

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.01.2017**

CORAM

THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

A.S.No.27/2010

Jagadeeswari

..Appellant

..Vs..

1.Padmavathi

2.Lakshmi

3.Uma

4.Chitra

5.Usha

6.Aasha

...Respondents

Prayer: Appeal filed under Section 96 R/w Order 41 Rule 1 Civil Procedure Code against the Judgment and Decree of the Court of the Principal District Judge, Cuddalore in I.A.No.147 of 2005 in O.S.No.88 of 2004 dated 01.12.2005.

For Appellant	: Mr.V.Raghavachari
For RR-1 to 3	: M/s.S.L.Priya
For R-4	: No Appearance
For RR-5 & 6	: Mr.Kingston Jerold

JUDGMENT

The plaintiff whose plaint was rejected by the Trial Court on the ground that she has no cause of action to file the suit, in view of the fact that her father had died even in the year 1934 and she being the daughter cannot claim partition has filed this appeal.

2.The suit was filed by the plaintiff contending that the suit properties belonged to one Madhava Chettiar who died in the year 1934. Thereafter, Saradammal wife of Madhava Chettiar had filed a suit for partition for herself and on behalf of her minor sons against the brothers of her late husband and their minor sons in O.S.No.49 of 1938 before this Court. The suit for partition was decreed on 30.9.1941. As a result, the exclusive right to the suit property of the legal heirs of Madhava Chettiar got crystallized. During in the year 1969, a registered partition deed was entered into between her mother Saradammal and her brothers namely defendants 1 and 2. In the said partition A and B Schedule Properties were allotted to the 1st and 2nd defendants who are the sons of Madhava Chettiar and C Schedule property was allotted to his wife Saradammal. The daughters of Madhava Chettiar defendants 3 to 5 and the plaintiff were not given any share under the partition deed. It is claimed that the plaintiff and the defendants 3 to 5 are not parties to the said partition. Therefore, the said partition will not bind them. Saradammal died during the year 1990. The plaintiff had along with the third defendant issued a legal notice to defendants 1, 2, 4 and 5 seeking partition of the properties. The 1st defendant sent a reply notice on 05.01.2000 refusing to comply with the said legal notice. It is also contended that only from the

reply, the plaintiff came to know about the partition that is said to have taken place in the year 1969. The plaintiff would contend that the suit property, and other properties being joint family properties of late Madhava Chettiar they were administered by Saradammal for the benefit of her minor children. Therefore, the plaintiff claims 1/6th share in the suit properties.

3.It appears that the first defendant namely; G.M.Ramasamy Chettiar died pending suit and defendants 6 to 11 being his wife and children were impleaded as legal heirs. The said legal representatives namely; defendants 6 to 11 filed a written statement through the tenth defendant contending that since Madhava Chettiar had died prior to the introduction of Hindu Succession Act, 1956, the plaintiff and the defendants 3,4 and 5 being the daughters of the said Madhava Chettiar will not be entitled to any share. In the light of the partition that have taken place in the year 1969 by way of a Registered instrument between Saradammal and the sons of Madhava Chettiar namely; defendants 1 & 2, the plaintiff cannot claim any share in the properties of Madhava Chettiar. On the same contentions, the defendants 6 to 11 also filed an application in I.A.147/2005 under Order 7 Rule 11 of the Code of Civil Procedure seeking rejection of the

plaint. The plaintiff filed a counter resisting the said application. On a consideration of the facts as well as the law relating to succession, the learned Principal District Judge, Cuddalore held that father of the plaintiff having died in the year 1934, the plaintiff will not get any right to file a suit for partition of the properties of her father. It was also found as of fact that the plaintiff has not included the properties which were allotted to the mother Saradammal and under partition deed dated 16.03.1969.

