

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.922 of 2015

and

M.P.No.1 of 2015

1.Pachiammal

2.Gnanambal

... Appellants/Plaintiffs

Vs

1.Manivasagam

2.Sidheswaran

3.Vadivel

... Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.08.2014 passed in A.S.No.39 of 2013 on the file of the Principal District Judge, Namakkal, confirming the judgment and decree dated 01.02.2013 made in O.S.No.85 of 2010 on the file of the Subordinate Judge, Rasipuram.

For Appellants

.. Mr.S.Subbiah, Sr. Counsel
for Mr.P.Raja

For Respondents

.. Mr.T.Murugamanickam

JUDGMENT

The plaintiffs are the appellants. They are the daughters of the first defendant through the first wife. Defendants 2 to 4 are the sons of the first defendant through the second wife. The suit has been laid for partition and separate possession on the premise that the suit properties are the joint family properties as the first defendant himself has got it under the registered partition deed among his brothers under Ex.A1 dated 05.05.1975. It is the case of the defendants that the suit properties are the self-acquired properties of the first defendant. The first

defendant also executed a Will under Ex.B1 dated 24.06.2002 in favour of defendants 2 to 4. Pending the suit, the first defendant died. Thereafter, the share has been enhanced from 1/6 to 1/5. Both the Courts dismissed the suit holding that the suit properties are the self-acquired properties of the first defendant. Challenging the same, the present second appeal has been filed.

2.At the time of admission, the following substantial question of law has been framed:

Whether the concurrent finding of the Courts below is sustainable in law, in view of the decisions of the Supreme Court in Commissioner of Wealth Tax Kanpur Vs. Chander Sea ((1986) 3 SCC 567) and Prakash Vs. Phulavathi (2015 (8) MLJ 115 (SC)).

3.Learned senior counsel appearing for the appellants submits that Ex.A1 is not in dispute. It is the basis upon which both the parties claim right. Ex.A1 is admittedly a partition deed between the brothers of the first defendant. Thus the suit properties are the joint family properties.

4.Learned counsel appearing for the respondents submits that considering the finding rendered by the Courts below, no interference is required. Learned counsel further submits that insofar as the Will - Ex.B1 is concerned, the same has been proved in the manner known to law.

5.As narrated earlier, the basic facts are not in dispute. Ex.A1 is a registered partition deed dated 05.05.1975 effected in the family of the first defendant between him and his brothers. Thus both the Courts have committed a fundamental error that the property acquired by a divided Hindu family son from the joint family shall become his absolute property. This proposition of law may be correct insofar as no children are born. If the children are born to him, they become co-parceners and the properties would become joint family properties. Unfortunately, this principle, though appears to be rudimentary, has been omitted to be looked into by the Courts below. The lower appellate Court concurred with the finding of the trial Court in one paragraph on a wrong legal premise. However, this Court does not find any error in the findings rendered by the Courts below insofar as the due execution of Ex.B1 is concerned. If that is the case, then the appellants/plaintiffs would be entitled for only 1/6 of the suit properties as against the claim of 1/5.

6. Accordingly, the judgment and decree of the Courts below are set aside and the second appeal is allowed. The substantial question of law is answered in favour of the appellants. It is hereby declared that the appellants are entitled for 1/6 share each. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
Namakkal.
- 2.The Subordinate Judge,
Rasipuram.

Copy to

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

+1cc to Mr.T.Murugamanickam, Advocate Sr.9900
+1cc to Mr.Subbiah, Advocate Sr.9806

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S.A.No.922 of 2015

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