

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:01.03.2017
DATE OF DECISION:28.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.575 of 2008

1.T.V.Ravikumar
2.Muthulakshmi

..Appellants/Defendants

Vs

Shrisudharsana
Sole respondent declared as major
and Vinitha discharged from the
guardianship vide order of Court
dated 10.12.2011 made in
M.P.No.1/2011 in A.S.No.575/2008 ..Respondent/Plaintiff

This appeal is filed under Section 96 C.P.C. against the judgment and decree dated 30.12.2005 made in O.S.No.50 of 2005 on the file of the Additional District-Cum-Sessions Judge/Fast Track Court No.II, Coimbatore.

For Appellants : Mr.R.Sivaraman for
Mr.N.Damodaran
For Respondent : Mr.T.R.Rajagopalan
learned Senior counsel
for Mr.K.S.Jeyaganesan

J U D G E M E N T

The defendants 1 and 2 are the appellants. The respondent as a minor had filed the suit for partition claiming 3/8 share in the suit properties. The suit properties originally belonged to the joint family of Thangavel Gounder and the 1st defendant. The Tangavel Gounder died in 1990. The 1st defendant had married the next friend of the plaintiff on 02.09.1990 and they lived together at Pollachi. The plaintiff was born during the said wedlock on 23.11.1995.

2. According to the plaintiff, the 1st defendant had tortured and sent her and her mother out of the matrimonial house. Hence they were living with her maternal grand parents at Erode. The 1st defendant had also sought for divorce from the mother of the plaintiff. According to the plaintiff, the suit A-

schedule properties are vast income yielding properties. According to the plaintiff though the B-schedule properties stand in the name of 2nd defendant namely, the mother of 1st defendant and wife of Thangavel Gounder, it was claimed that she had no separate income and as such those properties are also joint family properties. On the above contentions, the plaintiff claimed that she and the 1st defendant are entitled to 3/8 share each and the 2nd defendant is entitled to 2/8 share.

3. The suit was resisted by the 1st defendant contending that the custody of the next friend of the minor plaintiff itself is illegal and he had already filed a petition for custody of the minor plaintiff in O.P.No.110 of 1997 before the Trial Court. It was further contended that the property belonged to Thangavel Gounder. It was further contended that the family properties were partitioned by a registered partition deed dated 11.09.1968 and as per the said partition, suit A-schedule properties were allotted to Thangavel Gounder, the father, suit B-schedule properties were allotted to the 1st defendant and suit C-schedule properties were allotted to the 2nd defendant Muthulakshmi.

4. After the death of Thangavel Gounder, the properties allotted to Thangavel Gounder were inherited by defendants 1 and 2 under Section-8 of the Hindu Succession Act and as such, the plaintiff has no right to demand partition of those properties as they are self acquisition of the defendants. It was also further claimed that the 1st defendant had spent several lakhs of rupees in improving upon the property. The 2nd defendant though filed a separate written statement, adopted the pleadings in the written statement of the 1st defendant.

5. On the side of the plaintiff her next friend was examined as PW1 and Exs.A1 to A2 were marked. On the side of the defendants eight witnesses were examined and Exs.B1 to B7 were marked. Partition deed dated 11.09.1968 was marked as Ex.A1.

6. Upon consideration of the facts and circumstances of the case, the learned Trial Judge held that the plaintiff cannot claim share in respect of the C-schedule properties to the partition which was allotted to the 2nd defendant. In so far as B-schedule properties, which were allotted to the 1st defendant is concerned, the learned Trial Judge held that the plaintiff would be entitled to half share as coparcener, being the daughter of the 1st defendant. Since those properties were allotted to the 1st defendant in the partition that took place in the family, in the capacity of coparcener. Therefore, the plaintiff has acquired a right by birth in the said properties in view of the provisions of the Hindu Succession (Tamilnadu Amendment) Act 1 of 1990.

7. In so far as A-schedule properties are concerned, the same was allotted to Thangavel Gounder in the partition. Therefore, on his death, the properties allotted to Thangavel Gounder were inherited by defendants 1 and 2 in equal share. The Trial Court however, granted ¼th share in the said properties also to the plaintiff. Aggrieved by the said judgement and decree, the defendants have come forward with this appeal.

The Trial Court framed the following issues:

1) Whether the plaintiff is entitled to partition?

2) To what other relief, is the plaintiff entitled to?

The following additional issues were also framed:

1) Whether the claim of the 1st defendant that the suit properties were purchased by one Kumarasami Gounder under the Court auction and it was reconveyed to the defendants and therefore, the plaintiff cannot claim as a coparcener is acceptable?

2) Whether the claim that the plaintiff's mother is in possession of jewels worth about 5 lakhs is true?

3) Whether the claim of the 1st defendant that he has borrowed a sum of Rs.22 lakhs on the security of property allotted to him in the partition dated 11.09.1968 is true?

