

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2017

PRONOUNCED ON : 28.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.701 of 2011

and

M.P.Nos.1 of 2011 & 2 & 3 of 2012

Kameela Batcha

...

Appellant

(Sole appellant Name
substituted as per the order of
this Court dated 07.02.2017
made in M.P.No.1 of 12)

Vs.

1.Nagarajan (deceased)
2.Nagalakshmi
3.Jayalakshmi
4.Thirupurasundari
5. Visalakshi
6. Savithri
7. Meenakshi
8. Rajeswari
9. N.Sundari
10.Anuratha
11.N.Sudha

...

Respondents

(RR9 to 11 brought on record as
LRs of the Deceased R1 vide order of
this Court dated 01.02.2017 made in
M.P.Nos.1to 3 of 2013)

Second Appeal is filed under Section 100 of Civil Procedure

Code, against the judgment and decree passed in A.S.No.323 of 2007 on the file of the Court of Additional District and Sessions Judge, (Fast Track Court -III) Chennai dated 19.01.2010 in confirming the judgment and decree passed in O.S.No.669 of 1996 on the file of the Court of XIV Assistant Judge City Civil Court, Chennai dated 04.09.2002.

For Appellant	: Mr.A.Muthukumar
For Respondent	: Mr.V.Subramani
Nos. 9 to 11	
Respondent Nos.2 to 8	: Set exparte

JUDGMENT

Challenge in this appeal is made by the 7th defendant against the judgment and decree dated 19.01.2010 passed in A.S.No.323 of 2007 on the file of the Additional District and Sessions Courts, (Fast Track Court -III), Chennai, confirming the judgment and decree dated 04.09.2002 passed in O.S.No.669 of 1996 on the file of the XIV Assistant City Civil Court, Chennai.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal:-

" Whether the judgments and decrees of the courts below in accepting the case of the plaintiff are based upon the perverse findings and misdirected against the evidence on record?"

3. The suit has been laid by the plaintiff for partition.

4. The defendants 1 to 8 are the sisters of the plaintiff and the plaintiff and the defendants are the son and daughters of Late B.L.Narasimhan. Claiming that the suit property is the joint family ancestral property belonging to the plaintiff and his father, the plaintiff has laid the suit seeking 11/18 share in the suit property.

5. Per contra, the defendants have taken a plea that the suit property had been derived by their father and he having died intestate on 06.01.1984 leaving behind the plaintiff and the defendants as his legal heirs, according to them, both the plaintiff and the defendants are entitled to equal share in the suit property and hence, the suit is liable to be dismissed.

6. As regards the relationship between the plaintiff and the defendants, as adverted to above, there is no dispute. It is also found that both parties have agreed that the suit property originally measuring about 1872 sq.ft belonged to their paternal grandfather viz., the deceased Balasubramania Iyer. It is not in dispute that the said Balasubramania Iyer died leaving two sons viz. B.L. Narasimhan

i.e. the father of the plaintiff and the defendants and Ramamurthy Iyer. It is not in dispute that Balasubramania Iyer died in or about 1933. Therefore, it could be seen that the suit property belonging to Balasubramania Iyer, as per the law then existing, devolved upon his two sons as their joint ancestral family property. It is not in dispute that Ramamurthy Iyer also died intestate in the year 1946 leaving behind his wife Parvathy Ammal. Both parties have agreed that Parvathy Ammal also died intestate in the year 1982. Admittedly, Ramamurthy Iyer and Parvathy Ammal had no issue. It is also admitted that the plaintiff and his father B.L.Narasimhan, had sold an extent of 744 Sq.ft out of 1872 Sq.ft. to one Krishnamurthy under a registered sale deed dated 05.03.1983, which has been marked as Ex.A2. As could be seen from the recitals found in Ex.A2, claiming that the said property belonged to the plaintiff and his father, they constituting a Hindu Joint Family and further, claiming that they are the full and absolute owners of the above said property as the members of the Hindu Joint family, it is found that they had sold the said extent of 744 sq.ft to Krishnamurthy under Ex.A2.

