

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2018

Coram

The Hon'ble Mr.Justice N.SESHASAYEE

S.A.No. 128 of 2008

and

M.P.No.1 of 2008

1. Rama Navithan
2. Lakshmana Navithan
3. Sengodan
4. Thulasimani
5. lakshmi

...Appellants/Defendants 5 to 8 & 10

Vs.

1. Kannammal
2. Pappal
3. Rathinammal
4. Ramaswamy
5. Shanmugham
6. Pappa
7. Sumathi
8. Seeral
9. Soundaram

... 1 to 4 Respondents/Plaintiffs

... 5 to 9 Respondents/1 to 4 & 9 Defendants

(Respondents 5, 7 and 9
are exparte and hence given up)

Prayer: Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of the learned Principal Subordinate Judge, Erode in A.S.No.77/2006 dated 05.07.2007 reversing the judgment and Decree of the learned Principal District Munsif of Erode in O.S.No.581/2001 dated 18.08.2004.

For Appellants : Mr.S.Kaithamalai Kumaran
For Respondents : No appearance

JUDGMENT

The defendants 5 to 8 and 10 in O.S.No.581 of 2001 are the appellants before this Court. The appeal is yet to be admitted.

There is no representation for the respondents.

2.1 The suit property described in the plaint as A and B schedule properties originally belonged to a certain Rama Navithan. He had purchased the property under Ext.A3 = Ext.B2 dated 15.08.1921. The said Rama Navithan had two sons namely Karuppa Navithan and Nachi. Karuppa Navithan had four daughters and two sons. His four daughters are the plaintiffs 1 to 3 and one Arukani. Arukani is dead and her son is impleaded as 4th plaintiff and her daughter is 9th defendant. Nachi's heirs are defendants 4 to 8. The 10th defendant is the wife of the 6th defendant.

2.2 The plaintiffs though included B-schedule property, do not claim any relief against the same.

2.3 It is the case of the plaintiffs that Rama Navithan, referred to above is their paternal grand father, that he had sold the entire property to one Chennimalai Gounder who had divided the property which is now described as A and B schedule properties and sold the same under a set of contemporaneously executed sale deeds dated 22.05.1963. Chennimalai Gounder had sold the A-schedule property to Karuppa Navithan and the B-schedule property to Nachi, under Exts.A-1 and A-2 sale deeds. After the demise of Karuppa Navithan, the contesting defendants/appellants herein have purchased the property from his son, the first defendant, under Ext.B3 dated 29.05.2000.

2.4 On considering the evidence before it, the trial court has held that even though the plaintiffs have right in the A-schedule property, inasmuch as the same had been sold to the 10th defendant under Ext.B-3, no preliminary decree could be granted and accordingly dismissed the suit. The plaintiffs accordingly preferred an appeal in A.S.No.77 of 2006. In arriving at its conclusion, the trial Court has taken a view which this Court considers as fantastic and beyond reasonable doubt that the right of alienation of the property of the co-sharer/daughters, who have forfeited their rights seeking partition, is especially found under Section 23 of the Hindu Succession Act as it then stood.

2.5 But then, the suit is laid not against the co-sharers who were in physical occupation. Section 23 of the Hindu Succession Act does not enure any benefit of the purchasers. However, this defect was rectified by the first Appellate Court while passing the preliminary decree in favour of the plaintiffs to the extent of 4/6 share. This is now challenged by the defendants chiefly by the 10th defendant in this appeal.

3. Heard the learned counsel for the appellants.

4. On perusing the materials before this Court, more particularly the judgment of the first Appellate Court, this Court does not find the findings entered by the said court are legally or factually incorrect. The only point canvassed by the learned counsel was that the property was a dwelling house, that the purchasers are entitled to the benefit under Section 23 of the Hindu Succession Act. However, Vide Central Act 39 of 2005, Section 23 of the Hindu Succession Act itself has been repealed. This apart, as already indicated, the privilege that a statute has conferred on the male heir cannot be taken as enuring to the benefit of his purchasers. At the end of the day, if the 10th defendant is in actual physical possession of the plaint A-schedule property, and if the property by its nature is indivisible or incapable of being divided conveniently, then the same can be worked out in the proceedings of final decree.

5. In the end, this Court finds no merit in this appeal and accordingly, this second appeal is dismissed and the judgment and decree of the learned Principal Subordinate Judge, Erode in A.S.No.77/2006 dated 05.07.2007 reversing the judgment and decree of the learned Principal District Munsif of Erode in O.S.No.581/2001 dated 18.08.2004 is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Principal Subordinate Judge,
Erode.

2. The Principal District Munsif,
Erode.

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3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate sr.no.76942

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