

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No303/2017 & CMP.No.7196/2017

1.K.Munikrishnan
2.M.Vasanthi
3.N.Sumathi
4.V.Narasimalu

Appellants /Appellants
Defendants

Versus

K.Shanthi

Respondent /Respondent/
Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree made in AS.No.10/2014 on the file of the Subordinate Judge, Gudiyatham, Vellore District, dated 24.01.2017 confirming the judgment and decree made in OS.No.139/2006 on the file of the District Munsif, Gudiyatham, Vellore District, dated 18.12.2013.

For Appellants : Mr.K.A.Ravindran

JUDGMENT

By consent, the second appeal is taken up for final disposal.

2 The defendants who had lost before the Courts below, are the appellants herein.

3 The respondent / plaintiff has filed a suit in OS.No.139/2006 on the file of the Court of the District Munsif at Gudiyatham, Vellore District, against the appellants / defendants praying for the relief of declaration and permanent injunction restraining them from interfering them from possession and enjoyment of the landed properties situate in Baradarami Village, Gudiyatham Taluk, Vellore District.

4 The first appellant herein, earlier to the suit in OS.No.139/2006, filed a suit in OS.No.241/2005 on the file of the very same Court, praying for declaration and consequential relief of permanent injunction in which the plaintiff in OS.No.139/2006 was arrayed as Defendant No.6.

5 The Trial Court vide common Judgment and decree dated 18.12.2013, granted declaration in favour of the plaintiff in OS.No.139/2006 in respect of the Gramanatham Survey No.261/1 and restraining the defendants from interfering in her peaceful possession and enjoyment of the property and dismissed the suit regarding other properties.

6 OS.No.241/2005 filed by the first appellant herein, was decreed in respect of Gramanatham Survey No.711/21 and accordingly, permanent injunction was granted in respect of the said property and the Trial Court had relegated the parties to file a suit for partition regarding their joint family properties in accordance with law, if necessary.

7 The appellants / defendants, in OS.No.139/2006 aggrieved by the partly decreeing of the suit in OS.No.139/2006, filed an appeal in AS.No.10/2014 on the file of the Court of Sub Judge, Gudiyatham. The Lower Appellate Court, vide impugned Judgment and decree dated 24.01.2017, has dismissed the appeal and thereby, confirming the judgment and decree passed by the Trial Court in OS.No.139/2006 and challenging the same, the present second appeal is filed.

8 In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised:-

[1] Whether the Courts below are right in giving a finding that the legal heirs of Kuppaiya Chetty and Rajamma are equally entitled to get their respective share in their ancestral property as per the Hindu Succession Amendment Act 39/2005 when the father died much earlier to the coming into force and notional partition opened as early as 1980 and the daughters cannot be treated as co-parceners along with first appellant as per Rulings reported in 2015 [6] CTC 576?

[2] Whether the Courts below are right in giving a finding that the daughters are equally entitled to their share in the ancestral property left by Kuppaiya Chetty who died as early as 1980 and his son that is the first appellant herein is entitled to get half share and a share in Kuppaiya Chetty's share in the ancestral property as per law prevailed before 2005?

[3] Whether the Courts below are right in granting a decree for declaration and injunction

in favour of the respondent with respect to second part of Item 1 of the suit property by mentioning a wrong survey number [S.No.261/1] when the property in S.No.711/21 belonged to the 1st appellant herein and as per the decree granted by the Trial Court in common judgment made in OS.No.139/2006 and OS.No.241/2005?

[4] When the respondent mentioned a wrong survey number for the second part of item 1 as 261/1 Door No.3/60, instead of S.No.711/21 in D.No.3/60. Whether the Courts are right in granting a decree in favour of the respondent and also in favour of the appellant by mentioning different survey numbers for the very same property in a common judgment made in OS.No.139/2006 and OS.No.241/2005 dated 18.12.2013?"