7. When it is admitted by all concerned that Balasubramania Iyer, the original owner of the suit property measuring an extent of

1872 sq.ft left behind his two sons as his legal representatives, it is evident that both sons had inherited the property left by him as co-owners. In other words, it is found that both B.L.Narasimhan and Ramamurthy Iyer would have derived 1/2 share in the property left by Balasubramania Iyer. Therefore, as per law, it could be seen that as rightly put forth by the appellant counsel, on the death of Ramamurthy Iyer in the year 1946, admittedly, he having left behind his wife as his legal representative, as per law, then existing, particularly, as per the Hindu Women's Rights to Property Act, 1937, it is found that Parvathy Ammal shall have in the property the same interest as her husband had. Thus it could be seen that inasmuch as her husband Ramamurthy Iyer derived 1/2 share in the property left by Balasubramania Iyer, it could be seen that as per Section 3(2) of the Hindu Women's Rights to Property Act, 1937, it is only Parvathy Ammal, who would have derived the interest of her husband, which, he had in the property left behind by Balasubramania Iyer. No doubt, the interest, which had devolved on Parvathy Ammal under Section 3(2) of the above said Act, shall be only the limited interest known as Hindu Woman's estate. It is further found that as per Section 3(3) of the above said Act, Parvathy Ammal would have had the same right of claiming partition as a male owner, as regards her right provided under Sections 3(2) and 3(3) of the above said Act. Therefore, the

claim of the plaintiff that on the death of Ramamurthy Iyer, he and his father had derived even the interest in the suit property left behind by Ramamurthy Iyer as members of the Joint Hindu Family, as such, cannot be acceded to.

8. Coming to the further question, as to the limited interest, which Partvathy Ammal had derived on the death of her husband in the property, as rightly put forth by the appellant's counsel, it is found that on the advent of the Hindu Succession Act, 1956, as per Section 14(1) of the said Act, it is found that the limited estate, which, Parvathy Ammal had derived blossomed into an absolute estate as per Section 14(1) of the Hindu Succession Act, 1956, and therefore, it could be seen that Hindu Woman's estate derived by Parvathy Ammal under the Hindu Woman's Right to Property Act, 1937 had enlarged into an absolute estate as per Section 14(1) of the Hindu Succession Act, 1956 and therefore, the case of the plaintiff that on the death of Ramamurthy, he and his father B.L.Narasimhan had also succeeded the interest of Ramamurthy Iyer in the suitproperty as members of the joint Hindu Family as such cannot be accepted. Be that as it may, as admitted by both parties, inasmuch as Ramamurthy Iyer and his wife Parvarthy Ammal had died issueless, it could be seen that as per Section 15 (2) (b) of the Hindu Succession Act, 1956, the absolute

right, which Parvathy Ammal had in the suit property viz., 1/2 share on her death, devolved only on her husband's heir as per Section 15(2)(b) of the Hindu Succession Act, 1956, and so viewed, it could be seen that at that point of time, B.L.Narasimhan, the father of the parties being the only heir of her husband, admittedly, her 1/2 share in the suit property, devolved on B.L.Narasimhan. When the inheritance of the above said 1/2 share of B.L.Narasimhan from Parvathy Ammal is looked at, it is found that the said 1/2 share cannot be the joint Hindu Family property of B.L.Narasimhan along with his son and on the other hand, as rightly contended by the appellant's counsel, the 1/2 share devolved on B.L.Narasimhan on the death of Parvathy Ammal would only be his separate property and it cannot be treated as the joint family property of B.L.Narasimhan and his son viz. the plaintiff, as pleaded by the plaintiff. Therefore, the contention of the plaintiff that the entire suit property, as now available is the joint family property consisting of his father and himself, as such, cannot be countenanced.

9. The Courts below on the basis that the suit property, as such, constitutes the joint family property of the plaintiff and his father, accordingly, granted 10/18 share in favour of the plaintiff.

10. As contended by the Counsel for the appellant, on the death of Parvathy Ammal, her right in respect 1/2 share in the suit property i.e. 936 sq.ft having been inherited by B.L.Narasimhan as per section 15 (2) (b) of the Hindu Succession Act, 1956, it is found that B.L.Narasimhan takes the said property only as his separate property. As adverted to above, the plaintiff and his father B.L.Narasimhan had alienated an extent of 744 sq.ft. to one Krishnamurthy claiming that the said extent is their joint family property and they belonged to the plaintiff and his father being members of the Joint Hindu family property. However, the said case of the plaintiff and his father, as narrated in Ex.A2, could be valid, only with reference to the 1/2 share derived by B.L.Narasimhan on the death of Balasubramania Iyer and not in respect of the other 1/2 share derived by B.L.Narasimhan on the death of Parvathy Ammal. Therefore, it could be seen that as rightly put forth by the appellant's counsel, the extent of 744 sq.ft alienated under Ex.A2 could only be out of the extent derived by B.L.Narasimhan and the plaintiff, as members of the Joint Hindu family, on the death of Balasubramania Iyer and therefore, it is found that the plaintiff in his capacity as a co parcener of the joint family consisting of himself and his father, at best, would be entitled to claim 10/18 share only in 192 sq.ft. after deducting 744 sq.ft already conveyed under Ex.A2. Equally, when it

is found that the other $\frac{1}{2}$ share i.e. 936 sq.ft which had been inherited by B.L.Narasimhan from Parvathy Ammal constituting his separate property. It could be seen that on his death, it would devolve equally on his children i.e. the plaintiff and the defendants. Viewed in that angle, it is found that, as rightly put forth by the appellant's counsel, the plaintiff and the defendants would be each entitled to obtain $\frac{1}{9}$ share in the said extent of 936 sq.ft.

