

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Second Appeal No. 354 of 2012

1. Mahalakshmi
2. D.Vijayalakshmi
both are rep.by their POA
Ms.J.C.Buelah Appellant/Appellant/Plaintiff

Vs.

1. K.Venkatraman
2. Mohandoss Gandhi
3. B.Srinivasan
4. Raja Gnanaseelan
5. P.R.Srinivasan
6. A. Pushparani
7. C.K.L.Gopal
8. United Financiers
rep by its Partner S.Sugumar
9. Poomalli Respondents/Respondents/Defendants

Prayer : Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Decree and Judgment in O.S.No.471 of 2006 dated 26.03.2008 on the file of Principal District Munsif Court, Poonamallee as confirmed in A.S.No.36 of 2008 dated 18.07.2011 on the file of the Subordinate Judge Court at Poonamallee.

For Appellants : Mr. A. Amalraj

For Respondents: R1 to R3 disd vide order dated 19/12/13
R4 to R9-Not ready in Notice
RR1 to 3 rep by their Power of Attorney
Against S.Mani
(Vide MP 1/13 order dated 16/08/2013)

JUDGMENT

1. This Second Appeal has been filed against the concurrent findings of the courts below dismissing the suit filed for declaration declaring three sale deeds dated

17.12.1989 (one sale deed) and 19.12.1989 (2 sale deeds) in favour of the Defendants 1 to 3 and another three sale deeds dated 06.09.1990, 18.10.1990 and 21.06.1991 in favour of the Defendants 4 to 6 respectively, executed by the father of the Plaintiffs as null and void and unenforceable in law and shall not be binding on the plaintiffs insofar as it relates to the 2/3rd share of the Plaintiffs in the suit property.

2. It is the case of the Plaintiffs that the suit property originally belonged to one Mrs. Rukmani Ammal, she sold the same to Mr. Chinnakannu Naicker, who is the grand father of the Plaintiffs. Mr. Chinnakannu Naicker died on 22.07.1974. After the death of Mr. Chinnakannu his wife Mrs. Alammal and three sons inherited the properties. After the death of Mr. Chinnakannu Naicker his legal heirs partitioned the same on 18.12.1989 in which the suit property was allotted to the father of the Plaintiffs. The Plaintiffs' father died on 22.11.1995 leaving behind the Plaintiffs and 9th Defendant as legal heirs. Since the property originally belongs to Mr. Chinnakannu Naicker, the grandfather of the Plaintiffs, the Plaintiffs are entitled to the equal share in the suit property. Therefore, any sale made by their father in respect of the suit property will not bind them.

3. The trial Court considered the entire materials, found that the suit property is the absolute property of the grandfather of the plaintiffs Mr. Chinnakannu Naicker. After his death three sons and wife being the Class-I heirs become the owners of the property and the property devolved upon them as per Section 8 of the Hindu Succession Act. Therefore, as the property is absolute property of Plaintiffs father, the plaintiffs do not have any share in it and hence dismissed the suit. The First Appellate court also confirmed the findings of the trial court. Hence, the Plaintiffs have preferred this Second Appeal.

4. The learned counsel for the Appellants vehemently contended that the partition among the sons of Mr. Chinnakannu Naicker took place only after Act 1 of 1990 Tamil Nadu Act came into force. Therefore such partition is not valid. Any sale by the father of the Plaintiffs will not bind the Plaintiffs. The Plaintiffs being grand daughters of Mr. Chinnakannu Naicker they are entitled to the partition of the suit property. The sale deed is not binding the Appellants. In support of his case he relied upon the decision of this Court in Amudha Rani and 2 others v. K. Veeraraghavan @ K.V. Raghavan and 4 others [(2008) 1 MLJ 610].

5. I have perused the entire materials. It is the admitted case of the Plaintiff that the suit property is self-acquired

property of their grandfather Mr.Chinnakannu Naicker. This aspect is not in dispute. As far as the self acquired property or individual property of Hindu who dies after the commencement of the Hindu Succession Act 1956, the property will be dealt as per Section 8 of the Hindu Succession Act and the properties shall devolve according to Section 8 firstly upon the legal heirs specified in schedule-I of the Act. It is to be noted that the grandchildren are not Class-I legal heir as per Schedule I. Therefore, grand children except the grandchildren of predeceased son or daughter and other not shown as Class I legal heirs cannot claim share under Section 8 of the Hindu Succession Act.

