

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

A.S No.254 of 1992

Veerapandian @ Haridas ... Appellant/1st Defendant

v.

1. Kothandarama Gounder (deceased) ... 1st Respondent/Plaintiff

2.Amirthammal ... 2nd, 3rd Respondent/2nd, 3rd Defendant

3.Baby

4.Sarasu

5.Lalitha

6.Banumathi

7.Shantha

8.Mariammal ... Respondents 4 to 8

(R2 & R3 and sole appellant recorded as LR's of the deceased R1 and R4 to R8 brought on record as LR's of the deceased R1 vide order of this court dated 11.01.2018 made in C.M.P.No.971 to 974/2010, 594 & 853 of 2013 in A.S.No.254/1992]

Appeal filed under Section 96 of the Code of Civil Procedure judgment and decree dated 19.09.1991 made in O.S.No. 67 of 1988 on the file of Subordinate Judge, Tindivanam.

For Appellant : Mr.R.Agilesh

For Respondents : R1 - died (steps taken)
Ms.N.Mala - for R2 to R8

JUDGMENT

Challenging the judgment and decree passed in O.S.No. 67 of 1988 on the file of Subordinate Court, Tindivanam, the 1st defendant has filed the above Appeal. The respondents 2 to 8 were brought on record as legal representatives of the deceased 1st respondent, who died during the pendency of the appeal.

2. The plaintiff filed the suit for for partition, separate possession and for mesne profits.

3. The appellant is the son of the deceased 1st respondent, the 2nd respondent is the wife of the deceased 1st respondent, the 3rd respondent is the unmarried daughter of the deceased 1st respondent and the respondents 4 to 8 are the married daughters of the deceased 1st respondent.

4. The brief case of the plaintiff is as follows:-

(i) According to the plaintiff, the suit properties are the joint family properties and some of the properties were purchased in the name of the 1st defendant. The 1st defendant is the only son of the plaintiff and the 2nd defendant. The 3rd defendant is their unmarried daughter and their other married daughters were brought on record as respondents 4 to 8 in the appeal.

(ii) According to the plaintiff, at the instigation of some third parties, the 1st defendant was acting against the interest of the joint family, therefore, he filed the suit for partition claiming 1/3rd share. On 06.03.1988, the plaintiff sent a lawyer's notice to the 1st defendant and the 1st defendant has given a reply dated 04.04.1988 to the plaintiff. In the reply, the 1st defendant has stated that about 6 months back, the joint family properties were partitioned in the presence of Panchayatdars. In these circumstances, the plaintiff has filed the suit for partition, separate possession and for mesne profits.

5. The brief case of the 1st defendant is as follows:-

(i) According to the 1st defendant, the properties were divided in the year 1987 in the presence of Panchayatdars. In the said partition, the 2nd defendant was also allotted an extent of 4 kani and the remaining lands were allotted to the 1st defendant. Some of the items mentioned in the plaint schedule as self acquired property of the 1st defendant were purchased by him out of the funds provided by his mother-in-law. The joint family funds were not utilized for the purchase of the properties standing in the name of the 1st defendant.

(ii) According to the 1st defendant, in the year 1987, the joint family properties were partitioned in the presence of Panchayatdars and therefore, the plaintiff cannot seek for partition again. Immediately after the receipt of the lawyer's notice dated 06.03.1988, sent by the plaintiff, the defendants sent reply dated 04.04.1988 narrating the real facts.

(iii) The plaintiff and the 1st defendant are residing in separate houses since 1984. The 3rd defendant is not entitled to 1/3rd share under the amended provisions of the Hindu Succession Act for the reason that the partition had taken place even prior to the amendment. In these circumstances, the 1st defendant prayed for dismissal of the suit.

6. The brief case of the 3rd defendant is as follows:-

According to the 3rd defendant, as per the amended provisions of section 29 A of the Hindu Succession Act, she is also entitled to 1/3rd in the suit properties along with the plaintiff and the 1st defendant.

7. Before the trial Court, on the side of the plaintiff, 2 witnesses were examined and 38 documents, Ex.A-1 to Ex.A-38 were marked and on the side of the defendants, 10 witnesses were examined and 43 documents, Ex.B-1 to Ex.A-43 were marked

8. The trial Court, after taking into consideration, the oral and documentary evidences let in by the parties, passed a preliminary decree in 'A' schedule properties excluding item Nos.5, 6, 34 and 37 (excluding 0.82 cents in item No.37) and in 'B' schedule properties, passed a preliminary decree, excluding item Nos. 1, 2, 8, 9 and 10, granting 1/3rd share to the plaintiff and the 1st defendant.

9. Aggrieved over the preliminary decree passed by the trial Court, the 1st defendant has filed the above appeal.

10. Heard Mr.R.Agilesh, learned counsel appearing for the appellant and Ms.N.Mala, learned counsel appearing for the respondents 2 to 8.

11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the 1st defendant was examined as D.W.2 and he was able to establish that item Nos.5, 6, 34 and 37 (excluding 0.82 cents in item No.37) in 'A' schedule and item Nos. 1, 2, 8, 9 and 10 in 'B' schedule, were his self acquisitions and therefore, they are not liable for partition.

12. On the contrary, the plaintiff was not in a position to establish that these properties are the joint family properties.

13. The 3rd defendant's contention is that she is also entitled to 1/3rd share as per the amended provisions of section 29 A of the Hindu Succession Act.

14. Since the plaintiff has not established his case with regard to the properties excluded from partition, preliminary decree was passed in respect of those items. The 1st defendant has also failed to establish that the other properties were partitioned earlier and therefore, they are not liable for partition.

15. In the absence of any proof with regard to the earlier partition, the trial Court has rightly passed a preliminary decree for partition in respect of item Nos.5, 6, 34 and 37 (excluding 0.82 cents in item No.37) in 'A' schedule and in respect item Nos. 1, 2, 8, 9 and 10 in 'B' schedule. The trial Court has considered the oral and documentary evidences let in by the parties and rightly passed a preliminary decree.

16. In these circumstances, I do not find any reason to interfere with the judgment and decree of the trial Court. The appeal liable to be dismissed. It is brought to the notice of this court that pursuant to the preliminary decree passed by the trial court, the legal representatives of the deceased 1st respondent have filed final decree application and the same is pending. It is open to the parties to raise all the issues available to them before the trial Court in the final decree application, in accordance with law.

With the above observations, the appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Rj

To

The Subordinate Judge
Tindivanam.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+ 1 cc to M/s.T.Dhanasekaran Advocate, SR.9440
+ 1 cc to Ms.N.Mala Advocate, SR.9194

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nr 28/02/2018