11. The above said pleas particularly with reference to the inheritance of B.L.Narasimhan of 936 sq.ft from Parvathy Ammal acquiring the character of the separate property though taken up before the first appellate court was not considered by the first appellate court on the footing that specific pleas had not been raised by the defendants with reference to the same in the written statement. However, as rightly contended by the appellant's counsel, those pleas being pure questions of law emanating from the operation of law as it then stood, it could be seen that even if the same have not been specifically mentioned in the written statement, the same could be considered and applied as they do not require any evidence as such. Therefore, it is found that despite the above said contention having been raised before the first appellate court, the first appellate court has erred in not considered the same on the sole

ground of absence of any averment with reference to the same in the written statement.

12. In this second appeal, the application has been taken up by the appellant under Order 41 Rule 27 CPC for the reception of the additional evidence of a sale deed dated 08.05.1995 on the footing that pending the suit proceedings, the defendants 1, 3, 4, 5 & 8 had sold their respective shares to the appellant by means of a registered sale deed dated 08.05.1995 and thereafter, inasmuch as the above said defendants/vendors of the above said sale deed has no interest in the suit property, according to the appellant, he has been necessitated to file the application for the reception of the above said sale deed as additional evidence for complete adjudication of the lis between the parties in all aspects.

13. The application has been resisted by the respondent/plaintiff contending that only to the delay proceedings and without any basis, the application has been filed and if the same is entertained, the respondent would be put to irreparable loss and hardship.

14. It is found that the additional evidence viz. the sale deed

dated 08.05.1995, if it is true, on coming into existence even during the course of trial proceedings, in such circumstances, the appellant should have made specific reference about the same in the written statement or at least, by way of additional written statement and taken necessary steps to produce and mark the said document before the trial court. However, the additional evidence has been for the first time projected during the course of the second appeal. The only reason given for the same is that the appellant was under the impression that the above said sale deed could be brought to the notice of the Court during the final decree proceedings. However, the above cause given by the appellant for not producing the said document before the courts below is found to be unacceptable and not convincing.

15. That apart, at this point of time, this Court also does not find it necessary for the reception of the said additional evidence for adjudicating the issues involved in the matter between the parties. That apart, it is also found that the application does not confirm to the requirements of Order 41 Rule 27 CPC. In the light of the above reasons, the application deserves no acceptance and accordingly, is

dismissed.

16. In the light of the above discussions, it is found that the courts below have not properly appreciated the evidence adduced in the matter in the correct perspective and also against the principles of law surrounding the case of the parties and accordingly found to have wrongly decreed the suit in favour of the plaintiff by granting him 10/18 share in the suit property. On the above lines, substantial question of law formulated for consideration in this second appeal is answered in favour of the appellant.

17. The counsel for the appellant in support of his contention placed reliance upon the decision reported in **(1995) 6 Supreme Court Cases 88 (Mangat Mal (Dead) and Another V. Punni Devi (Smt) (Dead) and others)**. The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

In conclusion, the judgment and decree of the Courts below are modified and accordingly, the preliminary decree is granted in favour of the plaintiff declaring that he is entitled to 10/18 share in 192 sq.ft and 1/9 share in 936 sq.ft of the suit property and the defendants are

each entitled to 1/18 share in 192 sq.ft and 1/9 share in 936 sq.ft of the suit property upon the payment of the necessary court fees. The second appeal is ordered accordingly. No costs. Consequently, connected miscellaneous petition in M.P.No.2 of 2012 is dismissed and M.P.Nos.1 of 2011 and 3 of 2012 are closed.

Index : Yes/No
Internet: Yes/No
sms

28.02.2017

To

1. The Additional District and Sessions Courts,
(Fast Track Court -III), Chennai.
2. The XIV Assistant City Civil Court, Chennai.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.701 of 2011
and
M.P.Nos.1 of 2011 & 2 & 3 of 2012

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