

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.812 of 2012
and
M.P.No.1 of 2012

K.Krishnamoorthy ... Appellant/1st Defendant

vs.

1.J.Surya Bai ... 1st Respondent/Plaintiff
2.J.Chitra ... 2nd Respondents/2nd Defendant

Prayer:- Appeal suit filed under Section 96 of C.P.C. against the judgment and decree dated 12.10.2011, passed by the District Judge No.2, Kanchipuram, in O.S.No.143 of 2010.

For Appellant :Mr.V.Raghavachari

For Respondents :Mr.K.Hariharan for R1
Mr.K.J.Parthasarathy for R2

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree, dated 12.10.2011, passed in Original Suit No.143 of 2010, by the District Court No.2, Kanchipuram.

2.The first respondent herein, as plaintiff, has instituted Original Suit No.143 of 2010, on the file of the trial Court, praying to pass a preliminary decree for partition, wherein, the present appellant and second respondent have been arrayed as defendants.

3.The material averments made in the plaint are that one Kuppusamy Naicker has passed away on 04.04.2006. The plaintiff and one Sagunthala are his daughters. The first defendant, by name, Krishnamoorthy is his only son. The second defendant is the daughter of the deceased Sagunthala. The suit

properties are the ancestral properties, in which, the plaintiff, first defendant and the deceased Sagunthala are having equal shares. The plaintiff has made several attempts to have amicable partition. But, the first defendant has failed to concede the same. Under the said circumstances, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed on the side of the first defendant, it is averred to the effect that the relationship mentioned in the plaint is correct. The suit properties are ancestral properties and since the suit properties are ancestral properties, the quantum of share claimed by the plaintiff is erroneous and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for by way of passing a preliminary decree. Against the judgment and decree passed by the trial Court, the first defendant, as appellant, has filed the present appeal suit.

6. The consistent case of both parties is that the father name of the plaintiff, first defendant and deceased Sagunthala is M. Kuppusamy Naicker and he passed away on 04.04.2006 and all the suit properties are ancestral properties.

7. The main defence taken on the side of the first defendant is that all the properties are ancestral properties; the quantum of share claimed by the plaintiff is erroneous. The defence put forth on the side of the first defendant has been rejected by the trial Court and decreed the suit as prayed for.

8. The learned counsel appearing for the appellant/first defendant has sparingly contended to the effect that since all the suit properties are ancestral properties, by way of birth, the first defendant is having half share; whereas, father Kuppusamy Naicker is having half share and since he passed away, his half share has to be divided into three shares and therefore, the quantum of share claimed by the plaintiff is erroneous, but the trial Court has failed to look into it.

9. In order to controvert the contention put forth on the side of the appellant/first defendant, the learned counsel appearing for the first respondent/plaintiff has contended to the effect that as per Section 6 of the Hindu Succession Act, 1956, the plaintiff and deceased Sagunthala have become coparceners; since all the suit properties are joint family properties, by way of birth, they are also having equal shares on par with son(s) and the trial Court, after considering the

overall evidence available on record, has rightly decreed the suit as prayed for and therefore, the judgment and decree passed by the trial Court are not liable to be interfered with.

10.As adverted to earlier, the relationship mentioned in the plaint has been clearly admitted in the written statement filed by the first defendant. Further, both parties have unitedly agreed to the effect that the suit properties are ancestral properties.

11.The only point that comes up for consideration in the present appeal is as to whether the first defendant is alone entitled to get half share by way of birth or both the plaintiff and deceased Sagunthala are also having such right, in view of the amendment made to Section 6 of the Hindu Succession Act, 1956.

12.Section 6 of the Hindu Succession Act, 1956 reads as follows:

"6.Devolution of interest in coparcenary property-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall.-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;

Even from a cursory look of the said Section, it is discernible to the effect that the daughters are also having equal right as that of son(s).

13.As rightly pointed out on the side of the first respondent/plaintiff, since the suit properties are ancestral properties and since as per Section 6 of the said Act, daughters are also having equal right as coparceners in joint family properties, it is needless to say that both the plaintiff and deceased Sagunthala are having equal right along with the first defendant.

14.The trial Court, after considering the rival contentions put forth on either side, has rightly decreed the suit as prayed for.

15.In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/first defendant and therefore, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed without cost. The judgment and decree passed in Original Suit No.143 of 2010, by the trial Court, are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1.The District Judge No.2,
Kanchipuram

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

+1cc to M/S.V.Raghavachari, Advocate Sr. 68795
+1cc to M/S.K.Hariharan, Advocate Sr. 69256
+2cc to M/S.K.J.Parthasarathy, Advocate Sr. 68945

A.S.No.812 of 2012

CNR (CO)
VR(24/10/2017)