

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.508 of 2017
and
C.M.P.No.12202 of 2017

Bakkiam

Appellant

..VS..

1. S.Pandurangan

2. S.Natarajan

3. P.Raja

Respondents

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 09.11.2016 passed in A.S.No.113 of 2015 on the file of the I Additional District Judge, Salem confirming the decree and judgment dated 17.03.2015 passed in O.S.No.427 of 2012 by the II Additional Subordinate Judge, Salem.

For Appellant : Mr.R.Nalliyappan

J U D G M E N T

The second plaintiff, who has lost before both the Courts below, in a suit for partition, has filed the above Second Appeal.

2. The first plaintiff (since deceased) is the mother of the second plaintiff and the defendants 1 and 2 and grand mother of the third defendant. Originally, the property belonged to one Thambu Naidu, who had his only son Subramani. The said Subramani's wife is the first plaintiff and the second plaintiff and defendants 1 and 2 are their children. The third defendant is the son of the pre-deceased son.

3. It is the definite case of the second plaintiff that the suit properties are ancestral properties and their father was in possession till his death. Thereafter, the first defendant had obtained patta in his name and other pre-deceased brother's name jointly, as the first defendant was the eldest male member of the family. The defendants have executed a partition deed dated 21.01.2012 without the knowledge of the plaintiffs by excluding them. As the second plaintiff is not a party to the said document, it is not binding on her. As soon as the plaintiffs got knowledge about the said partition deed, the plaintiffs demanded for division of the properties and allot one share to them.

4. The defendants have filed their written statement contesting the suit by contending that the properties are not ancestral properties of the plaintiffs. The defendants are the absolute owners of the suit properties and the patta was granted in their name only in accordance with law and Rules due to their rights, title and possession. The plaintiffs' ancestral family did not have any property. The father of the second plaintiff and the defendants 1 and 2 died long back and the properties sought to be divided are the exclusive properties of the defendants 1 and 2 and the plaintiffs have got no right or title over the same.

5. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiffs, the second plaintiff examined herself as P.W.1 and two more witnesses were examined as P.W.2 and P.W.3 and as many as 6 documents have been exhibited as Ex.A1 to Ex.A.6. On the side of the defendants, the first defendant examined himself as D.W.1 and one more witness was examined as D.W.2 and as many as 10 documents have been exhibited as Ex.B1 to B10.

6. Both the Courts below had concurrently held that the plaintiffs are not entitled to a share in the suit properties. Aggrieved by the same, the above Second Appeal has been filed by the second plaintiff.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. The trial Court had held that the suit is barred by limitation, as the plaintiffs have filed the suit beyond the period of limitation after the partition deed was executed. It is evident from the records that Ex.A-1-Partition Deed was executed on 21.01.2012, whereas the suit was filed on 15.09.2012 itself, which is well within the period of limitation. The admitted facts are that the second plaintiff got married 50 years prior to the date of filing of the suit. Hence, she is not entitled to any right under the Tamil Nadu Act 1 of 1990. At the same time, it is found that there is no evidence that the properties belong to the father of the second plaintiff and the defendants 1 and 2, namely, Subramaniam. It is stated by the second plaintiff that she had been living with her mother separately for more than 50 years and she

had been in joint possession in the suit properties. Merely because the patta stands in the joint name of the first defendant and his deceased brother, it cannot be presumed that the properties are joint family in nature. It is to be noted that the said Subramaniam is the son of Thambu Naidu, who predeceased him.

9. It is the further argument of the learned counsel for the appellant that as the properties belonged to the grandfather, Thambu Naidu and they are ancestral in nature, the appellant / second plaintiff is entitled to a share in the suit properties as per the amended Section 6 of the Hindu Succession Act. In order to claim that the second plaintiff is entitled to the benefits of Section 6 of the Hindu Succession Act, the burden is on her to prove that the properties are joint family in nature and that the second plaintiff is also a member of the coparcenary and that she is in joint possession of the properties or the possession of the properties by the other co-sharers or on behalf of the second plaintiff also. In Ex.A-1, which is the partition deed, it is mentioned that the properties are ancestral in nature. The patta and kist receipts of the properties are also in the name of the first defendant. If the properties are held to be joint family in nature, the second plaintiff cannot claim any right in the same, excepting as per

the Tamil Nadu Act 1 of 1990. If the appellant has to claim benefit under the Tamil Nadu Act 1 of 1990, then the date of marriage is significant. P.W.1 has deposed that she is now aged about 70 years and when she was 19 years, her father had passed away and it is also admitted by her that she was 18 years at the time of marriage. Therefore, the appellant / second plaintiff was married even prior to coming into force of Act 1 of 1990. Hence, she will not be entitled to any share in the suit properties. Similarly, the second plaintiff is disentitled to get any share even as per Section 6 of the Amended Hindu Succession Act, 2005. The appellant has specifically admitted that her father died when she was 19 years. In this case, when it is categorically stated that the father died even much prior to coming into force of the amended Act of 2005, the appellant is not entitled for any share in the suit properties. Thus, having failed to establish that she is entitled for a share either under the Tamil Nadu Act 1 of 1990 or under the amended Hindu Succession Act of 2005, the plaintiff has been rightly non-suited by the Courts below.

10. As this Court finds no infirmity in the said judgment and decree of the lower Court, as confirmed by the Appellate Court, the same does not warrant any interference by this Court and there is no

question of law, much less, substantial question of law arising for consideration in this Second appeal.

11. In the light of the above, the **Second Appeal is dismissed** and the judgment and decree of the Courts below is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2017

Index: Yes/No

Internet: Yes/No
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To

1. The I Additional Subordinate Judge, Salem,
2. The Principal District Munsif, Salem.
3. The Section Officer, V.R.Section, High Court, Madras

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PUSHPA SATHYANARAYANA.J

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