

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

A.S.No.241 of 2010

and

M.P.No.1 of 2010

and

M.P.No.1 of 2011

1. K.Ravikumar
2. K.Prabhakaran
3. K.Rajkumar ... Appellants/Plaintiffs

Vs.

1.A.Kalyanasundaram
2.K.Vasanthakumari
3.K.Vijayalakshmi ... Respondents/Defendants

Prayer :Appeal suit is filed under Section 96 of the Civil Procedure Code against the Judgment and Decree dated 14.10.2009 in O.S.No.6458 of 2005 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.V.Chandrakanthan
For Respondents : Mr.C.Regurajan

JUDGMENT

This appeal is directed against the decree passed in O.S.No.6458 of 2005 on the file of the learned IV Additional Judge, City Civil Court, Chennai, which the appellants have laid the suit for partition. Parties are referred to by their rank before the court below.

2. The suit property is described as a residential building put up on a site measuring 710 sq.ft., in R.S.No.1686/1 correlated to New S.No.1351 within the jurisdiction of Royapuram Sub-Registry.

3.1 According to the plaintiffs the properties originally stood in the name of a certain Annamalai Nadar and Vedachala Nadar, who purchased the same under a sale deed dated 29.06.1935, that in a partition that took place on 10.07.1948, the suit property was allotted to the share of Annamalai Nadar, and that on 28.06.1985 there was a partition among Annamalai Nadar and his children, in which the suit property came to be allotted to the share of his son Kalyanasundaram. Kalyanasundaram is the 1st defendant.

3.2 The 1st defendant has five children. The plaintiffs 1 to 3 are his sons and defendants 2 and 3 are his daughters. Alleging that the suit property is an ancestral piece of property, the plaintiffs have laid a suit for partition of 1/4 shares in the suit property. Plaintiffs further alleged that so far as the share of the defendants 2 and 3, the sisters of the plaintiffs are concerned, the 3rd defendant had relinquished her share in favour of one of the co-parceners, her father, the 1st defendant and her mother. As concerning 2nd defendant, she was married in 1980, well before 25.03.1989, the day on which Section 29-A of the Hindu Succession Act, as inserted by Tamil Nadu Amendment, came into operation. Hence, she is not entitled to the benefit of Section 29-A of the Hindu Succession Act.

4.1 The 1st defendant alleged that the suit property is his personal property and that the plaintiffs are not entitled to claim any share in the same.

4.2 Blaming that the plaintiffs are unkind and uncharitable to their parents, the 2nd defendant would say that neither she nor her sister would be entitled to any share in the property, yet would continue to state in her written statement that in case law grants them any share, then both the sisters would be entitled to equal share.

4.3 The 3rd defendant has filed the written statement along the lines adopted by the 2nd defendant, her sister, however on the allegation of the plaintiffs that she had relinquished her share in the property, in favour of her parents is concerned, her statement is silent.

5. The trial court has framed as many as six issues and the 1st issue is whether the suit property is owned by Hindu undivided family consisting of the plaintiffs and the 1st defendant. The court finds that the property is an ancestral piece of property and passed a preliminary decree declaring one upon six shares for each of the parties to the proceedings. This appeal is challenged by the plaintiffs as regards quantum of share so declared. None of the sisters or the 1st defendant / the father have challenged it.

6. Points for consideration:

1. Are the defendants 2 and 3 are entitled to any share in the suit property?
2. Whether Ext.A-25 constitute any relinquishment?

7. The basic premise on which the case has to be decided is that the suit property is an ancestral piece of property. If it is an ancestral property, then under Section 6 of the Hindu Succession Act as amended Vide consequent Act 39 of 2005, which came into force on 09.09.2005, the daughters would be entitled to a share in the coparcenary property, irrespective

of their marital status as on the date of coming into force of the said amendment. In this case, the suit was laid on 29.09.2005 after the commencement of Central Act 39 of 2005, and so both the daughters would be entitled to a share in the suit property, especially when the 1st defendant was alive on that date. This view is also supported by a judgment of this Court in K.M.Thangavel & others v. K.T.Udayakumar & another [2014-2-L.W-113].

8. So far as the second question on Ext.A25 is concerned, it is only a letter written by the 3rd defendant dated 10.10.1991. This document on its face is not competent enough to divest the 3rd defendant of her vested right in the suit property.

9. Therefore, on both the points raised, the appeal has to fail. Accordingly, this appeal suit is dismissed and the Judgment and Decree dated 14.10.2009 in O.S.No.6458 of 2005 passed by the learned IV Additional Judge, City Civil Court, Chennai is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The IV Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer
High Court, Chennai.

+1cc to Mr.V.Chandrakanthan, Advocate SR.NO.45439
+1cc to Mr.C.Regurajan, Advocate SR.NO.45495

SAI (CO)
sm:9.10.2018

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