

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.201 of 2017

N.Ramsudhan @ Harihara Sudhan Appellant/Defendant

vs.

1.Masilamani
2.Srinithi Akilandeswari
3.Minor Srimugi Akilandeswari
rep.by next friend and guardian
mother Masilamani Respondent/Plaintiffs

Appeal suit filed under Section 96 read with Order XLI Rule 1 of C.P.C. against the judgment and decree dated 16.11.2016 in O.S.No.163 of 2014, passed by the I Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.M.Sivavarthanan

For Respondents : Mr.M.S.Shriram Narayan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 16.11.2016, passed in O.S.No.163 of 2014, by the I Additional District and Sessions Court, Tiruppur.

2.The respondents herein, as plaintiffs, have instituted O.S.No.163 of 2014, on the file of the trial Court, for getting the reliefs of partition of 2/3 share of the plaintiffs 2 and 3; for passing a decree of maintenance in favour of the first plaintiff and also for creating charge over the share of the defendant.

3.It is averred in the plaint that the first plaintiff is the legally wedded wife of the defendant and both of them have blessed with the plaintiffs 2 and 3. The suit properties are

ancestral properties and the same have been allotted to the share of the defendant in a partition suit instituted in O.S.No.368 of 1970. Since the suit properties are joint family properties, the plaintiffs 2 and 3 are also having equal shares along with the defendant. Further it is averred in the plaint that the defendant has failed to maintain the first plaintiff and under the said circumstances, the present suit has been instituted for getting the reliefs sought therein.

4. In the written statement filed on the side of the defendant it is averred that the suit properties are not the joint family properties. The mother of the defendant has instituted O.S.No.368 of 1970 against the father of the defendant for getting a relief of partition in respect of joint family properties, wherein, a compromise decree has been passed and the suit properties have been allotted to the share of the defendant and therefore, all the suit properties are his separate properties and further, the plaintiffs 2 and 3 have got birth after 1970 and they are not entitled to claim the relief of partition. Further it is averred in the written statement to the effect that the defendant has never failed to maintain his family members, including the first plaintiff. Only at the instigation of the first plaintiff, the present suit has been instituted unnecessarily and therefore, the same is liable to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for so far as the relief of partition is concerned and decreed the suit in part so far as the relief of maintenance is concerned. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred at the instance of the defendant, as appellant.

6. Before contemplating the rival submissions made on either side, the Court has to narrate the following admitted facts.

7. It is an admitted fact that the first plaintiff is the legally wedded wife of the defendant. The plaintiffs 2 and 3 are the children of the first plaintiff and defendant. It is also equally an admitted fact that while the defendant is a minor, a partition suit has been instituted by his mother in O.S.No.368 of 1970, on the file of the District Munsif Court, Udumalpet, wherein, a compromise decree has been passed and the suit 'A' Schedule properties have been allotted to the share of the defendant.

8.The main contention put forth on the side of the plaintiffs is that all the suit properties are joint family properties and by way of birth, the plaintiffs 2 and 3 are having equal shares along with the defendant and since the defendant has failed to maintain the plaintiffs, the present suit has been instituted for the reliefs sought therein.

9.The main contentions put forth on the side of the defendant are that the suit properties are his separate properties and further all along he has been maintaining the plaintiffs; only at the instigation of the first plaintiff, the present suit has been instituted unnecessarily and therefore, the same deserves to be dismissed.

10.The trial Court, as mentioned supra, so far as the relief of partition is concerned, has decreed the suit as prayed for; as far as the relief of maintenance is concerned, has partly decreed to the tune of Rs.5000/- per mensem.

11.The learned counsel appearing for the appellant/defendant has raised the following points so as to supplant the judgment and decree passed by the trial Court:

(1)The defendant and his father have once constituted a Hindu Joint family and during his minority, his mother has instituted O.S.No.368 of 1970 for the relief of partition, wherein, a compromise decree has been passed and the suit 'A' Schedule properties have been allotted to the share of the defendant and since, the plaintiffs 2 and 3 have got birth after passing of compromise decree in O.S.No.368 of 1970, they cannot become coparceners and therefore, they are not entitled to get partition in respect of suit properties.

(2)The defendant has all along been maintaining the plaintiffs and only at the instigation of the first plaintiff, the present suit has been instituted and therefore, the first plaintiff is not entitled to get monthly maintenance and also a charge decree.

