

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No.197 of 1998

JUDGMENT

This appeal has arisen from the judgment and decree dated 21.03.1996 passed in O.S.No.142 of 1991 by the Additional Subordinate Judge, Chittoor.

2. Heard learned counsel for appellants/defendants and perused the record. There is no representation on behalf of respondents/plaintiffs.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the suit.

4. Plaintiffs filed suit for partition and separate possession. They stated that one Chinnappa had two wives, by name Govindamma and Krishnamma. Plaintiffs 2 to 4 and mother of plaintiff No.1 are daughters of Govindamma. One Kannaiah is the only son of Krishnamma. Defendants 1 and 2 are the wife and daughter of late Kannaiah. Said Chinnappa died on 04.06.1962 intestate and his wives were pre-deceased him. During his life time, Chinnappa had purchased the suit schedule property under registered sale deed dated 07.05.1951. Plaintiffs were residing in the suit schedule property till their marriage and thereafter, left to their matrimonial home. After the death of Chinnappa, Kannaiah was in occupation of the entire house and he used to send Rs.25/-each to the plaintiffs for their share in the house and after the death of Kannaiah, defendants

refused to send the share amount to the plaintiffs. Hence, plaintiffs filed the suit.

5. Defendants 1 and 2 filed written statement stating that as the marriage of plaintiffs took place before acquisition of the suit schedule property by Chinnappa and by virtue of Section 29(1a) of Hindu Succession Act (for short 'the Act'), plaintiffs have no right over the suit schedule property. It is further stated that after the death of Kannaiah, defendants were in occupation of the suit schedule house and they are in possession and enjoyment of the same as absolute owners. They denied the averment that Kannaiah used to send Rs.25/- each to his sisters for their share in the suit house.

6. Based on the pleadings, the trial Court framed six issues. During trial, P.Ws.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of plaintiffs and D.W.1 was examined and Exs.B1 to B5 were marked on behalf of defendants.

7. The trial Court, after considering the entire evidence and the documents, passed a preliminary decree dividing the suit schedule property into five shares for allotment of one such share to plaintiffs 1 to 4 and defendant No.1 each. Aggrieved by the same, defendants filed the present appeal.

8. Learned counsel for appellants/defendants contended that the trial Court failed to consider the aspect that the marriage of plaintiffs took place before acquisition of the suit schedule property by Chinnappa and as such they are not entitled for partition and

separate possession. He further contended that the trial Court without considering the evidence of D.W.1 in proper perspective passed the decree. He further contended that as per the amendment made to Section 29(a) of the Act, plaintiffs are not entitled to claim share in the suit schedule property and the trial Court erred in holding that the suit schedule property is the ancestral property of the plaintiffs and defendants and ultimately, prayed to set aside the judgment and decree by allowing the appeal.

9. There is no dispute with regard to the relationship between the parties. The plaintiffs are Class-I heirs of deceased Chinnappa. P.Ws 1 to 3 have supported the averments made in the plaint. D.W.1 stated that the daughters of Chinnappa married long back and after their marriage, Chinnappa had purchased the suit schedule property and that the plaintiffs are not coparceners and they are not entitled to claim share in the property.

10. There is record to show that Chinnappa had purchased the suit schedule property under Ex.A1-registered sale deed dated 07.05.1951. The plaintiffs are Class-I heirs of deceased Chinnappa, so also Kannaiah, who is the son of Chinnappa, and on the demise of Chinnappa, all the children are entitled to equal share in the suit schedule property since it is his self acquired property. Therefore, the contention of defendants that the marriage of plaintiffs took place before acquisition of the suit schedule property by Chinnappa and they are not entitled to any share is untenable. Further more, Section 29(a) of Hindu Succession Act has no application to the case on hand. The trial Court while determining the

entitlement of the plaintiffs over the suit schedule property had analysed all factual and legal aspects and arrived at a correct conclusion. In view of the same, there is no infirmity in the impugned judgment and decree and the same are liable to be confirmed.

11. In the result, the appeal is dismissed, confirming the judgment and decree dated 21.03.1996 passed in O.S.No.142 of 1991 by the Additional Subordinate Judge, Chittoor. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

4th October, 2017

sj

Dr. SHAMEEM AKTHER, J