9 Mr.K.A.Ravindran, learned counsel appearing for the appellants / defendants would vehemently contend that taking advantage of the liberty granted by the Trial Court, the respondent / plaintiff has already filed a suit for partition on the file of the Sub Court, Gudiyatham, Vellore District and unless the findings given by the Courts below are eschewed, it will be extremely difficult for the appellants to defend the said suit and prays for appropriate orders.

10 This Court has carefully considered the submissions made by the learned counsel appearing for the appellants and also perused the impugned judgments and decrees.

11 The Trial Court has recorded the finding that the properties covered in both suits, cannot be inherited by the plaintiff's and 1st defendant's father Kuppaiyya Chetty and the parties to the suits are all legal heirs of Kuppaiyya Chetty and the said properties are treated as Hindu Undivided Joint Family Properties and however, Kuppaiyya Chetty has gifted the property in favour of his mother-in-law, viz., Lakshmiammal, under Ex.A1 - Settlement Deed dated 14.03.1960. The Trial Court has also recorded the finding that Kuppaiyya Chetty being the Kartha of the Joint Family property can alienate the same only for the benefit of the joint family ; but the recitals in Ex.A1 do not disclose the said fact and he has no right to do so.

12 The Trial Court has also recorded the finding that Kuppaiyya Chetty died leaving behind the plaintiff and defendants 1 to 6 as his legal heirs and the mother of the plaintiff, viz., the first defendant, also died leaving behind

the said persons and as such, all of them are entitled to get their respective shares in the above said properties.

13 The Trial Court has also noted that the 1st defendant had also admitted that item nos.1 to 8 to the Schedule mentioned Property in OS.No.241/2005 are ancestral properties and that his sisters including the plaintiff are also entitled to get equal share in the properties and mere marking of the revenue records cannot create any absolute right or title to the parties and thereby, abrogate the rights of the other co-parcenars. The Trial Court recording the said finding, has partly decreed the suit in OS.No.139/2006 and aggrieved by it, the defendants filed AS.No.10/2014.

14 The Lower Appellate Court, on an independent application of mind, had recorded a finding that the suit properties are ancestral joint family properties and as such, Kuppaiyya Chetty has no right to settle the entire properties in favour of his mother-in-law under Ex.A1 - Settlement Deed in the absence of any separate property of Kuppaiyya Chetty and as such, it is a joint family property wherein all the legal heirs are entitled to have equal share, the said statement is wholly invalid and concurred with the findings rendered by the Trial Court.

15 The learned counsel appearing for the appellants / defendants urged that since the father died much earlier to the coming into force of the Hindu Succession Amendment Act, 39/2005, notional partition opened as early as in the year 1980 and as such, the daughters cannot be treated as co-parcenars. The facts and evidence let in and the findings recorded by the Courts below coupled with the admission of D.W.1 would point out that the properties are ancestral Hindu Joint Family properties and the recitals in Ex.A1-Settlement Deed do not disclose that settlement was made by Kuppaiyya Chetty in favour of his mother-in-law under Ex.A1 was for the benefit of the family. In the considered opinion of the Court, the findings rendered by the Courts below cannot said to be perverse.

16 This Court is of the view that the impugned judgment passed by the Lower Appellate Court is in consonance with the well settled legal principles and finds no error or infirmity.

17 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree passed by the Courts below. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

18 At this juncture, the learned counsel appearing for the appellants / defendants would contend in the subsequent suit for partition filed by DW1, the Court in which the suit is pending, need not be influenced by the findings rendered in OS.No.139/2006 which was confirmed by the Appellate Court in AS.No.10/2014.

19 It is to be noted at this juncture that the plaintiff in the suit, has to succeed on his pleadings and evidence let in and the Courts are expected to render its findings based on the pleadings and quality of evidence let in by the parties.

Sd/-
Asst.Registrar (CSV)

/true copy/

Sub Asst. Registrar

To

- 1.The Sub Ordinate Judge
Gudiyatham, Vellore District
- 2.The District Munsif
Gudiyatham, Vellore District.

Copy to:
The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.K.A.Ravindran,Advocate sr.39916

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SA.No.303/2017

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ss(23/6/2017)