6. The property is admittedly individual property of grand father, it devolved upon Class-I legal heirs, as per Section 8 of the Act. There was no co-parcenary in the above property. In the absence of any interest or co-parcenary right exists in the property, applying section 29 of the Hindu Succession Act (i.e., Tamilnadu Act) or Act 39 of 2005 (Central Act) will not arise at all. Therefore, the judgment relied upon by the learned counsel for the Appellant in Amudha Rani's case (2008) 1 MLJ 610 is not applicable to the facts of the present case. The above judgment deals with co-parcenary property and not individual property. Since, the Class I legal heirs, upon whom the property was devolved as per Section 8, the property remain absolute property. Admittedly, the Plaintiffs father become owner of the property and sold the property. Therefore, the plaintiffs cannot avoid sale deed on the ground that they are having equal share in the property. Hence this Court, after analysing the entire materials and pleadings of the Plaintiffs, do not find any substantial question of law. Accordingly, the Second appeal is dismissed. The findings of the Trial Court and the First Appellate Courts are confirmed. No costs.

7. It is made clear that the Appellants and the Respondents 1 to 3 have already entered into a compromise before this Court on 19.12.2013. In view of the above compromise the Second Appeal was dismissed with respect to Respondents 1 to 3 as early as 19.12.2013. Compromise recorded by this court bind on the parties to compromise alone.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Munsif,
Poonamallee.

2.The Subordinate Judge,
Poonbamallee.

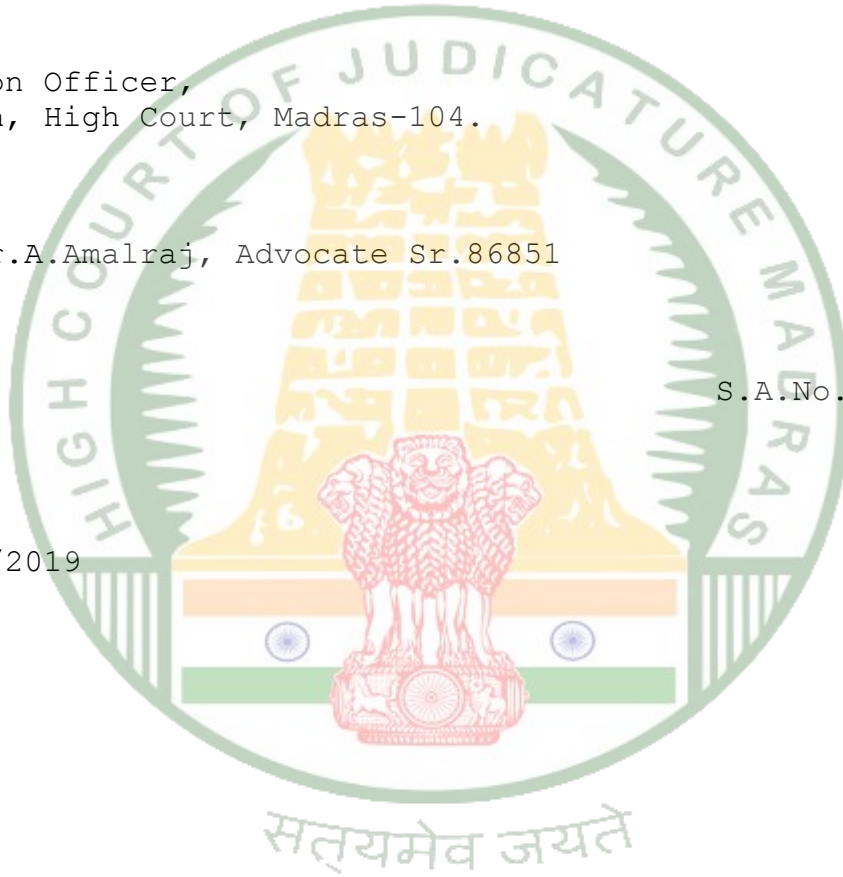
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The Section Officer,
VR Section, High Court, Madras-104.

+lcc to Mr.A.Amalraj, Advocate Sr.86851

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srg 09/12/2019



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