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S.A.Nos.576 &

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.576 & 577 of 2013

Chandra
W/oAshokan

.. Appellant in both the S.A's

-vs-

Rajamani
W/o Paramanathan

.. Respondent in both the S.A's

Memorandum of Grounds of Second Appeal No.576 of 2013 filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.01.2013 passed in A.S.No.39 of 2012 on the file of the learned Subordinate Judge at Namakkal, reversing the judgment and decree dated 28.02.2012 passed in O.S.No.658 of 2008 on the file of the learned Additional District Munsif at Namakkal.

Memorandum of Grounds of Second Appeal No.577 of 2013 filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.01.2013 passed in Cross Objection in A.S.No.39 of 2012 on the file of the learned Subordinate Judge at Namakkal and to confirm the judgment and decree dated 28.02.2012 passed in O.S.No.658 of 2008 on the file of the learned Additional District Munsif at Namakkal.

For Appellant :: Ms.Monolisa for
Mr.R.Marudhachalamurthy

For Respondent :: Mr.T.M.Hariharan
(thru' Video Conferencing)

COMMON JUDGMENT



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The present second appeals are at the instance of the plaintiff.

2. The plaintiff instituted O.S.No.658 of 2008 on the file of the Additional District Munsif Court at Namakkal for the following reliefs:-

“(அ) தாவா சொத்தில் வாதிக்கு பேர்பாதி பாகம் உள்ளது என்று டிக்ளேர் செய்தும், அதனைத் தொடர்ந்து வாதி தாவா சொத்தில் தன் பேர்பாதி பாகத்தை தன் விருப்பம்போல் அனுபவித்து வருவதை பிரதிவாதியோ அவரது ஆட்களோ எவ்விதத்திலும் எக்காலத்திலும் தடையோ இடைஞ்சலோ செய்யக்கூடாது என்று பிரதிவாதி பேரில் நிரந்தர உறுத்துக்கட்டளை பிறப்பித்தும்,

(ஆ) தாவா செலவுத் தொகை வாதிக்கு பிரதிவாதிகளால் கிடைக்கும்படிக்கும்,
....”

3. The case of the plaintiff is that she is the daughter of one Nalli Gounder. Nalli Gounder is the descendant of Rangasamy @ Athiappa Gounder. Rangasamy and his brothers originally possessed the suit schedule mentioned property. By way of a sale deed dated 25.04.2008, the property was sold by Nalli Gounder to Rajamani for a sale consideration of Rs.79,000/-. Of this Rs.79,000/-, Rs.29,000/- was to be paid towards discharge of the loans incurred by Nalli Gounder from one Mani. Remaining



4. According to the plaintiff, since the property is an ancestral property, she is entitled to a share in the same. The sale deed itself recites that the defendant had purchased 1/18th share of the ancestral property in common. Taking advantage of the amendment to the Hindu Succession Act made in the year 2005, the plaintiff filed the suit for the aforesaid reliefs.

5. The defendant entered appearance and contested the suit on two principal grounds, (i) that the suit is not maintainable, since the plaintiff should have sought for the relief of partition and not for a declaration and (ii) the plaintiff is not the daughter of Nalli Gounder.

6. The matter went for trial and the trial Court in and by way of the judgment dated 28.02.2012, denied the second relief of injunction on the basis of the settled principle of law that there cannot be an injunction against the co-owner, but granted the relief of declaration. Against the said relief, an appeal was presented in A.S.No.39 of 2012. Taking note of the fact that the injunction relief had been denied, the plaintiff



presented the Cross Objection. Since the appeal and the cross objection arise out of the same judgment, they were clubbed and heard together by the lower appellate Court.

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7. By a judgment dated 22.01.2013, the learned Subordinate Judge at Namakkal allowed the appeal preferred by the defendant and held that the relief of partition should have been sought for and that a suit for declaration is not maintainable. So far as the injunction relief is concerned, the Court held that injunction cannot be granted against the co-owner for undivided properties and rejected the cross objection.

8. S.A.No.576 of 2013 has been preferred against A.S.No.39 of 2012 i.e., so far as the denial of the relief of declaration is concerned and S.A.No.577 of 2013 has been preferred against the rejection of the cross objection in A.S.No.39 of 2012. When these second appeals came up for admission before this Court on 30.05.2013, they were admitted on the following substantial questions of law:-

“(a) Whether the lower appellate Court is correct in law in non-suiting the appellant after finding that the suit property is ancestral property of the appellant and her father Nalli Gounder and that Nalli Gounder did not have right to execute sale deed in respect of the entire suit property in favour of the respondent under Exhibit A1 sale deed dated 25.04.2008?

(b) Whether the finding of the lower appellate Court that the



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appellant does not have clear rights as to her ½ share and hence she cannot seek declaration is sustainable, in the background of the finding that the appellant is entitled to ½ share over the suit property?”

9. Heard Ms.Monolisa for Mr.R.Marudhachalamurthy for the appellant and Mr.T.M.Hariharan for the respondent.

10. It is the contention of Ms.Monolisa that from the sale deed under Ex.A1, which is a registered copy of the original under Ex.B1, what was purchased by Rajamani was only the undivided 1/18th share of the ancestral property. Being a daughter, the appellant is entitled to a share by virtue of the Hindu Succession (Amendment) Act of 2005. It is her clear and categorical case that since the properties have not been divided between Nalli Gounder and Chandra, she is entitled to a share in the property. She would further plead that Order VII, Rule 7 of the Code of Civil Procedure should be applied and though she has sought for a declaratory relief, the relief of partition should have been granted by the Courts below.

