

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.374 of 2012

and

M.P.No.1 of 2012

Arukutty

.. Appellant/Appellant/
Plaintiff

Vs.

1. Punithavathy
2. G.Ramkumar
3. K.Sivakami
4. K.Maruthachalam
5. K.Palanisamy
6. K.Subramanian
7. P.Subramaniam
8. V.Ayyammal
9. R.Ponnuraj
10. R.Ramraj
11. Kaliammal
12. M.Rangasamy

.. Respondents/Respondents/
Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.09.2011 in A.S.No.42 of 2011 on the file of the First Additional District Court, Coimbatore, against the judgment and decree dated 11.02.2011 in O.S.No.268 of 2008 on the file of the First Additional Subordinate Court, Coimbatore.

For appellant : Mr.P.Dinesh Kumar

For respondents : Mr.P.Valliappan for RR-1 to 3
No appearance for RR-4 to 12

JUDGMENT

The unsuccessful plaintiff has filed the above Second Appeal against the judgment and decree dated 30.09.2011 in A.S.No.42 of 2011 on the file of the First Additional District Court, Coimbatore, confirming the judgment and decree dated 11.02.2011 in O.S.No.268 of 2008 on the file of the First Additional Subordinate Court, Coimbatore.

2. The case of the plaintiff is that the two items of the suit properties originally belonged to one Ramanna Gounder as his ancestral properties. He died intestate on 17.04.1959 leaving behind his wife Devathal, son Rangasamy @ Raju and four daughters, namely Ramathal, Kaliammal, Sengammal and Rangathal. Ramanna Gounder's wife died in 1965. Thereafter, the suit properties devolved on the five children of Ramanna Gounder, each one entitled to 1/5 share. Rangasamy @ Rasu Gounder and his four sisters died. The plaintiff is one of the children of Rangathal. Rasu Gounder's heirs are one Gopalsamy and the third defendant Sivakami. The said Gopalsamy died and his wife and son are defendants 1 and 2. All the other defendants are heirs of the four sisters stated above. The suit properties are undivided common properties. The plaintiff demanded the defendants for partition. The defendants 1 to 3 are attempting to alienate the suit properties to the third party in collusion with the other defendants. The plaintiff is entitled to 1/15 share in the suit properties and is entitled for partition. He issued a legal notice on 27.03.2008 to the defendants for partition. The defendants 1 and 3 alone sent reply objecting to the partition and the other defendants did not send any reply. Hence, the plaintiff has filed the suit for partition of items No.1 and 2 of the suit properties into fifteen equal shares in each of the properties by metes and bounds with respect to good and bad soil and to allot one such share in each of the suit items to the plaintiff; for permanent injunction restraining the defendants from alienating or encumbering the item Nos.1 and 2 of the suit properties to any third party and for costs.

3. The defendants 1 and 2 filed written statement, stating that the suit properties belonged to Ramanna Gounder ancestrally and the relationship mentioned in the plaint had been admitted by the defendants 1 and 2. The said Ramanna Gounder did not die in 1959 as alleged by the plaintiff, but he died some time in 1948-1949. On his death, the entire suit property devolved on his only son Rangasamy Gounder as the sole surviving coparcener. Ramanna Gounder's widow Devathal died about a year after his death and not in 1965 as alleged by the plaintiff. Any right will vest in the daughters only as coparceners and the Hindu Succession (Amendment) Act, 2005 will have only prospective operation and consequently, none of the daughters would be entitled to any share in the suit properties. While the properties were in the hands of Rangasamy Gounder, his son Gopalsamy is entitled to 1/2 share as coparcener. On 05.09.1988, Rangasamy, his children Gopalsamy and the third defendant partitioned the properties by registered Partition Deed. Some of the particulars given in the suit notice were wrong and they were corrected in the plaint only based on the particulars provided in the reply notice. The plaintiff's mother and her sisters never claimed any right over the suit properties and

were never in joint possession. The plaintiff's mother lost her right by ouster and adverse possession. There is no cause of action for filing the suit. The third defendant's written statement is similar to that of the defendants 1 and 2. The defendants 1 to 3 prayed for dismissal of the suit.

4. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Exs.A-1 to A-10. The third defendant examined herself as D.W.1 and filed Exs.B-1 to B-11. The trial Court, on an analysis of the oral and documentary evidence, dismissed the suit, against which, the plaintiff preferred First Appeal, which was also dismissed, against which, the plaintiff has filed the present Second Appeal.

