

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.236 of 2018

A.Arthi Kiruthika

(Appellant declared as major and her mother/next friend S.Uma Maheshwari discharged from the guardianship vide order of this Court dated 07.02.2018 made in C.M.P.No.2044 of 2018 in S.A.SR.No.78793 of 2017) ... Appellant/Plaintiff

Vs.

1.V.Visalakshmi
2.T.Arivudainambi
3.T.Adalarasu
4.S.Thillainayaki Saravanan ... Respondents/Defendants 1 to 4

Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 05.10.2016 made in A.S.No.12 of 2014 on the file of the II Additional District Court, Tiruppur, confirming the judgment and decree dated 10.09.2013 made in O.S.No.29 of 2007 on the file of the Sub Court, Udumalpet.

For Appellant : Mr.M.Kamalanathan

JUDGMENT

Second Appeal is filed against the judgment and decree dated 05.10.2016 made in A.S.No.12 of 2014 on the file of the II Additional District Court, Tiruppur, confirming the judgment and decree dated 10.09.2013 made in O.S.No.29 of 2007 on the file of the Sub Court, Udumalpet.

2.The appellant is plaintiff and the respondents are defendants 1 to 4 in O.S.No.29 of 2007 on the file of the Sub Court, Udumalpet. While she was minor, the appellant filed the said suit represented by her mother and next friend Uma Maheshwari, for declaration that the legal heirs' certificate

dated 14.01.2003 issued by the fifth defendant is not valid, declaration that the averments made in the Power of Attorney dated 13.01.2013 are invalid, declaration that the document dated 02.09.2005 executed by her father, the third respondent in favour of the first respondent is not binding on the appellant, declaration that the appellant has share in 'A' schedule family property and for partition and separate possession of appellant's share in 'A' schedule property. According to the appellant, 'A' schedule property and amounts in the bank as well as bonds etc. are joint family property and it was jointly enjoyed by her grand father Thangavel and the respondents herein. The properties were purchased from and out of income from the joint family property. The appellant as per the Hindu Succession Act is entitled to a share in the joint family property. On these averments, the appellant prayed for the relief stated above.

3.The first respondent filed written statement and the same was adopted by the respondents 2 and 4. According to the first respondent, the properties are not joint family properties. The properties are self-acquired properties of one Kandasamy Pillai, father-in-law of the first respondent. He, by the Will dated 28.04.1982 bequeathed the properties to his son Thangavel, husband of the first respondent and his brothers. The sons of Kandasamy Pillai partitioned the properties among themselves and also the properties purchased by Thangavel and first respondent out of their individual income and the properties are not joint family properties.

4.In the suit, the respondents 3 and 4 remained exparte. The suit against the defendants 5 and 6, the official defendants, was dismissed.

5.Based on the pleadings, the learned trial Judge framed four issues and additional issues. Before the trial Court, the mother of the appellant was examined as P.W.1 and 23 documents were marked as Exs.A1 to A23 on behalf of the appellant. The respondents did not let in any oral and documentary evidence.

6.The learned trial Judge considering the pleadings and oral and documentary evidence, dismissed the suit holding that the appellant failed to prove that the suit properties are joint family properties.

7.Against the said judgment and decree dated 10.09.2013 made in O.S.No.29 of 2007, the appellant filled A.S.No.12 of 2014 on the file of the II Additional District Court, Tiruppur.

8.The learned first Appellate Judge framed necessary points for consideration and independently considering all the materials on record and judgment and decree of the trial Court, dismissed the appeal confirming the judgment and decree of the trial Court.

9.Against the judgment and decree dated 05.10.2016 made in A.S.No.12 of 2014, confirming the judgment and decree dated 10.09.2013 made in O.S.No.29 of 2007, the appellant has come out with the present Second Appeal.

10.The appellant has become major and she filed C.M.P.No.2044 of 2018 in Second Appeal SR.No.78793 of 2017 and she was declared as major by order of this Court dated 07.02.2018 made in the said C.M.P. and the mother and next friend of the appellant was discharged from the guardianship of the appellant.

11.The learned counsel appearing for the appellant contended that the Courts below erred in holding that the appellant failed to prove that the suit property is joint family property. On the other hand, the appellant has produced and marked the partition deed/Ex.A4 and recitals in the said partition deed had established the existence of the joint family property. He further contended that the learned first Appellate Judge presumed that the appellant as a daughter of third respondent is not entitled to a share in the joint family property. The learned Judge failed to consider the provisions of Section 6 of the Hindu Succession Act, 1956 and decision reported in 2017 (3) CTC 170 (M.Krishnamoorthy v. K.Pondeepankar and others). The learned first Appellate Judge failed to see that Thangavel, grand father of the appellant even during the life time of his father Kanthasamy Pillai and after his death, enjoyed the suit properties as joint family properties jointly along with his brother till the sale of the said properties dated 17.07.1995. The learned counsel for the appellant further contended that the respondents have not denied their contention and they did not appear before the Court and give evidence before the Trial Court. In support of his contention, he relied on the following judgment of this Court reported in 2017 (3) CTC 170 (M.Krishnamoorthy v. K.Pondeepankar and others):

"16. . . .

