

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2018

PRONOUNCED ON : 22 .10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.346 of 2015 and MP No.1 of 2015

1. Jothinathan
2. Rajammal

..Appellants/Appellants/Defendants 1 & 2

Vs.

1. Angammal
2. Kannammal
3. Mani
4. Pushpa
5. Mallika
6. Jamuna
7. Lakshmiyammal

.. First Respondent/Respondent/Plaintiff

..Respondents 2 to 7/Appellants 4 to 9/
Defendants 4 to 8

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.04.2013 passed in A.S.No.2 of 2012 on the file of the Sub Court, Perundurai, confirming the judgment and decree dated 19.01.2011 in O.S.No.247 of 2008 passed on the file of the District Munsif Court-cum-Judicial Magistrate, Perundurai.

For Appellants : Mr.S.Kaithamalai Kumaran

For R1 : Mr.K.S.Jayaganeshan

For R2 to R6 : Mr.P.Dinesh Kumar

For R7 : No apperance

Set exparte

Vide order dated 03.10.2018

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 15.04.2013 passed in A.S.No.2 of 2012 on the file of the Sub Court, Perundurai, confirming the judgment and decree dated 19.01.2011 in O.S.No.247 of 2008 passed on the file of the District Munsif Court-cum-Judicial Magistrate, Perundurai.

2. The second appeal has been admitted on the following substantial questions of law.

"a) Whether the courts below are right in holding that the plaintiff is entitled to as share in the ancestral property especially when it had been proved through Ex.B1 that the father of the plaintiff by name Ramasamy died prior to 1950 much before the Hindu Succession Act, 1956 came into force?

b. Whether the courts below are correct in holding that all the parties to the suit are entitled to 1/9th share in the suit schedule properties without considering the family tree under which the appellants are entitled to 4/9th share and the respondents 2 to 7 herein are entitled 4/9th share?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has been laid by the plaintiff / 1st respondent for the partition seeking division of the suit properties into three equal shares and allot one share to the plaintiff. The plaintiff has based her claim of share in the suit properties on the footing that the same originally belonged to the plaintiff's father Ramasamy ancestrally and accordingly the plaintiff's mother Karuppayammal also having died 10 years ago, both leaving behind their sons Malaisamy and Ramasamy and the plaintiff as their legal heirs and the defendants 1 and 2 being the legal heirs of Malaisamy and his wife Chinnammal and the defendants 3 to 8 being the other branch consisting of Ramasamy and his children, accordingly seeking 1/3 share in the suit properties, the plaintiff's has levied the suit.

5. The defendants had resisted the plaintiff's suit mainly on the footing that the father Ramasamy died intestate 40 years ago, accordingly, it is their case that when he had died before

the advent of the Hindu Succession Act, 1956, the plaintiff would not be entitled to lay any claim of share in the suit properties as per law then existing and thereby sought for the dismissal of the plaintiff's suit.

6. However, as per the materials placed on record, it is seen that there has been a clear admission on the part of DW1 that Ammasai Gounder, the father of Ramasamy Gounder had died prior to the demise of Ramasamy Gounder, the death certificate marked as Ex.A9 go to show that Ammasai Gounder had died on 18.11.1956. So it is evident that the plaintiff's father Ramasamy had died only after the enactment of the Hindu Succession Act, 1956. Furthermore, the suit properties having been determined rightly that they are the ancestral properties of Ramasamy, it is found that the plaintiff, being one of the legal heirs of Ramasamy, is entitled to seek her due share in the suit properties. Accordingly, the courts below had accepted the plaintiff's case of claiming a share in the suit properties and the suit had come to be decreed in favour of the plaintiff holding that she is entitled for 1/9 share in the suit properties and the preliminary decree for partition had been passed accordingly in favour of the plaintiff. The first appellate court had also confirmed the same.

7. The only grievance of the defendants 1 and 2 / appellants in the present second appeal is that when Ramasamy had died leaving behind three legal heirs and accordingly, one branch consisting of the defendants 1 and 2 are wholly entitled to 4/9 share and the other branch consists of the defendants 4 to 8 are entitled to the remaining 4/9 share and accordingly without determining the shares on the above line, the courts below had erred in granting 1/9 share each to all the parties to the suit without considering the legal status of the parties concerned.

8. As rightly argued by the appellants' counsel as well as admitted by the respondents' counsel also fairly, it is found that considering the family tree left behind by Ramasamy, it is seen that the defendants 1 and 2 representing one branch together would be entitled to 4/9 share and the defendants 4 to 8 representing the other branch together would be entitled to the other 4/9 share and the plaintiff would be entitled to 1/9 share in the suit properties. The substantial questions of law formulated in this second appeal are accordingly answered.

9. In the light of the above discussions, the judgment and decree of the courts below are modified only to the extent that the plaintiff is entitled to 1/9 share in the suit properties and the defendants 1 and 2 (appellants) are entitled to 4/9 share in the suit properties and the defendants 4 to 8

(respondents 2 to 6) are entitled to the remaining 4/9 share in the suit properties and accordingly the preliminary decree is passed in the suit. The determination of the shares of the defendants in the suit properties is subject to the payment of the necessary court fees by the defendants with reference to the same as per law. Accordingly, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bga

To

1. Sub Court, Perundurai, Erode District.
2. District Munsif Court-cum-Judicial Magistrate, Perundurai.
3. The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.71658

+1cc to Mr.K.S.Jeyaganeshan, Advocate SR.No.71920

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VG II(CO)
GMY(14/03/2019)

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