

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.342 of 2018

Jamuna

.. Appellant/6th defendant

Vs.

1.P.Jayamani
2.Jayasankar
3.Jayabarathi
4.Sumathi

Respondents 1 to 4/Defendants 2,3,7,8

Pappa (died)

5.Rani

.... 5th Respondent/Plaintiff

6.Jayalakshmi

7.Vijayalakshmi

... Respondents 6 & 7/Defendants 4 & 5

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 13.08.2015 made in A.S.No.20 of 2013 on the file of the I Additional District Court, Salem, modifying and partly allowing the judgment and decree dated 28.10.2011 made in O.S.No.115 of 2010 on the file of the Sub Court, Attur.

For Appellant : Mr.G.Surya Narayanan

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 13.08.2015 made in A.S.No.20 of 2013 on the file of the I Additional District Court, Salem, modifying and partly allowing the judgment and decree dated 28.10.2011 made in O.S.No.115 of 2010 on the file of the Sub Court, Attur.

2.The appellant is sixth defendant, one deceased Pappa is the 1st defendant, respondents 1 and 2 are the defendants 2 and 3, respondents 3 and 4 are the defendants 7 and 8, 5th respondent is plaintiff, and respondents 6 and 7 are the defendants 4 and 5 in O.S.No.15 of 2007 on the file of the Fast Track Court No.II, Salem, which was then transferred to the file of Sub Court, Attur and renumbered as O.S.No.115 of 2010. The 5th respondent

filed the said suit for partition and separate possession against the appellant, respondents 1, 2, 6 and 7 and one Pappa, the 1st defendant who died pending suit. The respondents 1, 2, 6 and 7 and appellant are brothers and sisters of 5th respondent/plaintiff. The respondents 3 and 4 were impleaded as defendants 7 and 8 after death of Pappa, as they claimed to be owners of some of the properties as per the Will of deceased Pappa, the first defendant. The deceased 1st defendant, Pappa is mother of the parties.

3.The case of the 5th respondent :

According to the 5th respondent, she is daughter of one Perumal Reddiar and Pappa, the deceased first defendant. The suit properties originally belonged to her father Perumal Reddiar. The suit properties are ancestral properties. Her father died in the year 1995, leaving behind his wife Pappa, the deceased 1st defendant, herself, respondents 1,2,6 and 7 as his legal heirs. The 5th respondent and other legal heirs of Perumal Reddiar were in possession and enjoyment of the suit properties along with Perumal Reddiar till his death. After his death, all the legal heirs are in joint possession and enjoyment of the suit properties.

3(a).Misunderstanding arose between the 5th respondent and other legal heirs of Perumal Reddiar as 5th respondent married one Krishnan belonging to Vanniar community and not having any issues. Other legal heirs are giving trouble to the 5th respondent. On several occasions, the 5th respondent demanded partition and separate possession of her 1/7th share in the suit properties. The legal heirs of Perumal Reddiar were evading partition. Hence, she filed suit for partition. Pending suit, her mother, Pappa, the first defendant died on 20.11.2008 and the respondents 3 and 4 were impleaded as defendants 7 and 8 as they claimed ownership in respect of the certain properties as per the Will dated 24.11.2008, alleged to have been executed by Pappa, the deceased first defendant.

4.The 1st respondent filed written statement and the same was adopted by deceased Pappa, the 1st defendant and the 2nd respondent herein. In the written statement they have stated that the 5th respondent is not the daughter of Perumal Reddiar and she has no share in the suit properties. The suit was barred by limitation. It is not correct to state that Perumal Reddiar died intestate, on the other hand, on 30.10.1969, Perumal Reddiar executed the document in favour of respondents 1 and 2 by which they have become owners of all the properties of Perumal Reddiar. The 5th respondent has to prove that the suit properties belong to Perumal Reddiar. The 5th respondent was not in joint possession of the properties either during life time of Perumal Reddiar or even after the death of Perumal Reddiar.

Based on the patta, the 5th respondent cannot claim partition and she has to file original documents. The 5th respondent is not in joint possession of the properties and therefore she has to pay the Court fee as per section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The 5th respondent has not properly valued the suit properties and has not paid proper Court fee. Item Nos.8 to 12 are self-acquired properties of Pappa, the deceased first defendant, 13th Item is self-acquired property of 1st respondent and Item No.20 belongs to deceased 1st defendant, Pappa, which she got by registered settlement deed. Items Nos.1 to 7 and 14 to 19 are the properties of respondents 1 and 2. The respondents 6 and 7 executed release deed in favour of respondents 1 and 2.