1.The property that is allotted to a male Hindu at a partition, in his capacity as a Coparcener will be held by him with all incidents of Coparcenery. Once a son is born, he will acquire the right by birth in the said property. Needless to say till such time, a son is born, the

male Hindu to whom the property allotted will hold it absolutely as a sole surviving Coparcener.

2.The property that is inherited by a male Hindu on the death of his father under Section 8 as Class-I heir will be his absolute property and neither his son nor his daughter would claim any right by birth."

12.Heard the learned counsel for the appellant and perused the materials available on record.

13.From the averments made in the plaint, it is seen that the appellant is claiming relief as mentioned in the plaint on the ground that the properties are joint family properties. The first respondent denied the said averments. The appellant has failed to establish that the suit properties are joint family properties in the hands of her grand father Thangavel and the respondents were enjoying the properties jointly. On the other hand, the appellant's mother as P.W.1 has admitted that Kandasamy Pillai purchased the property and bequeathed his properties to his sons. After the death of Kandasamy Pillai, his sons including Thangavel, the grand father of the appellant partitioned the properties and sold the same. She further admitted that Thangavel and first respondent worked as teachers for more than 30 years and purchased the properties. In view of the above admission of P.W.1, the judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case.

14.Considering the evidence of P.W.1 as well as documents filed by the appellant, the Courts below have come to the conclusion that the properties are not joint family properties and appellant is not entitled to a share in the said properties. There is no error in the said findings. The Courts below have given valid reason for rejecting the claim of the appellant. No question of law much less than the substantial question of law has been raised in this Second Appeal.

15.In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-viii)

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Sub Assistant Registrar

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To

1.II Additional District Judge, Tiruppur.

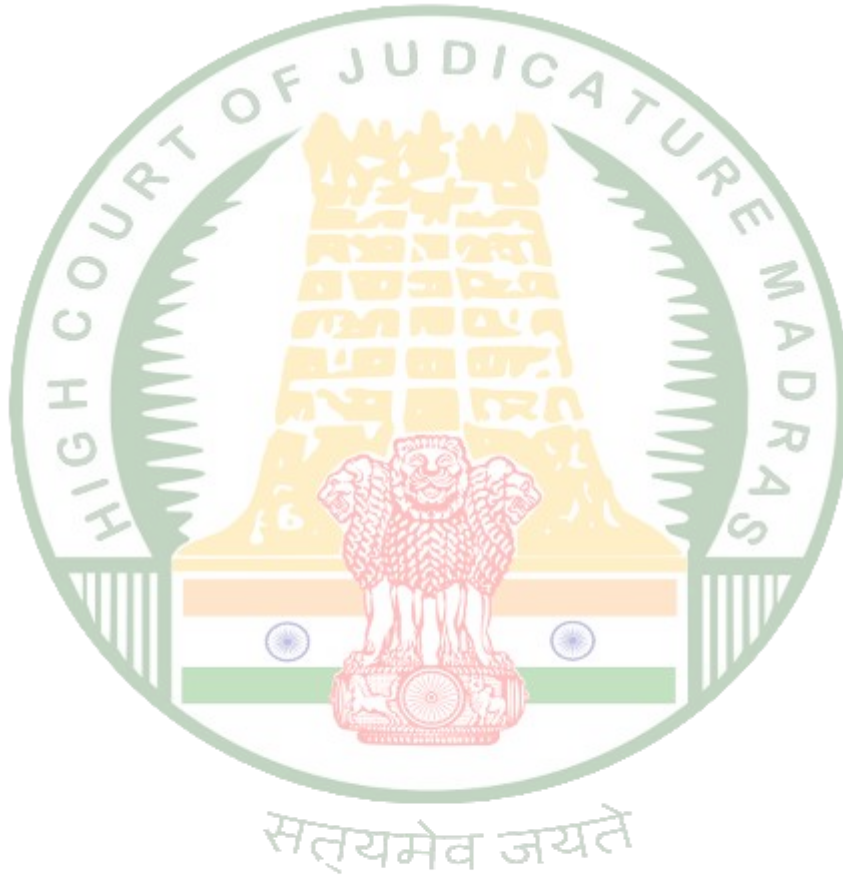
2.The Subordinate Judge, Udumalpet.

+1cc to Mr.M.KAMALANATHAN, Advocate, S.R.No. 34625

S.A.No.236 of 2018

SV (CO)

TR(04/07/2018)



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