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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.06.2018

Pronounced on : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.1661 of 2016

and

CMP (MD) No.8111 of 2016

G.Paulraj

...Petitioner

-vs-

S.Ramalakshmi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.726 of 2014 in O.S.No.125 of 2007 dated 01.07.2016 on the file of the District Munsif Court, Aruppukkottai.

For Petitioner : Mr.C.M.Arumugam
for R.Pandi Maharaja

For Respondent : Mr.S.Lakshmanan

O R D E R

The instant Civil Revision Petition is filed as against the fair and decreetal order passed in I.A.No.726 of 2014 in O.S.No.125 of 2007 on 01.07.2016 by the learned District Munsif, Aruppukkottai. The relief sought for in the above said I.A.No.726 of 2014 is to reject the plaint which was filed for the relief of partition.

2. According to the learned counsel for the revision petitioner is that he is the 1st Defendant in the aforesaid suit and the Plaintiff, who is his elder sister, filed the suit for partition after the lapse of nearly 40 years from the date of the registered deed of partition dated 23.06.1958. The main contention of the learned counsel for the Petitioner is that the Respondent/Plaintiff has admitted that she was excluded without allotted any share in the ancestral properties even in the registered partition deed dated 23.06.1958. So, the Plaintiff had been ousted from the joint family property. Hence, the filing of the suit in the year 2007 is barred by limitation as contemplated and Article 110 of the

Limitation Act. To substantiate his case, the Revision Petitioner filed Exs.P-1 to P-7 in the interim petition before the learned trial Court, but they were not considered in its veracity.

3.The further contention of the learned counsel for the Revision Petitioner is that the value of the Plaint is wrongly calculated and thereby the valuation of the plaint under Section 37 (2) of Tamil Nadu Court Fee and Suit Valuation Act is not correct and the plaint ought to have been valued under Section 37(1) of the Court Fee Act and thereby, he prays that the plaint of the plaintiff is liable to be rejected.

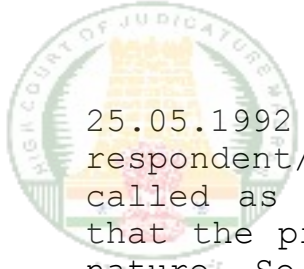
4.Apart from that it is also submitted by the learned Counsel for the petitioner that no ancestral property can be allotted to a wife and the wife cannot be equally treated as son. So, the allotment of the property as per "C- Schedule" by comprising the interest of the minors in favour of the wife is unsustainable and impermissible. However, all these legal aspects are not considered by the learned trial Court, hence the instant civil revision petition is filed.

5.Per contra, the learned counsel for the Respondent/Plaintiff would submit that the Petition filed for the rejection of plaint is purely on misconception and though it is submitted that the deed of partition came into registration on 23.06.1958, the Respondent/Plaintiff was not party therein and the same shall not take away the right of the Respondent/Plaintiff. Further, he has also contended that the said partition deed consisted of the '3' schedules and the suit properties had fallen in the 'C' schedule. Since the 'C' schedule was allotted to the mother of the Plaintiff along with her minor son. The mother of the Respondent/Plaintiff was having equal share as that of the Revision Petitioner. So, the petition for rejection of plaint filed before the learned Trial Court was rightly dismissed and needs no interference.

6.It is also contended by the learned counsel for the Respondent/Plaintiff that the plaint was correctly valued as the Plaintiff was in the joint possession of the suit property. However, the respondent/plaintiff is permitted by the learned trial Court to pay the additional Court fee and accordingly payment was made before the learned Trial Court.

7.I heard Mr.C.M.Arumugam learned counsel for Mr.R.Pandi Maharaja, learned counsel appearing for the petitioner and Mr.S.Lakshmanan, learned counsel for the respondent and the materials available on record are perused.