8. Mr.R.Sivaraman, learned counsel appearing for the appellants would vehemently contend that the plaintiff having been born after 1956, does not become a coparcener and she is not entitled to lay the suit for partition during the life time of her father. The learned counsel would draw support from the judgement of the Hon'ble Supreme Court in 1) Sheela Devi and others reported in (2006) 8 SCC 581; 2) Bhanwar Singh vs. Puran and others reported in (2008) 3 SCC 87 and 3) M.Yogendra vs. Leelamma reported in 2009 (15) SCC 184.

9. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the respondent would invite my attention to the following judgements of Co-equal Benches of the Hon'ble Supreme Court:

1) Commissioner of Wealth Tax, Kanpur and others vs. Chander Sen and others reported in (1986) 3 SCC 567;

2) Commissioner of Income Tax vs. P.L.Karuppan Chettiar reported in 1993 Supp(1) SCC 580 confirming the judgment of a full Bench of this Court in the Additional Commissioner of Income-tax, Madras-1 v. P.L.Karuppan Chettiar reported in AIR 1979 Madras 1.

3) Yudhishter vs. Ashok Kumar reported in 1987 (1) SCC 284.

4) Shyama Devi (Smt) and others vs. Manju Shukla (Mrs) and another reported in (1994) 6 SCC 342.

5) S. Rohit Chauhan vs. Surinder Singh reported in 2013 (9) SCC 419

6) Prakash vs. Phulavathi reported in 2016 (2) LW 865 and would contend that I should follow the judgement of the Hon'ble Supreme Court, which according to me is appropriate to the case on hand. The question as to whether a son or daughter born after 1956 would become a coparcener along with his/her father and they would be entitled to seek partition is no longer res integra. In 2016 (2) LW 865, a two judge Bench of the Hon'ble Supreme Court had in paragraph 23 of the said judgement observed that rights under the amendment Act are available to living daughters of living coparceners as on 09.09.2005 irrespective of when such daughters are born.

10. I had also considered the issue of conflicting decisions of co equal Benches on the question whether son born after 1956 would become a coparcener or not in the judgement in A.S.No.874 of 2008. I have concluded that a son/daughter born after 1956 would also become a co-parcener.

11. In view of the above, the main objection of the learned counsel for the appellants that a daughter of a coparcener born after 1956 cannot claim as a coparcener and seek partition during the life time of her father has to be rejected and the same is accordingly rejected. Yet another question that would arise in this appeal is whether the Trial Court was right in granting share in the properties shown in A-schedule to the partition dated 11.09.1968 allotted to Thangavel Gounder. On the death of Thangavel Gounder, these properties have devolved under Section-8 of the Act on the defendants as class-I heirs. Section-8 does not recognize son's son or son's wife as class-I heir. A son of the pre-deceased son and widow of a son are recognized as class-1 heirs. Therefore, once, it is held that the properties that were allotted to Thangavel Gounder shown as A-schedule property in the partition dated 11.09.1968, were inherited by the defendants in equal moieties upon his death in the year 1990, the said properties would be definitely self acquisition of the defendants 1 and 2 and the plaintiff cannot claim right by birth over the said properties. This issue was answered by the Full Bench of this Court in The Additional Commissioner of Income-tax, Madras-1 v. P.L.Karuppan Chettiar reported in AIR 1979 Madras 1 and the said view of this Court was approved by the Hon'ble Supreme Court in Commissioner of Wealth Tax, Kanpur and others vs. Chander Sen and others reported in (1986) 3 SCC 567 as well as in Yudhishter vs. Ashok Kumar reported in 100 LW 356.

12. In view of the above, the judgement and decree of the Trial Court granting ¼th share to the plaintiff in the suit A-schedule properties has got to be set aside and is accordingly set aside. In so far as, the decree for half share in the B-schedule properties, the same is confirmed in view of the conclusion that the daughter of a coparcener becomes a coparcener along with her father irrespective of her date of birth in respect of the properties, which are inherited by the father under Section-6 of the Hindu Succession Act 1956. The dismissal of the suit in respect of the C-schedule properties allotted to the 2nd defendant is also upheld.

13. In view of the above conclusion, the appeal is partly allowed. The decree in respect of properties shown in A-schedule is set aside and the suit in respect of those properties will stand dismissed. In other respects, the judgement and decree of the Trial Court are confirmed. In view of the relationship of the parties, they are directed to bear their own costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vk

To

1. The Additional District-Cum-Sessions Judge/
Fast Track Court No.II, Coimbatore.

2. The Section Officer, VR Section, High Court, Madras.

+ 2 ccs to Mr.N. Damodaran, Advocate Sr.26065

+ 1 cc to Mr.K.S. Jayaganeshan, Advocate Sr.26083

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KJI(CO)
EU 23.5.17