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S.A.No.537 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.537 of 2013 &
M.P.No.1 of 2013

Satheeswari

... Appellant

Vs.

1.Selvakumar

2.Subbayee

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree made in A.S.No.32 of 2012 dated 17.12.2012 on the file of the Subordianate Court at Harur in reversing the judgment and decree passed in O.S.No.161 of 2008 on the file of the District Munsif, Harur dated 28.11.2011.

For Appellant : Mr.J.Bharathi Raja

For Respondents : Ms.Madhumitha for
Mr.V.Karthikeyan for
Mr.V.Nicholas



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JUDGMENT

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The present second appeal arises out of the judgment and decree of the court of Subordinate Judge at Harur in A.S.No.32 of 2012 dated 17.12.2012 in reversing the judgment and decree of the court of District Munsif at Harur in O.S.No.161 of 2008 dated 28.11.2011.

2. O.S.No.161 of 2008 is a suit for partition and separate possession.

3. The parties will be referred to as their ranks in the suit, for the sake of convenience.

4. The plaintiff pleaded that the suit schedule mentioned properties were purchased by one Chinnu/her father under a registered sale deed dated 05.06.1965. The said Chinnu passed away leaving behind his wife Subbayee and their children viz., the plaintiff/Satheeswari and the first



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defendant/Selvakumar. Satheeswari issued a notice to the defendants calling upon them to grant her separate possession of 1/3rd share. Though she demanded partition by way of a notice dated 23.07.2008, they had not issued a reply and had only made urgent arrangements to alienate the property. Hence, the plaintiff was left with no other option than to present the plaint for the relief of partition.

5. On service of summons, the defendants entered appearance and took a plea that the defendants 1 and 2 are the members of the joint family, but the plea that the property itself is a joint family property is a false one. According to them, the plaintiff's father had purchased the property by means of a registered sale deed and dug a well and got electricity connection and enjoyed the same. They denied the fact that the plaintiff was in joint possession of the property. They took a further plea that the patta granted in the UDR proceeding was given on 20.06.1986 in the name of Chinnu. They pleaded that there is an oral partition under which, the said property was



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allotted to the share of the first defendant. Since he had obtained the property by way of the oral partition, the first defendant had spent a sum of Rs.1,00,000/- and was maintaining the same, based on which, they sought for dismissal of the suit.

6. On the basis of these pleadings, the learned trial judge framed the following issues:

- “1. நலம் தீது கலந்து 1/3 பாகம் ஒதுக்கீடு செய்து முதல்நிலை தீர்ப்பாணை பெறவும் அதன் அடிப்படையில் தனி சுவாதீனம் மற்றும் இறுதிநிலை தீர்ப்பாணைக்கு மனு செய்யவும் வாதி அருகதை உடையவரா?
2. வாய்மொழி பாகத்தின் மூலம் தாவா சொத்து 1ம் பிரதிவாதிக்கு பாத்தியப்பட்டது என்ற பிரதிவாதியின் கூற்று உண்மையா?
3. தரப்பினர்களுக்கு கிடைக்கக்கூடிய பிற பரிகாரங்கள் என்ன?”

7. The plaintiff on her side examined PW1 to PW3 and marked Ex.A1 to Ex.A10. The defendants on their side examined DW1 to DW4 and marked Ex.B1 to Ex.B6. Apart from that, two documents namely Ex.X1 to Ex.X3 were marked.



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8. After perusal of the oral and documentary evidence, the learned trial judge granted a decree for $1/3^{\text{rd}}$ share in the suit property. Aggrieved by the same, the defendants filed an appeal in A.S.No.32 of 2012.

9. The learned Subordinate Judge came to the conclusion that the property is an ancestral property and therefore, the daughter does not have a share in the same and at the same time, he held that the properties were self-acquisitions and since they were granted in the oral partition to the first respondent, he was entitled to alienate the same in favour of one Gunasekaran, under Ex.A9 and therefore, dismissed the suit.

10. This second appeal has not been admitted. Originally notice regarding admission had been ordered on 30.04.2013. Pending the second appeal, the second respondent/mother passed away leaving behind her daughter/Satheeswari who is the plaintiff/appellant and son/Selva Kumar



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who is the first defendant/first respondent as her legal representatives. As the legal representatives are already on record, the court recorded the factum on 24.08.2017 and posted the matter for final disposal.

11. I heard the second appeal on the following substantial questions of law:

“1) Whether, in the peculiar facts and circumstances of the case, the lower appellate court is justified in reversing decree and judgment passed by the trial court thereby dismissing the suit for partition when admittedly the suit property is a self acquired property of the father of the plaintiff and the 1st defendant who died intestate?