8.It is the specific case of the revision petitioner that even in the plaint itself it is admitted by the Respondent/Plaintiff that she had been excluded in the deed of registered partition marked as Ex.R-1 and also brought to the notice of this Court about the pleadings of the plaint. Exhibit R-1 is produced before this Court for perusal along with the photo copy of two sale deeds dated



25.05.1992 and 25.09.1967. In the pleadings itself the respondent/plaintiff has admitted her exclusion which can also be called as "Ouster". Further, in the plaint itself it is mentioned that the properties found in Ex.R-1 are the ancestral properties in nature. So, it is contended by the learned counsel for the Revision Petitioner that the 'C' schedule could have been allotted only with an intention to appoint the mother of the Revision Petitioner and the Respondent/Plaintiff only as guardian but would not have intended to be a joint share holder. Further, it is admitted that the deed of partition was marked before the learned Trial Court as Exhibit R-1. So, this Court is having an occasion to peruse the same. In the perusal, it has been shown that there are '3' schedules in Exhibit R-1, 'A' schedule was allotted to the father of the Revision Petitioner/1st Defendant and the Respondent/Plaintiff. 'B' schedule was allotted to the sons of the 1st wife of the aforesaid Ganapathy Reddiar and his 1st wife. 'C' schedule was allotted to the 2nd wife of the said Ganapathy Reddiar and his son born through the 2nd wife. These factual aspects are not disputed by the respondent.

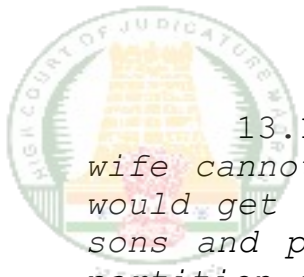
9. Admittedly, all the properties are ancestral properties. The legal position is settled that though the Hindu wife is the member of the joint family, she cannot become a share holder in the properties belong to the HUF. This legal position is reiterated by the Hon'ble Supreme Court on several occasions. Further, I am fortified with decisions of the Hon'ble Supreme Court as well this Hon'ble Court as relied on by the learned counsel for the revision Petitioner in AIR 1970 SC 14, AIR 1966 SC 24, AIR 2014 Bombay 119, 2017 (5) CTC 676, 2017 (1) LW 562, 2018(1)MLJ 476.

10. It is decided by the Hon'ble Supreme Court in AIR 1970 (SC) 14:

(B) Hindu Joint Family and Co-parcenary Distinction. A Hindu joint family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A Hindu Co-parcenary is a much narrower body than the Hindu joint family, it includes only those persons who acquired by birth an interest in the joint or co-parcenary property, these being the sons, grandson and great grandsons of the holder of the joint family property for the time being.

11. So, it is clear that though the wife comes within the definition of Hindu joint family, she cannot be form part of Hindu co-parcenary since she cannot acquire any right in the joint family by birth.

12. The ratio laid down in AIR 1966 SC (24) is that the widow cannot be Karta of the family. Under Hindu law co-parcenership is a necessary qualification for the manager ship of the joint Hindu family. A widow is not a coparcener; she has no legal qualification to become the manager of a Hindu joint family.



13. It is also held in AIR 2014 Bombay 119; under Hindu law wife cannot demand partition of the joint family property, but she would get a share only if partition is demanded by her husband or sons and property is actually partitioned only a widow can demand partition of interest which deceased husband was entitled to.

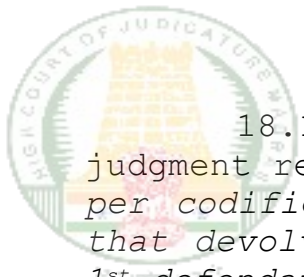
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14. In instant case, the claim of the Respondent/Plaintiff is from her mother whereas her mother is not a coparcener admittedly. Once the mother of the Respondent/Plaintiff was not entitled to acquire any co-parcenary right over the properties, then as a daughter the Respondent/Plaintiff is having no right to claim any partition.

15. Apart from that it is the another submission of the learned counsel for the Revision Petitioner is that as per the ratio laid down by this Hon'ble Court in the judgment reported in 2017 (5) CTC 676 that a partition suit can be rejected on account of limitation. In the said case plaintiffs father executed registered sale deed in 1973 in favour of 3rd defendant, recovery and possession of suit property granted to 3rd defendant through Court process and revenue records mutated in 1983, in 2010 plaintiff filed suit for partition and declaration of sale deed registered in 1973 as null and void, trial Court rejected suit is barred by limitation and the same was approved by this Hon'ble High Court.