5. On 26.03.2012, this Court ordered only notice regarding admission to the respondents returnable in two weeks. Now, the Second Appeal is taken up for final disposal on merits.

6. Heard both sides and perused the materials available on record.

7. It is not in dispute that the two items of the suit properties belong to Ramanna Gounder, which devolved upon his heirs and the suit properties were ancestral properties. Ramanna Gounder had five children, i.e. one son, namely Rasu Gounder and four daughters, namely Ramathal, Kaliammal, Sengammal and Rangathal. Rasu Gounder and his son are entitled to 1/2 share in the suit properties constituting as coparceners and they are entitled to 1/2 share by birth.

8. Ramanna Gounder died intestate and it is stated by the plaintiff that he died in 1959 and his wife Devathal died in 1965. It is categorically stated by the defendants that Ramanna Gounder died around 1948-1949 and his wife Devathal died in 1950. It appears that only to bring the death within the purview of the Hindu Succession Act, 1956, the date of death of Ramanna Gounder was stated as in the year 1959 and his wife's death was stated as in the year 1965. If Ramanna Gounder had died after coming into force of the Hindu Succession Act, 1956, the widow and four daughters constitute Class-I legal heirs as per First Schedule of the Hindu Succession Act and by operation of Section 6 read with 8 of the Hindu Succession Act, there would be notional partition of Ramanna Gounder's properties and thereafter, that share would devolve upon his heirs as per Section 8 of the Hindu Succession Act, 1956. Ramanna Gounder has died prior to the said enactment and his son would have obtained the entire suit properties as the sole surviving coparcener with the widow Devathal acquiring her right on maintenance. That is the reason why this Court earlier pointed out the date of death of Ramanna Gounder which is alleged to have been mentioned as

1959 in the plaint, but admittedly, as per the records, the said Ramanna Gounder is said to have died even prior to 1950.

9. The appellant/plaintiff claims equal right for four daughters of Ramanna Gounder and not any right as per Section 6 read with Section 8 of the said Hindu Succession Act. This plea is not acceptable as, after the introduction of Section 29-A in the Hindu Succession Act (Tamil Nadu Act 1 of 1990), the unmarried daughters in joint family as on the date of coming into force of the said Act, are declared to be coparceners. Admittedly, there is no plea by the plaintiff that any of the four daughters of Ramanna Gounder were unmarried on 25.03.1989, when the said Section 29-A came into force. The evidence of P.W.1 is very clear that most of the daughters are married even in late 1940s. The Hindu Succession (Amendment) Act was enacted in 2005, which inter-alia replaced the existing Section 6 of the Act with new provision. The Hindu Succession (Amendment) Act came into force on 09.09.2005 and the amended Section 6 had done away with marital status as provided in Section 29-A of the Tamil Nadu Act 1 of 1990 as a pre-condition for a daughter to acquire a status as a coparcener and conferred on all daughters, irrespective of their marital status, the status of a coparcener and all the rights associated therein.

10. As per Section 6(1) and Section 6(5) of the amended Act 2005, it is necessary that the property should continue to retain its character as a coparcenary property without any partition prior to the date of commencement of the amended Act, 2005, by a deed of partition. However, this is also depending on the date of demise of the said Ramanna Gounder. According to the plaintiff, Ramanna Gounder died on 17.04.1959. The defendants who contested the suit stated that Ramanna Gounder died in 1948-1949. The only document relied upon is Ex.A-10 Death Certificate of Ramanna Gounder. As per Ex.A-10, Ramanna Gounder is said to have died on 17.04.1959. As per Section 17(2) of the Registration of Births and Deaths Act, 1969, a duly certified copy of a Death Certificate issued is a public document within the meaning of Section 76 of the Indian Evidence Act and under Section 77 of the said Evidence Act, a copy so issued is sufficient to prove the contents of the public document.

11. P.W.1 in his evidence has deposed that he was about 57 years as on the date of his examination on 08.09.2009 and when Ramanna Gounder died, he was a boy. This shows that P.W.1 should have been born sometime in 1952, and therefore, the contention that Ramanna Gounder died in 1959, cannot be accepted. The third defendant who is the daughter of Rangasamy Gounder and granddaughter of Ramanna Gounder, in her cross-examination as D.W.1, stated that she was born on 27.07.1959 and that she was 50 years old when she was examined in the Court. The first appellate Court accepted the evidence of P.W.1 to that of D.W.1, as D.W.1

was not born on the alleged date of demise of Ramanna Gounder and she is incompetent to speak about his death. After the demise of Ramanna Gounder, his son has acquired the entire properties and later the same was partitioned by him with his children as per Ex.B-1 partition deed in 1988. Therefore, when the properties have already been partitioned between the coparceners as per the registered deed of partition, there is no question of inducting daughters as coparceners.