5.The respondents 1 and 2 filed additional written statement. In the said statement, they have contended that Pappa died on 27.11.2008, pending suit and while she was alive and good mental condition, without anybody's instigation, she executed two Wills both dated 24.11.2008. The said Wills are registered as document Nos.36 and 37 of 2008. As per the Wills, the properties mentioned therein are bequeathed to the respondents 3 and 4. After the death of Pappa, the Will came into effect and the respondents 3 and 4 become absolute owners of the properties.

6.The respondents 1 and 2 filed second additional written statement and stated that the ancestral properties were partitioned by them in the year 1981 by way of a registered document No.345 of 1981 and prayed for dismissal of the suit.

7.The appellant filed written statement and submitted that the suit properties belong to her father Perumal Reddiar and mother Pappa. Only Perumal Reddiar was managing the properties. He died long back and after that Pappa and second respondent were managing the properties. The respondents 1 and 2 executed partition deed dated 23.08.1981 and partitioned the properties among themselves. The partition was effected before amendment to Hindu Succession Act, 1989. In view of the same, the 5th respondent is not entitled to any share. The appellant is entitled to 1/3rd share in the suit properties. All the properties in the name of deceased 1st defendant Pappa was purchased by Perumal Reddiar. The appellant is entitled to 1/3rd share and she is ready to pay necessary Court fee. She made averments similar to the averments made by the respondents 1 and 2.

8.The respondents 3 and 4 filed written statement and claimed title to certain items of suit properties as mentioned in two registered Wills both dated 24.11.2008, executed by Pappa

and they are in possession of the suit properties. They also contended that the 5th respondent has no right to claim share in the said properties.

9. In the reply statement filed by the 5th respondent to the written statement filed by the appellant and other respondents, she has stated that it is not correct to state that Pappa died on 27.11.2008. She died before 24.11.2004 and two Wills are fabricated and they are not binding on the 5th respondent. The respondents 3 and 4 have no right in the suit property and their claim must be rejected.

10. Based on the pleadings, the learned Trial Judge framed necessary issues on 29.11.2007 and additional issues on 25.08.2009. Before the learned Trial Judge, the 5th respondent examined herself as P.W.1 and one Jayaraman as P.W.2 and marked 9 documents as Exs.A1 to A9. The appellant, respondents 1,3 and 4 were examined as D.Ws.1,6 and 7, Nagarajan, Maheswaran, Mothilal and Jeganathan were examined as D.Ws.2 to 5 and marked 21 documents as Exs.B1 to B21 and Court documents were marked as Exs.C1 to C17.

11. The learned Trial Judge considering the pleadings, oral and documentary evidence, held that the 5th respondent is the daughter of Perumal Reddiar, all the suit properties are ancestral properties of Perumal Reddiar and passed preliminary decree, granting 1/6th share to 5th respondent in all the suit properties. Against the said judgment and decree dated 28.10.2011 made in O.S.No.115 of 2010, the respondents 1 to 4 filed A.S.No.20 of 2013. The learned First Appellate Judge framed necessary points for consideration. The First Appellate Judge considered all the materials on record, judgment of the trial Court independently, evidence of D.W.4-Doctor, Ex.B17 and held that first defendant, Pappa died on 20.11.2008 and not on 27.11.2008. In view of the same, the learned First Appellate Judge held that there is no possibility for the deceased Pappa, first defendant to execute the Wills both dated 24.11.2008, marked as Exs.B14 and B15 and the claim of the respondents 3 and 4 that Pappa executed the Will is not acceptable and Wills are not valid one.

12. The learned First Appellate Judge confirmed the findings of the Trial Court that Perumal Reddiar died in the year 1995. On such findings, the First Appellate Court held that the notional partition was effected on the death of Perumal Reddiar and respondents 1 and 2 and Perumal Reddiar got 1/3rd share each in the suit properties and all the legal heirs of Perumal Reddiar including respondents 1 and 2 inherited 1/3rd share of Perumal Reddiar equally. On such conclusion, the learned First Appellate Judge partly allowed the appeal, granting decree of

1/18th share in the suit properties to the female heirs i.e appellant, respondents 5 to 7 and 7/18th share each to the respondents 1 and 2.

13. Against the said judgment and decree dated 13.08.2015 made in A.S.No.20 of 2013, the 6th defendant has come out with the present Second Appeal.