4. Upon the above findings, the learned Principal District Judge allowed the application for rejection of a plaint and the suit stood dismissed. Aggrieved by the said order of rejection of the plaint, the present appeal has been filed. This appeal was initially posted before me on 25.10.2016. I had directed private notice to the 4th respondent and adjourned the case to 17.11.2016. Thereafter, the appeal was posted on 04.01.2017, on that date at request of the learned counsel for the appellant, it was adjourned to 05.01.2017. Again 05.01.2017 the appeal was adjourned to 11.01.2017. On 11.01.2017, I heard Mr.V.Raghavachari, learned counsel for the appellant and the appeal was adjourned to 17.01.2017. On 20.01.2017, the appeal was again adjourned to 25.01.2017. Since there was no representation for the

appellants on 25.01.2017. I had posted the appeal for dismissal to day. Today when the matter was taken up Mr.V.Raghavachari, learned counsel appearing for the appellant, expressed that he has unable to argue the appeal further. I pointed out to him he had completed his arguments. Though the counsel has his own reasons for expressing his inability I am not going in to the same in order to avoid any unpleasant situation.

5.I have heard learned counsel for the respondents today and I proceed to dispose of the appeal on merits.

6.It is seen that notice to the 4th respondent has not been served. Private notice sent to the 4th respondent has been returned unserved. The 4th respondent is one Chitra who is one of the daughters of Ramaswami Chettiar who is the son of deceased Madhava Chettiar. In the light of the arguments and conclusions reached by me I do not think I should wait for service of notice on her, since her rights are not going to be affected by the disposal of the appeal.

The following point emerges for determination in the appeal:

1.Whether a daughter of a male Hindu who died in the year 1934 that is prior to coming into force of the Hindu Succession Act 1956 could claim partition of her father's estate which is admittedly his ancestral property?

7.Mr.V.Raghavachari, learned counsel would contend that the partition of the year 1969 is not binding on her. The plaintiff is not a party and therefore she would atleast get a right in her mother's share. Unfortunately for the plaintiff on the date of death of Madhava Chettiar, her mother also did not have a right. Hindu Women's Property Act also came into force only in the year 1937 and only in 1947, the then Madras Presidency enacted its own law including agricultural lands also. It is the admitted case of the parties that the suit properties were ancestral properties of Madhava Chettiar and they were allotted towards his share in a partition which in took place pursuant to the decree of this Court in O.S.No.49/1938 and the said decree was passed on 30.09.1941. Therefore neither the mother Saradammal nor the plaintiff, defendants 3,4 and 5 who are the wife and daughters of Madhava Chettiar can claim any right over the estate of Madhava Chettiar which devolved on his sons by succession in the year 1934. It is also seen that there was a partition on 16.03.1969 and the mother Saradammal was allotted the properties described in Schedule C to the partition deed. The plaintiff has not chosen to include those properties in this suit. The mother had died in the year 1990. It may be open to the plaintiff to seek a share in the property that was allotted to the

mother who died in the year 1990. I do not think by any stretch of imagination, the plaintiff can claim a right over the properties of the deceased Madhava Chettiar. Even to enable a wife or a widow to claim a right under the Hindu Women's Right to Property Act, a division Bench of this Court in ***Bappu Ayyar .v. Ranganayaki alias Mennakshi Ammal & Others in [1955 (2) MLJ 302]*** had held that it should be shown that a husband was alive on the date when the Hindu Women's Rights to Property Act 1947 came into force. The same view has been followed by this Court and as well as the Supreme Court when the applicability of Hindu Succession Amendment Act 1 of 1990 and the Hindu Succession (Amendment) Act 39/05 were considered.

8. Therefore, in the light of the legal position, I am unable to disagree with the findings of the learned Principal District Judge who held that plaintiff did not have cause of action to file the suit. Hence the appeal is dismissed, confirming the judgment and decree of the trial Court. Considering the relationship between the parties, there shall be no order as to cost in this appeal.

27.01.2017

KP
Index: No
Internet: No

To
The Principal District Judge, Cuddalore.

R.SUBRAMANIAN.,J.

KP

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