So far as the injunction relief is concerned, Ms.Monolisa would argue that the Courts below ought to have granted injunction when the plaintiff has acquired the right over the property.



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11. Mr.T.M.Hariharan would contend that there was no access for Nalli Gounder to his wife and therefore the fact that Chandra was born to Nalli Gounder is in dispute. He would further argue that an objection as regards the frame of the suit was to be taken at the earliest point of time. When the written statement was filed in the year 2009, yet the plaintiff has not prayed for the relief of partition and therefore the relief of declaration cannot be granted. He would further argue that the entire sale was for discharge of the loans that had been borrowed by Nalli Gounder from Mani, who was examined as D.W.2 to substantiate the same. Apart from that, Mr.Nalli Gounder had also received amounts towards medical expenses and hence the sale is proper and valid and should not be interfered with in the second appeals.

12. I have carefully considered the submissions of both sides and perused the records.

13. So far as the first issue as to the paternity of Chandra is concerned, P.W.2, the father has entered the witness box and has stated that the appellant Chandra was born to him. In order to reject this argument, Mr.T.M.Hariharan would invite my attention to the deposition i.e., the cross examination of Nalli Gounder to state that Nalli Gounder had



stated that he had no access to his wife for 40 years and Chandra, being only 38 years, could not have been born from the wedlock between Nalli Gounder and his wife. He would further substantiate that the Government records did not reflect the name of Nalli Gounder as the father of Chandra and therefore he would state that the very basis for seeking partition does not arise.

14. I have gone through the evidence of P.W.2, namely, Nalli Gounder. P.W.2 has specifically stated in the chief examination by way of proof affidavit, as follows:-

“நான் பிரியாகவுண்டம்பட்டியில் இருக்கிறேன். எனக்கு ஒரே மகள். அந்த மகளின் பெயர் சந்திரா. மகளுக்கு திருமணம் ஆகிவிட்டது....”

15. The cross examination has not gone to the extent of denying this categorical statement of Nalli Gounder that Chandra is his daughter. Indirectly the defendant would seek to state that since Nalli Gounder has not seen his wife for 40 years, Chandra could not have been born to him. This evidence is insufficient for me to hold that Nalli Gounder is not the father of Chandra, in the light of the clear and categorical statement of Nalli Gounder, in his chief examination made by entering the witness box. The defendant ought to have let in some more evidence in order to get a finding that the plaintiff was not born to Nalli Gounder.



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16. Proceeding further, the very sale deed that has been marked as Ex.A1/B1 would reveal as follows:-

“நாமக்கல் ரிடி.சேந்தமங்கலம் சப்ரிடி.தாழம்பாடி கிராமம், பட்டா எண்.716, சர்வே எண்.பு.உற.ஏக்கர் தீ.நு.192/1 11.71.5 28.93.3/4 45.15 இந்த நிலத்தில் எனக்கு பாத்யப்பட்ட பொதுவில் 18 ல் 1 பங்கு புஞ்சை ஏக்கர் 1.60.3/4 உள்ள விவசாய நிலம் பூராவும். ஷே சர்வே எண்ணில் உள்ள கிணற்றில் பொதுவில் 18 ல் 1 பங்கு பூராவும் சேர்ந்து இந்த கிரயத்துக்கு கட்டுப்பட்டது.”

This statement is sufficient that what was purchased by the defendant Rajamani was 1/18th share in the ancestral property of Nalli Gounder.

17. With respect to the submissions that the sale has been made for proper consideration towards discharge of the loans incurred by Nalli Gounder as the Kartha of the family, I do not want to enter into any finding on that aspect in this particular case, as it is a defence which has to be taken in a regular suit for partition. Whether the sale was made by the Kartha for discharge of family debts or his own debts and whether in fact he was suffering from illness etc., are matters which have to be probed in a suit for partition that could be instituted either by Chandra or by Rajamani, the purchaser. For the purpose of this case, it is suffice to declare that the plaintiff is entitled to 1/36th share



of the property, which came to the family of Nalli Gounder through Rangasamy @
Athiappa Gounder.

18. The trial Court as well as the lower appellate Court having come to a categorical conclusion that the suit property is ancestral in nature and also having found that Chandra is the daughter of Nalli Gounder, the Courts below ought to have granted the declaration that had been sought for.

19. Accordingly, S.A.No.576 of 2013 is allowed. The plaintiff will be entitled to a declaration that she will be entitled to 1/36th share in the ancestral property that came out to the share of Nalli Gounder from Rangasamy @ Athiappa Gounder.

20. So far as S.A.No.577 of 2013 is concerned, on the admitted pleadings that the plaintiff and the defendant being co-owners, there cannot be an injunction by one co-owner against another. Consequently, S.A.No.577 of 2013 stands dismissed.

21. I make it clear that I have not gone into the validity of the sale that has been made in favour of Rajamani. That will be gone into in the separate suit for partition, if filed by any of the parties who have a right over the property. It is open to the purchaser



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to independently prove that the allegation that the sale was made for discharge of the debts that had been incurred by the Kartha and hence binding on Chandra. There shall be no order as to costs.

Index: yes/no

19.01.2024

Neutral citation : yes/no

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To

1. The Subordinate Judge
Namakkal
2. The Additional District Munsif
Namakkal



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V.LAKSHMINARAYANAN, J.

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