14. The learned counsel appearing for the appellant contended that the learned First Appellate Judge failed to consider that the appellant got married after 1994 and she is entitled to share in the entire suit property and the learned First Appellate Judge failed to consider whether female heirs are entitled to share in the ancestral properties or not based on the date of their marriage and failure to consider the same resulted in miscarriage of justice. An unmarried daughter after 24.06.1989 is entitled to a share in the property. The appellant having got married after 1994, is entitled to share in the ancestral properties and not having share only in the share of their father. The learned First Appellate Judge failed to see that Ex.B1, partition deed is between respondents 1 and 2, the sons of Perumal Reddiar and the same was executed in the year 1989, when the Perumal Reddiar was alive and therefore the same is not valid. The learned First Appellate Judge did not frame necessary issues as to whether the 5th respondent is entitled to partition as sought for and the judgment of the First Appellate Court is liable to be set aside. The learned First Appellate Judge failed to consider the Tamil Nadu State Amendment Act to Hindu Succession Act with regard to right of the unmarried daughters to the ancestral properties.

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

16. From the materials on record, it is clear that the contentions of the learned counsel for the appellant are without merits. The Courts below did not hold Ex.B1, partition deed between respondents 1 and 2 as valid. On the other hand, the Courts below have rejected the partition deed, as respondents 1 and 2 have partitioned the properties among themselves when their father Perumal Reddiar was alive. The appellant in her written statement had stated that Ex.B1 is the registered partition deed dated 28.03.1981 by which the respondents 1 and 2 have acquired title to the properties mentioned therein. The partition by Ex.B1 was effected before Tamil Nadu State Amendment Act, 1989 to Hindu Succession Act and 5th respondent is not entitled to any right in the suit property.

17. Contrary to such stand, the appellant has come out with the present Second Appeal contending that Ex.B1 is invalid. The

appellant has not pleaded in the written statement that she got married after 1994 and therefore she is entitled to share in the ancestral property as co-parcenor, as per the State Amendment and Hindu Succession Act. On the other hand, she has stated that Item Nos.8 to 12 of the suit properties are absolute properties of deceased Pappa, the first defendant, her mother. She has also stated that 13th item was purchased by the first respondent and Item Nos.1 to 7 and 14 to 19 were released in favour of the respondents 1 and 2 and therefore the 5th respondent is not entitled to any share in the suit property. The appellant has claimed 1/3rd share in the suit properties as daughter of Perumal Reddiar and deceased first defendant Pappa. She has not stated as to how she is entitled to 1/3rd share when the respondents 5 to 7 are also daughters of Perumal Reddiar. The appellant has not got into the witness box and did not let in any oral and documentary evidence to substantiate her present contention that she got married only after 1994. The Hindu Succession Act was amended in various states, including Tamil Nadu and Section 29(a) was inserted giving equal share to the daughters along with sons in the ancestral properties.

18.The daughters become co-parcenors when the said amendment came into effect. At the same time, the daughters to become one of the co-parcenor, must be unmarried as on date when the amendment came into force. The Courts below have held that on the death of father, a notional partition took place and sons get equal share along with father and daughters are not entitled to claim share as co-parcenor, unless they satisfy the condition mentioned in Section 29(a) of the Tamil Nadu State Amendment to Hindu Succession Act, 1989.

19.As far as Central amendment to Section 6 of the Hindu Succession Act is concerned, the same came into effect in the year 2005 and daughters become co-parcenor by birth.

20.In the present case, both the State and Central amendment to Hindu Succession Act are not applicable to the appellant as notional partition had taken place in the year 1995 and the appellant failed to prove that she was unmarried when the State amendment came into effect. The appellant has not given particulars till date as to when she got married. The learned First Appellate Judge has considered all these facts in proper perspective and held that appellant and respondents 5 to 7 have only 1/18th share in the suit properties.

21.The contention of the learned counsel for the appellant is that the learned First Appellate Judge failed to frame necessary points for consideration in respect of the claim of 5th respondent for partition and share in the suit property and the learned First Appellate Judge has not given any finding. This

contention is contrary to the facts. The third point for consideration framed by the learned First Appellate Judge was with regard to the claim of the 5th respondent for partition and share in the suit property. The first Appellate Judge considered all the materials on record and law and held that the 5th respondent is entitled to only 1/18th share in the suit properties and not 1/6th share as held by the learned Trial Judge. There is no error of law warranting interference by this Court with the judgment and decree of the Courts below. No question of law much less than the substantial question of law has arisen in this Second Appeal.

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

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

LPP/gsa

To

- 1.The Judge, I Additional District Court, Salem.
- 2.The Subordinate Judge, Attur.

+lcc to Mr.G.Suryanarayanan, Advocate SR.No.39401

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S.A.No.342 of 2018

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