16. In the case on hand partition was effected in the year 1958, subject matter of the suit lies in the 'C' schedule of the said partition deed. Admittedly the said 'C' schedule consisted 11 items of property and all the properties are brought as suit schedule properties. However, according to the learned counsel for the revision petitioner that among the 11 items 2 item of the properties have been sold in the year 1967, and 1992 respectively. But to challenge the same no steps were taken by the Respondent/Plaintiff to include the purchasers of those properties as parties to the suit even after the fact of sale was brought to her notice. This would show that the Respondent/Plaintiff has lost her interest and the same would further ascertain that the suit is barred by limitation. Apart from that without appreciated these material aspects, the learned trial judge has come to an incorrect conclusion that the respondent/plaintiff is presumed to be in the joint possession when the revision petitioner has claimed that he alone in possession. But the case of the revision petitioner is that he is not in possession of those properties which were already sold in the year 1967 and 1992.

17. Another judgment is relied on by the revision petitioner as reported in 2017 (1) LW 562 as per on the case for partition is concerned the suit for partition can be filed within 12 years from the date of denial of partition. But the suit is filed beyond the period of limitation.



18. It is also brought to the notice of this Court that the judgment rendered by this Court reported in (2018) 1 MLJ 476 that as per codified law in respect of joint family property of defendant that devolved upon him through his father, plaintiff being wife of 1st defendant could not claim partition of property.

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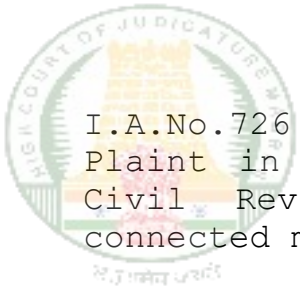
19. So, it is the admitted fact that the properties found in the Exhibit R-1 are ancestral properties and the contention of the learned counsel for the Revision Petitioner that the wife can never claim any share from the properties belong to the HUF and the said Ganapathy Reddiar himself had no right to allot any property in favour of his wife by giving independent right, hence it could be very clear that the intention of allotment of property only meant for guardian to the minor's properties.

20. Apart from that as contended by the learned counsel for the revision petitioner that the claim of the Respondent/Plaintiff as if she is in the joint possession is negatived when she has not raised any question about the execution of Exhibit P-4. The silence of the Respondent about the execution of Exhibit P-4 by the Revision Petitioner would clearly show that she is having no concern about the properties found in the 'C' schedule of Exhibit R-1 as she had been excluded from the properties belong to HUF. Further, the contention of the learned counsel for the Respondent that as per Exhibit R-1 the respondent is having right to get share from the properties found in the 'C' schedule of Exhibit R-1 would be nothing but an absurdity and against the settled legal position.

21. At the same time as far as the Court fee is concerned that no suit can be rejected for the reason as the same is not properly valued. However, if the opportunity given by the Court concerned for payment of the insufficient Court fee is not been complied with by the party concerned, then only the plaint would be rejected but here no such occasion has arisen. So, the 2nd contention raised by the learned counsel for the revision petitioner is unacceptable. Hence, the contention put forth by the learned counsel for the revision petitioner in respect of the legal aspect that the wife cannot become the share holder of her husband's ancestral property and the suit is barred by limitation are having legal force and the same are acceptable also.

22. It is also brought to the notice of this Court that the learned trial judge has discussed in the impugned order saying that the wife of the Ganapathy Reddiar namely Parvathy Ammal was died only in the year 2003, hence the suit is not barred by limitation. But the learned trial judge has miserably failed to consider the vital aspect whether the said Parvathy Ammal could get any share from her husband's ancestral properties. The said legal position though brought to the notice of the learned trial judge by placing reliance upon Ex.R-1, the same was not properly considered.

<https://hcservices.ecourts.gov.in/hcservices>
23. Therefore, for the foregoing reasons and discussions, this Court is having no option except to set-aside the Fair and Decretal Order passed by the learned District Munsif, Aruppukottai in



I.A.No.726 of 2014 in O.S.No.125 of 2007 dated 01.07.2016 and the
Plaint in O.S.No.125 of 2007 is hereby rejected, accordingly the
Civil Revision Petition is allowed. No costs. Consequently,
connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Aruppukottai.

+ 1 CC TO Mr.R.PANDI MAHARAJA, ADVOCATE IN SR No.71375

+ 1 CC TO Mr.S.LAKSHMANAN, ADVOCATE IN SR No.71326

VSV

RJ/AE/SAR-4 : 12/07/2018 : 6P/4C

order made in

C.R.P. (MD) No.1661 of 2016

and

CMP (MD) No.8111 of 2016

05.07.2018