

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 09.08.2017

Coram

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**S.A(MD)No.39 of 2014****and****M.P(MD) .No.1 of 2014**

1.Pitchai
2.Lakshmi
3.Visalakshi

.. Appellants/Appellants/Defendants

Vs.

Thavayi

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 23.10.2013, made in A.S.No.29 of 2012 on the file of the Subordinate Judge, Periyakulam, confirming the Judgment and Decree, dated 04.10.2012 made in O.S.No.84 of 2010 on the file of the District Munsif Court, Periyakulam.

For appellants : Mr.M.Saravanan for R.Subramanian

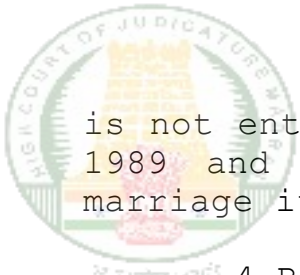
For respondent : Mr.A.Sivasubramanian

JUDGMENT

The unsuccessful defendants in the suit for partition are the appellants. The plaintiff and the defendants are the children of Kamatchi Pillai and his wife Ramayee Ammal. The relationship between the parties are admitted by both the parties. It is also admitted by the parties that the suit property belonged to their mother Ramayee Ammal.

2.It is mentioned in the plaint that the suit property was purchased by the said Ramayee Ammal from one Karuppaiah Pillai. The said Ramayee Ammal died intestate leaving behind the plaintiff and the defendants as her heirs. As plaintiff is entitled for a share in the property and as the said Ramayee Ammal died intestate, she demanded for the partition of her share and the same was refused. Hence, the suit has been filed.

3.The defendants, who are the brother and sisters of the plaintiff, filed a written statement contending that the plaintiff



is not entitled for any share as she was married even in the year 1989 and as she was sufficiently compensated at the time of marriage itself by giving srithana articles.

4. Both the Courts below have concurrently held that the plaintiff is also entitled for $\frac{1}{4}$ share in the suit property and thus, decreed the suit as prayed for.

5. At the time of admission, the following questions of law were framed for consideration:

(i). Whether in law the Judgment of the lower Appellate Court is vitiated as the same was passed without even framing points for determination as contemplated in Order 41 Rule 31 of C.P.C.?

(ii). Whether in law the judgment of the lower Appellate Court is vitiated as the same was passed without following the dictum laid down by this Hon'ble Court in 1997(1) LW 704?

(iii). Whether in law the Courts below are right in overlooking that the suit for partial partition is not maintainable?

(iv). Whether in law the Courts below are overlooking to see that the suit is hit by ouster?

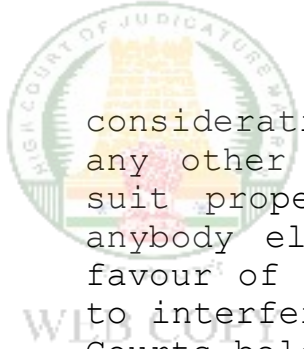
(v). Whether in law the Courts below are right in disposing the suit without even framing as issue and points for determination regarding ouster?

6. Admittedly, the suit property belongs to the mother of the parties viz., Ramayee Ammal. As per Sections 14 and 15 of the Hindu Succession Act, 1956, on the date of Hindu woman dying intestate, the property would devolve upon her son and daughter and as per clause (i), they are equally entitled to the same. It is also not the case of the parties that other than the suit property, there were any other properties that belonged to their mother. The suit property is a separate property of the mother. Hence, the question of joint family character does not arise for consideration.

7. As the plaintiff is entitled to get her share being a daughter to the deceased Ramayee Ammal, in the absence of any other evidence to disentitle her in getting share, the trial Court had decreed the suit. The first Appellate Court also has rightly confirmed the same.

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8. Though at the time of admission as many as five questions of law were framed for consideration, they do not arise for



consideration in view the above stated facts. In the absence of any other evidence produced by the defendants to show that the suit property was the joint family property or it belongs to anybody else other than the mother, the decree granted in the favour of the plaintiff cannot be disputed and there is no reason to interfere with the same. Accordingly, the decree granted by the Courts below is liable to be confirmed.

9. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Periyakulam.
2. The District Munsif Court,
Periyakulam.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Subramanian, Advocate in SR.No.71772

+1cc to Mr.A.Sivasubramanian, Advocate in SR.No.71958

msa

AE/SV MMS/SAR3/04.09.2017/3P/6C

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and
M.P (MD) .No.1 of 2014

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