2) Whether, in the facts and circumstances of the case, the lower appellate court is right in reversing the judgment and decree passed by the trial court when the alleged oral partition said to have taken place in the year 1990 was not proved by the 1 defendant by means of adducing sufficient evidence either orally or



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documentary?

3) Whether the lower appellate court is right in holding that the oral partition took place in the year 1990 when the same was not even proved by the 1st defendant and the burden of proving the oral partition heavily lies on the 1st defendant which he failed to prove?

4) Whether the lower appellate court is right in holding that the plaintiff is not entitled to get any share under the Hindu Succession Amendment (Tamil Nadu) Act 1989, when at one place it come to the conclusion that the suit property is self acquired property of the father of the plaintiff and the 1st defendant?

5) Whether the lower appellate court is right in holding that the suit is bad for non-joinder of necessary parties namely the subsequent purchaser in view of the fact that the relief sought for in the suit is for a partition?

12. I heard Mr.J.Bharathi Raja for the appellant and Ms.Madhumitha for Mr.V.Karthikeyan for V.Nicholas for the respondent. Learned counsel reiterated their contentions that had been taken by them



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before the courts below.

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13. I have carefully perused the records and the judgment of the courts below.

14. There is no dispute in the relationship between the parties. Chinnu, the father had purchased the property sometime in the year 1965 and got the sale deed in his favour. He married Subbayee and from the wedlock, two children were born viz., one Satheeswari and one Selvakumar.

15. The plaintiff pleaded that the properties are self-acquisitions of her father, Chinnu and therefore, since he died intestate, she claimed 1/3rd share. The fact that there was no joint family is the specific plea that had been taken by Selvakumar in his written statement. Having denied the factum of existence of the joint family, all that the court would have to do in such circumstances is to apply Hindu Succession Act.



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16. Under the Hindu Succession Act, the daughter being a class-1 legal heir would take the property equally along with her mother and brother. Curiously enough, the lower appellate court came to the conclusion that the property is a joint family property, which was not even the contention of the defendants. The court held that it can presume that the property is a joint family property.

17. The principle of law is this that if a property stands in the name of an individual, it is his self-acquired property, unless it is proved that there was an existence of joint family and the nucleus of the joint family was sufficient for him to purchase the property. When there is no such evidence before the Court, the presumption drawn by the learned Subordinate Judge is one, which is contrary to the law.

18. When the relationship is admitted and also the fact that the



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document stands in the name of Chinnu, the question of oral partition between Chinnu and Selva Kumar and that too, in the year 1990 would not arise. When the defendants has taken a stand that the property is not a joint family property, the question of partition of self-acquisition during his lifetime also is a very specious plea. There is absolutely no evidence before the court for the purpose of proving the oral partition.

19. Apart from that, as rightly pointed out by the learned counsel for the plaintiff/appellant, the suit had been presented in the year 2008 and the court had drawn a presumption that the properties are ancestral properties by virtue of a document executed three months, after the presentation of the plaint on 24.11.2008. It is unknown for a court to come to the conclusion that the properties are ancestral properties on the basis of the documents which have come into force *pendente lite*.

20. Even if I were to hold that the properties were joint family



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properties, a girl would still be entitled for a share in her father's share. The lower appellate court has dismissed the suit without granting any share to the daughter. Having come to the conclusion that the properties are the self-acquisition of Chinnu and the evidence pointing out that he had died intestate, the daughter will be entitled to a share in his property.

21. In view of the above, The substantial questions of law are answered in favour of the appellant and against the respondent. The judgment and decree of the court of Subordinate Judge at Harur in A.S.No.32 of 2012 dated 17.12.2012 is set aside. The property being a self-acquired property of Chinnu, the daughter will be entitled to 1/3rd share. The suit for partition in O.S.No.161 of 2008 is decreed as prayed for.

22. Considering the relationship between the parties, I am not inclined to impose any costs. The learned District Munsif, Harur is requested to follow the recent judgment of the Supreme Court in ***Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689*** and not wait for the parties to file an



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application for final decree. The trial court is requested to initiate final decree proceedings immediately on receipt of a copy of this judgment. It shall issue notice to the parties and thereafter proceed with further. It is open to the plaintiff and the defendant to plead for enlarging of their shares on account of the death of Subbayee.

23. In fine, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Principal District and Sessions Judge, Erode

2.The Subordinate Judge, Gopichettipalayam.



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V.LAKSHMINARAYANAN, J.

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