of the testator and whether Armugham Pillai was competent to deal with the properties by a testamentary instruments was also moot question. During the course of hearing of the appeal, we indicated to counsel that in view of the above and the fact that the properties have been given as per Ext. B-11 for a laudable purpose - the charities to be carried on in the Temple - the entire matter requires a second look in the a broad sense. Plaint A schedule contains seven items of properties. Some of them are very valuable prime properties in Coimbatore fetching substantial income. During the pendency of the appeal in

this Court an order was passed on 6-4-1987, requiring the plaintiff to deposit Rs.2,500/- as contribution for the maintenance of the Temple. Considering the very valuable properties dealt with in Ext. B-11, (A and B schedule) we suggested to counsel, as to why the plaint A and B schedule properties should not be made liable and charged to that extent for the performance of the charities in first defendant Temple, Counsel, appearing on both sides, agreed to our suggestion. In all the circumstances of the case, we are of the view that it is only just and fair and for doing complete justice in the matter, that a sum of Rs.24,000/- per year should be paid to the 1st defendant temple for the performance of the charities specified in Ext. B-11 Will and a charge created over plaint A and B schedule properties to that extent. Counsel appearing for both the parties graciously agreed to this suggestion. We hold that a sum of Rs. 24,000/- shall accordingly, be paid every year to first defendant temple, by the person or persons who are entitled to A and B Schedule properties, and the said properties shall stand charged to that extent. As we stated earlier, we are not deciding in this appeal, the validity and nature of the interests that have been created as per the Wills executed by Sadachiammal and the plaintiff.

9. The appeal is disposed of as above. There shall be no order as to costs. Order accordingly.