12. The lower appellate Court found that P.W.1 was examined in chief on 10.08.2009 and the case has been adjourned for marking the documents on 25.08.2009. In between, on 22.08.2009, Ex.A-10 was obtained. Ramanna Gounder's death would have been registered shortly before P.W.1's cross examination as per Ex.A-10. As per Section 13(2) of the Registration of Births and Deaths Act, if a death is not registered within one year from the date of its occurrence, then it can be registered only as per an order of a First Class Magistrate or a Presidency Magistrate as the case may be. Admittedly, the death of the said Ramanna Gounder was not registered till 2009. Ex.A-10 was issued based on the entry available in the certified copy of the extract of death under Section 17 of the Registration of the Births and Deaths Act, which is the true copy of the entry available in the Register and it will be of no help to the plaintiff in putting his case.

13. The first appellate Court held that the plaintiff has failed to prove the date of death of the maternal grand-father Ramanna Gounder. Unless and until the date of death of Ramanna Gounder is established, it cannot be held with any degree of certainty that his daughters would be entitled to any share. If proviso to then existing Section 6 does not operate to open the succession under Section 8 of the Hindu Succession Act, that would necessarily mean that on the death of Ramanna Gounder, the suit properties would have vested in his son Rangasamy Gounder as sole coparcener. The coparcenery of Ramanna Gounder would have come to an end and when the son Gopalsamy was born to Rangasamy Gounder, the coparcenery is re-constituted to include Gopalsamy, but the rights over the properties is already vested absolutely though as coparcenery properties in their hands. Both Rangasamy Gounder and his son Gopalsamy already began dealing with the properties and this is clear from the fact that on 05.09.1988, Rangasamy Gounder and his children had partitioned the properties, which is evidenced by Ex.B-1. For the next 17 years, the properties were enjoyed as per Ex.B-1 by the parties thereto without any of the daughters of Ramanna Gounder seeking any right in the properties.

14. The first appellate Court further held that unless a person is in joint possession as a co-sharer/co-owner, there is

no way that, that person can be ousted out of possession. As per Section 6 of the amended Hindu Succession Act, which is fundamentally a right conferring statute, whereunder, new right as a coparcener was conferred for the first time on daughters, but prior to amendment of the Hindu Succession Act, the daughters would not be a co-sharer of a joint family property. Therefore, a daughter claiming right based on the amended Section 6 of the said Hindu Succession Act, cannot claim any right to possession of the joint family property prior to the said amendment.

15. It is contended by the learned counsel for the plaintiff that the trial Court has rejected the claim of the plaintiff on the ground that the suit is barred by limitation, apart from merits, taking note of Article 110 of the Limitation Act, which is not correct, as the time from which the period runs is the date on which the person is excluded from joint family property to enforce a right to share therein, becomes known to the person. In this case, the suit was filed in 2008 and it is the contention of the plaintiff that after the reply notice by the defendants, the plaintiff has come to the knowledge that the plaintiff has been excluded from the joint family and hence, the suit is filed well within the time.

16. It is to be noted that since the said Ramanna Gounder and his wife would have died prior to 1956, namely the year of introduction of the amended Act, i.e. the Hindu Succession Act, 1956, the properties devolved upon the son of Ramanna Gounder, namely Rangasamy Gounder and thereafter, it devolved upon his children and that there was a partition among the coparceners, namely the son of Ramanna Gounder and the children born to Rangagamy Gounder and that none of the daughters of Ramanna Gounder have opposed the enjoyment of the properties by the sole surviving coparcener at that point of time and hence, the theory of knowledge addressed by the appellant herein cannot be accepted, and hence, the suit is also hit by Article 110 of the Limitation Act. But the first appellate Court, without rendering any finding on the limitation aspect, had considered the merits of the matter and rendered findings thereon to give a quietus to the entire issue on hand. Hence, not only on the aspect of limitation, but also on the merits of the matter, the plaint has got to be rejected. Thus, the relief sought for by the plaintiff has got to be rejected, which has rightly been rejected by both the Courts below.

17. Admittedly, as could be seen from the documents and also from the judgment and decree of the trial Court, the said Ramanna Gounder died prior to 1950 and his wife Devathal died within a period of less than two years from the date of demise of Ramanna Gounder.