12.To controvert the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondents/plaintiffs has succinctly contended to the effect that by virtue of compromise decree, erstwhile joint family properties have been divided into equal shares between the defendant and his father and one such share has been allotted to the share of the defendant and even though such a partition has taken place prior to the birth of plaintiffs 2 and 3, as per Section 6 of the Hindu Succession Act, 1956, the plaintiffs 2 and 3 are having partible interest and since, the defendant has failed to maintain the plaintiffs, the present suit has been instituted for the reliefs sought therein. The trial Court,

after considering the overwhelming evidence available on record on the side of the plaintiffs, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court are not liable to be set aside.

13. For considering the rival submissions made on either side, the Court has to look into the provision of Section 6 of the Hindu Succession Act, 1956 and the same reads as follows:-

"6. Devolution of interest in coparcenary property-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall.-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

A mere reading of the said Section would clearly go to show that by virtue of amendment to Section 6, daughters are also standing in the same footing as that of sons. To put it in short, daughters are also become coparceners.

14. The exception to applicability of Section 6 of the said Act is that if any disposition or alienation, including partition, has taken place between members of joint family, the same would not affect by virtue of amendment.

15. The learned counsel appearing for the appellant/defendant has relied upon the following decisions:-

(1) 2016(2) CTC 306 - Uttam vs. Saubhag Singh and Others.

(2) 2008(3) SCC 87-Bhanwar Singh vs. Puran and Others.

16.The only point that comes up for consideration in the present Appeal Suit is as to whether by way of birth, the plaintiffs 2 and 3 can be treated as joint family members as per the provision of Section 6 of the said Act.

17.By virtue of amendment to Section 6 of the said Act, it is needless to say that daughters are also coparceners and they can be treated as joint family members.

18.In the instant case, it is an admitted fact that in between defendant and his father, a partition has taken place in respect of joint family properties of erstwhile Hindu joint family, so far as the erstwhile Hindu joint family consisted of defendant and his father. After partition, a disruption has taken place. But, so far as the family of defendant is concerned and also by virtue of Section 6 of the said Act, plaintiffs 2 and 3 should also be treated as coparceners.

19.The repeated argument put forth on the side of the appellant/defendant is that since the defendant has separated from his father and the suit properties have been allotted to his share, by virtue of a compromise decree passed in O.S.No.368 of 1970, there is no joint family.

20.As stated in many places, by way of birth and also as per the provision of Section 6 of the said Act, plaintiffs 2 and 3 can very well be treated as joint family members. Since the plaintiffs 2 and 3 can also be treated as joint family members and since the suit properties have not lost the character of joint family properties, the plaintiffs 2 and 3 are legally entitled to get their shares in the suit properties.

21.The entire case of the plaintiffs proceeds only on the basis of the provisions of Section 6 of the said Act. Since the plaintiffs 2 and 3 are daughters of the defendant and since the properties allotted to the share of the defendant in the earlier suit are also nothing but joint family properties, absolutely there is no merit in the contentions put forth on the side of the appellant/defendant so far as the relief of partition is concerned and further the decisions accited on the side of the appellant/defendant are not factually identical to the facts of the present case.

22.The second limb of argument put forth on the side of the appellant/defendant is that the appellant/defendant has been maintaining his family members properly and there is no need to pass a maintenance decree as well as charge decree over the share of the defendant.

23.In fact this Court has perused the entire averments made in the plaint and ultimately found that the plaintiffs are not living along with the defendant. Considering the aforesaid factual aspect and also considering that the first plaintiff is the legally wedded wife of the defendant, as per law, the defendant is bound to maintain her.

24.Even though in the plaint it has been specifically prayed to award a sum of Rs.10,000/- per memsem as monthly maintenance to the first plaintiff, considering the factual situation of the present case, the trial Court has awarded only a meager sum of Rs.5000/- to the first plaintiff and to that effect a charge has already been created. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/defendant cannot be accepted.

25.The trial Court, after considering the overwhelming evidence available on record, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any error nor illegality in the judgment and decree passed by the trial Court and altogether, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without costs. The judgment and decree passed in O.S.No.163 of 2014, by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The I Additional District and Sessions Judge, Tiruppur.

Copy to

The Section Officer,
VR Section, High Court, Madras (2 copies)

+ 1 cc to Mr.M.Sivavarthanan Advocate,SR.85996

+ 1 cc to M/s.P.Valliappan Advocate,SR.86569

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