

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2017

PRONOUNCED ON : 06.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.469 of 2011
and
M.P.No.1 of 2011

R.Sudha ... Appellant

Vs.

1. Shanmugam
2. Murugan
3. Raju (Minor)
(Minor rep.by guardian
2nd respondent)
4. Elumalai
5. Subramani

... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.10.2010 in A.S.No.23 of 2010 on the file of the Principal Subordinate Judge, Thiruvannamalai, confirming the decree and judgment dated 25.03.2010 in O.S.No.523 of 2007 on the file of the Principal District Munsif, Thiruvannamalai.

For Appellant : Mr.R.Rajarajan

For Respondent : No appearance
Nos.1 to 3

For Respondent : Mr.T.Dhanasekaran
Nos.4 & 5

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 04.10.2010 made in A.S.No.23 of 2010 on the file of the Principal Sub Court, Thiruvannamalai, confirming the decree and judgment dated 25.03.2010 made in O.S.No.523 of 2007 on the file of the Principal District Munsif Court, Thiruvannamalai.

2. The suit has been laid by the plaintiff for partition.
3. The plaintiff is the daughter of the first defendant and one Chandra Ammal. The defendants 1 & 2 are their sons. Now, according to the plaintiff, the suit properties are the Joint Hindu Family properties belonging to the plaintiff and the defendants 1 to 3, of which, the first defendant is the kartha of the Joint Hindu Family. As regards the character of the suit properties i.e. ancestral Joint Hindu Family properties, there is no dispute as such.

4. Now, according to the plaintiff, inasmuch as she is entitled to claim partition in respect of the suit properties of her due share and however, with a view to defeat her lawful claim, it is stated that

the first defendant, without any necessity, had alienated the suit properties in favour of the defendants 4 & 5 and despite the above said alienation, as the plaintiff is entitled to claim partition in the suit properties, the suit has been laid.

5. The plaintiff's suit is mainly resisted by the defendants 4 & 5. It is contended that the first defendant, for family necessity and lawful purpose, had alienated the suit properties in favour of the defendants 4 & 5 under the sale deeds marked as Exs.B1 & 2 and hence, according to them, the above said sale transactions are binding upon the plaintiff as well as the sons of the first defendant and hence, the plaintiff is not entitled to lay any claim over the properties covered under Exs.B1 & 2. Further, the defendants have also raised the plea that the suit laid by the plaintiff be bad for partial partition. It is stated that the plaintiff has deliberately omitted to include the other properties belonging to the Joint Hindu Family of the plaintiff and the defendants 1 to 3.

6. The Courts below have rightly found that the first defendant, as the Kartha of the undivided Joint Hindu Family, had alienated the suit properties to the defendants 4 & 5 under Exs.B1 & 2 for family necessity and other lawful purposes and as regards the above

findings and conclusions of the courts below, no exception could be taken even in this appeal. The counsel for the plaintiff has not pointed out that the first defendant had alienated the suit properties under Exs.B1 and 2 for tainted objects and illegal activities. He would contend that the first defendant had not obtained the sanction of the court before alienating the Joint Hindu Family properties under Exs.B1 & 2. The above contention of the plaintiff's counsel has to be rejected as it is found that in view of the express terms of the provisions contained in Section 6 and 12 of the Hindu Minority and Guardianship Act, 1956 in respect of the Joint Hindu Family properties, the Kartha is not necessitated to seek the permission of the court for the alienation of the minor's share under Section 8 of the above said Act. In this connection, a useful reference may be made to the decisions reported in ***AIR 1996 Supreme Court 2371 (Sri Narayan Bal and others Vs. Sridhar Sutar and others), (1990) 3 Supreme Court Cases 68 (Manibhai and others Vs. Hemraj and others) and 2005-1-L.W.628 (Pandiarajan and four others Vs. Korangi Thyagarajan and seventeen others).***

7. That apart, as seen from the decision reported in ***(1990) 3 Supreme Court Cases 68 (Manibhai and others Vs. Hemraj and***

others), it could be seen that alienation of the Joint family property by the kartha to satisfy debts contracted even for his personal benefit and without any legal necessity is binding on his children on the basis of the doctrine of pious obligation if the alienation is not avyavharik or tainted with immorality or illegality and the debts were antecedent in fact as well as in time to the alienation.

8. The courts below have rightly found that the alienations made by the first defendant under Exs.B1 & 2 are not established to be made for illegal and immoral activities and on the other hand, they are found to be made only for family necessity and other lawful objects. Therefore, the above contention of the plaintiff to warrant interference in the findings of the courts below on the above aspect does not merit acceptance.

9. The next argument put forth by the plaintiff's counsel is that the courts below have erred in holding that the suit is bad for partial partition. However, as seen from the judgment and decree of the courts below, they have rightly found that the plaintiff has deliberately omitted to include the lands belonging to the Joint Hindu Family properties, particularly, obtained by the first defendant by way of oral partition and the document viz. Ex.B3. It is also found by the

courts below that it is only the first defendant, who is maintaining the joint family and also put up house construction in respect of the properties and also not acted against the interest of his children. Therefore, the courts below have also disbelieved the evidence of PWs1 and 2 and found that the joint Hindu Family had owned 3.66 acres lands and on the other hand, the plaintiff has deliberately excluded certain items and only had laid the suit in respect of the suit properties covered under Exs.B1 & 2. Therefore, as rightly contended by the contesting defendants, the suit laid by the plaintiff for partition is bad for partial partition. The findings of the courts below, as regards the above issue is found to be based on the correct appreciation of the evidence on record and also upon acceptable findings and conclusions. No infirmity is found with reference to the above findings of the courts below.

10. Apart from the above contentions, no other argument has been put forth by the plaintiff's counsel to warrant any interference with the findings of the courts below. Therefore, it could be seen that the above points are only matters pertaining to the appreciation of the facts and therefore, the second appeal does not merit acceptance.

In conclusion, no substantial question of law is found to be

involved in this second appeal and accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal Sub Court,
Thiruvannamalai.
2. The Principal District Munsif,
Thiruvannamalai.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.469 of 2011
and
M.P.No.1 of 2011

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