18. As the properties in dispute had devolved upon the son of Ramanna Gounder, and that there was partition between Ramanna Gounder and his children and that the demise of Ramanna Gounder and his wife was prior to 1956, the act of the appellant/plaintiff in trying to bring the case by contending the date of demise of Ramanna Gounder as in 1959 and his wife in 1965, is only to include the benefits under the provisions of the Hindu Succession Act, 1956, so as to deceive the heirs of Rangasamy Gounder. This Court finds no reasons to interfere with the judgment and decree of the trial Court, as confirmed by the lower appellate Court.

19. The concurrent findings of the Courts below do not warrant any interference by this Court under Section 100 CPC. It is settled law from a catena of decisions of the Supreme Court and this Court that the findings of facts concurrently recorded by the trial court, as also by the lower appellate court, could not be legally upset by this Court, sitting in Second Appeal under Section 100 CPC, unless it is shown that the findings are perverse, being based on no evidence or that on the evidence on record, no reasonable person could come to that conclusion. Further, the scope for interference with the concurrent findings of fact, while exercising jurisdiction under Section 100 CPC, is very limited, and re-appreciation of evidence is not permissible, and if the trial court and the first appellate court misdirected themselves in appreciating the question of law or placed the onus on the wrong party, certainly, there is a scope for interference under Section 100 CPC. This Court finds no illegality or perversity in the concurrent findings of both the Courts below, and hence, they are liable to be confirmed.

20. There being no question of law, much less substantial question of law, the Second Appeal is dismissed in-limine, confirming the concurrent judgments and decrees of the Courts below, with costs. The Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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Copy to

1. The First Additional District Judge, Coimbatore.

2. The First Additional Subordinate Judge, Coimbatore.

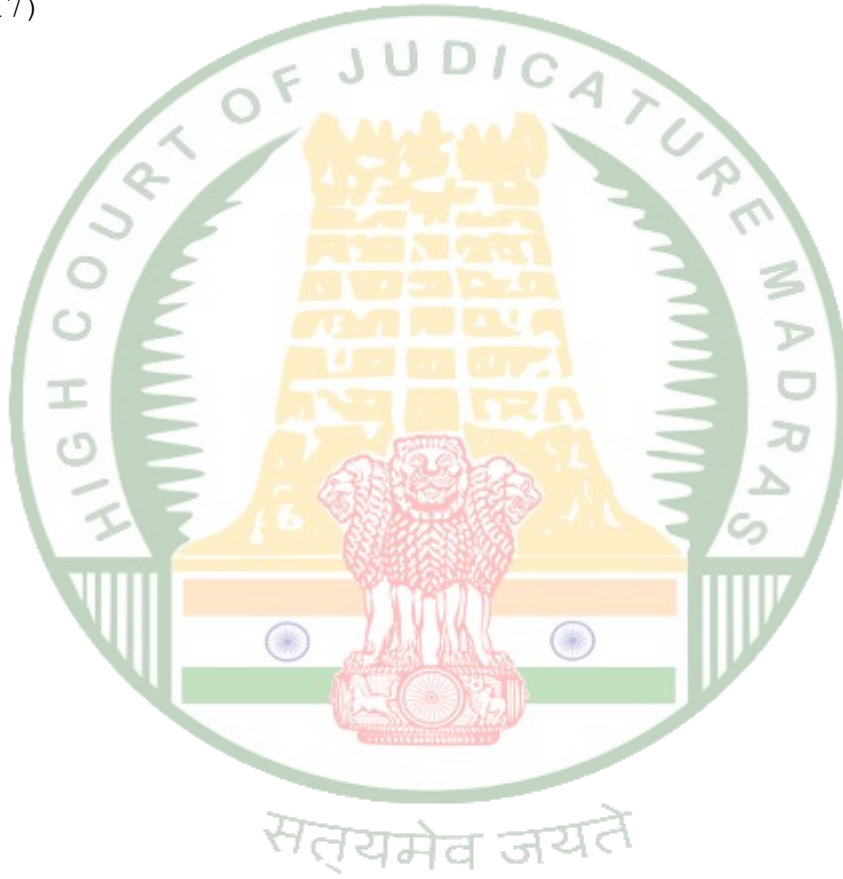
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to M/s.J.Ramakrishnan,Advocate sr.43833

+1cc to M/s.P.Valliappan,Advocate sr.43817

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