

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.883 of 2017

and

C.M.P.No.22166 of 2017 and C.M.P.No.545 of 2018

1. Sundari
2. Balu
3. Sangeetha

Cause title accepted vide Court
order dated 10.03.2017 in C.M.P.No.4130 of 2017
in S.A.Sr.No.39946 of 2014 by MSNJ... Appellants/defendants
2 to 3

..vs..

1. Alamelu Ammal ... 1st respondent/plaintiff
2. Devagi ... 2nd respondent/first defendant

Second Appeal filed under Section 100 C.P.C. against the
Judgment and decree of the Court of Subordinate Judge, Cheyyar
dated 26.08.2013 passed in A.S.No.36 of 2011 confirming the
judgment and decree of the Court of the District Munsif,
Vandavasi dated 08.08.2008 passed in O.S.No.465 of 1995.

For Appellants : Mr.A.Sundaravadhanan
For Respondents : Mr.P.Satheesh Kumar

J U D G M E N T

The defendants 2 to 4, who are the appellants herein, have
preferred the above Second Appeal.

2. The suit was filed by the plaintiff seeking for
partition. The plaintiff is the daughter of one Subbaraya
Gounder and Lakshmi Ammal. The first defendant is the younger
sister of the plaintiff and the second defendant is the wife of
the plaintiff's brother-Veera Raghava Gounder and the defendants
3 and 4 are the children of the said Veera Raghava Gounder.
According to the plaintiff, the suit properties are self-
acquired properties of their father Subbaraya Gounder and
Lakshmi Ammal. The mother-Lakshmi Ammal died on 15.10.1984 and

the father Subbaraya Gounder died on 29.05.1986. Therefore, the plaintiff, the first defendant and the deceased Veera Raghava Gounder are the legal heirs of the said Subbaraya Gounder. As the said Veera Raghava Gounder died, his wife and children, who are the defendants 2, 3 and 4, are his legal heirs and the plaintiff has sought for 1/3rd share in the suit properties.

3. The first defendant agreed with the plaintiff, whereas the defendants 2 to 4 contested, stating that the properties are joint family properties of Subbaraya Gounder and out of the joint family income, the suit properties were purchased. Hence, it should be dealt with only as the joint family properties and the plaintiff cannot have any claim over the same. Their marriage took place even prior to the Tamil Nadu Amendment Act. The defendants 2 to 4 had also mentioned about the loans that were outstanding on the death of Subbaraya Gounder.

4. Before the trial Court, on the side of the plaintiff, one Dharman was examined as P.W.1 and one Dhanapal was examined as P.W.2 and Exs.A1 to A14 were marked. On the side of the defendants, the first defendant examined herself as D.W.1 and three more witnesses were examined and Exs.B1 to B14 were marked.

5. Based on the oral and documentary evidence, the Courts below have concurrently found that the plaintiff is entitled to 1/3rd share in the suit properties. Aggrieved by the same, the above Second Appeal has been preferred by the defendants 2 to 4.

6. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials available on record.

7. Originally, this Court directed the parties to settle the issue between them, but the same could not fructify. It is argued by the learned counsel for the appellants that the Courts below should have dealt with the debts in the name of Veera Raghava Gounder, which were incurred by the father and after his death, the same has to be divided equally by the plaintiff and the first defendant. It is pointed out that the father Subbaraya Gounder purchased the undivided share in the suit properties from his brother under Ex.B-13 dated 17.07.1985. Therefore, it is argued that the suit properties are joint family properties. But the trial Court as well as the appellate Court had categorically held that the person, who alleges that the properties are joint in nature, has to prove the same, as in this case, the burden is on the defendants 2 to 4. The defendants 2 to 4 have not discharged the burden cast on them to prove that the properties are joint family properties. The plaintiff is entitled to equal share in the suit properties. Learned counsel for the appellants also pointed out that the evidence of D.W.1, who is one of the sisters, stated that she did not have knowledge about the purchase of the suit properties

by the father as self-acquired. A reading of the cross examination of D.W.-1 would go to show that the father had purchased the properties in the name of the mother. Hence, she has also pleaded ignorance about the partition between the father and his brothers. However, she has stated that the grand father-Vanniya Gounder did not have any properties and she also did not know how much properties the grandfather had in Rettanai Village. Considering all these aspects, the Courts below had rightly held that the suit properties cannot be characterized as joint family. The Courts below have categorically found that the suit properties exclusively belonged to Subbaraya Gounder and Lakshmi Ammal, who are the parents of the first defendant and the second defendant's husband. It is also further held that each one of the children of Subbaraya Gounder are entitled to 1/3rd share in the suit properties and that the defendants 2 to 4 will also be entitled to 1/3rd share in the suit properties. As the said findings are correct, there is no reason to interfere with the same.

8. It is stated by the learned counsel for the appellants that there were certain properties, though not shown as suit properties, which had already been dealt with by the respondents and to show the same, they had filed C.M.P.No.545 of 2018 in S.A.No.883 of 2017 seeking to receive the document as an additional evidence. The said document is dated 23.12.1988, which is a Sale Deed. According to them, if the said Sale Deed is considered, a considerable extent from the share of the plaintiff and the first defendant will get reduced. However, this Court is not going into that question. It is open to the parties to raise any such objection in the final decree proceedings. Admittedly, the property covered under the sale deed was not included in the plaint schedule. Without any pleading, there is no point in considering any amount of evidence. Hence, the C.M.P.No.545 of 2018 is dismissed.

9. In fine, the Second Appeal does not involve any substantial question of law warranting any interference by this Court. Hence, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

srn

To

1. The Subordinate Judge, Cheyyar
2. The District Munsif, Vandavasi
3. The Section Officer, V.R.Section, High Court, Madras

+1 CC to M/s. A. Sundaravadanam, Advocate sr 21643.

+1 CC to M/s.P. Satheesh Kumar, Advocate sr 21225.

S.A.No.883 of 2017

and

C.M.P.No.22166 of 2017
and C.M.P.No.545 of 2018

MP (CO)
SP (23/05/2018)



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