



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.193 of 2013
and
M.P.(MD)No.1 of 2013

1.A.Thottan
2.T.Muthuraj
3.T.Chellamuthu
4.T.Andisamy : Appellants / Respondents / Defendants

-Vs-

1.M.Alagammal
2.K.Kamu
3.K.Mokkai
4.Chinnasamy
5.K.Karthi
6.K.Karuvaian
7.Chinna Alagammal : Respondents / Appellants / Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, to set aside the decree and judgment of the learned Subordinate Judge, Periakulam, dated 02.01.2013 made in A.S.No.5 of 2012 in reversing the decree and judgment of the learned District Munsif, Periakulam, dated 06.09.2011, made in O.S.No.190 of 2009.

For Appellants :Mr.S.Palanivelayutham

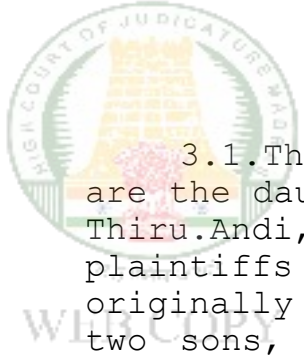
For Respondents :Mr.G.Thalaimutharasu

JUDGMENT

The defendants in the suit in O.S.No.190 of 2009 on the file of the District Munsif Court, Periyakulam, are the appellants in the above second appeal.

2.The respondents in this appeal, as plaintiffs filed the suit in O.S.No.190 of 2009 before the District Munsif Court, Periakulam for partition of $\frac{1}{4}$ share in favour of plaintiffs 1 and 7 each and another $\frac{1}{4}$ share in favour of plaintiffs 2 to 6 and for other consequential reliefs.

3.The case of the plaintiffs, as per the plaint, is as follows:



3.1. The first and seventh plaintiffs and the first defendant are the daughters and son of one Thiru.Andi. One another daughter of Thiru.Andi, by name, Athammal died in the year 1978 and the plaintiffs 2 to 6 are the children of Athammal. The suit properties originally belonged to one Periyannathan and the same devolved on his two sons, namely Thiru.Andi and Thiru.Nagan. The suit properties were allotted to Thiru.Andi in an oral partition between Thiru.Andi and Thiru.Nagan. The suit properties are the joint family properties of Late.Thiru.Andi. The father of plaintiffs 1 and 7, Thiru.Andi, enjoyed the properties till his death in the year 1970. After his demise his wife, by name, Tmt.Kaliyammal was looked after only by the first plaintiff till her death.

3.2. After the death of Andi and his wife, all the properties were not partitioned. Though the plaintiffs are in joint possession and enjoyment of the properties, the first defendant executed a settlement deed in favour of his three sons by a registered document, dated 22.05.2009 and such an alienation is not only invalid but also void. The plaintiffs, therefore, issued a legal notice, dated 22.07.2009, for which the defendants gave a reply notice, dated 27.07.2009 and thereafter, rejoinder notice was also given by the plaintiffs and a reply was received from the defendants. It is in these circumstances, the plaintiffs have filed a suit for partition.

4. The suit was contested by fourth defendant, by way of written statement and the same was adopted by other defendants. Apart from denying the averments in the plaint, it is the case of the defendants that the father of first defendant spent huge money for the marriages of plaintiffs 1 and 7 and mother of plaintiffs 2 to 6 and that as the male heir of Andi, the first defendant was in enjoyment of the properties along with his father. It is further stated that an extent of 1 acre 31 cents belonged to Andi was sold for the purpose of performing the marriages of the plaintiffs 1 and 7 and mother of plaintiffs 2 to 6 and that the parents of the plaintiffs 1 and 7 and first defendant received the amount by the sale of the substantial property of the family and spent for the marriage of daughters of Andi. It is further stated that the suit for partition, after 30 years of the marriages of plaintiffs 1 and 7 is not maintainable.

5. The trial Court after framing necessary issues, found that the suit properties are the ancestral properties of Andi. Since the plaintiffs 1 and 7 and the mother of plaintiffs 2 to 6 were given "srithana" by cash and the suit properties are in the enjoyment of the first defendant, the plaintiffs are not entitled to seek partition. The trial Court further held that the plaintiffs have not proved that the properties stood in the name of Andi and that the suit filed, after 30 years of the death of Andi, is barred by limitation and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.5 of 2012 before the Sub



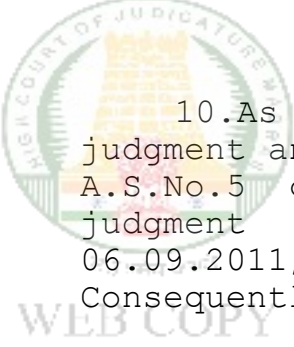
Court, Periyakulam.

6.The appellate Court set aside the judgment and decree of the trial Court and granted the decree for partition, holding that the plaintiffs 1 and 7 are entitled to 1/8 share each and the plaintiffs 2 to 6 are entitled to 1/8 share each in the suit properties. Aggrieved by the judgment and decree of the lower appellate Court, the above second appeal has been preferred by the defendants.

7.The learned Counsel for the appellants though raised several substantial questions of law, submitted that the appeal suit filed by the plaintiffs ought to have been dismissed in view of the admitted facts that the marriages of the daughters of Andi, namely plaintiffs 1 and 7 and the mother of plaintiffs 2 to 6 were solemnized long before 1989, when the Tamil Nadu Amendment Act came into force. It is further stated that as per the Tamil Nadu Amendment Act, only the unmarried daughters are entitled to claim a share in the joint family properties and that in a case, where the father died long before the Tamil Nadu Amendment Act came into force. The female heirs are not entitled to get any share in the joint family properties.

8.The contentions of the learned Counsel for the appellants have no legal force, having regard to the admitted facts in this case. It is not in dispute that the father, Thiru.Andi, died long before the amendment invoking Sections 29A, 29B and 29C of Hindu Succession Act, 1956, came into force in the State of Tamil Nadu. Hence, it is true that the plaintiffs are not entitled to get equal share in the joint family properties, as Tamil Nadu Act 1 of 1990 came into force w.e.f., 25.03.1989. However, as per Section 6 of Hindu Succession Act, 1956 (as it was in the book before the Hindu Succession (Amendment) Act, 2005 came into force), when a male Hindu dies after 1956, his interest in the property should devolve as per Section 8 of Hindu Succession Act, 1956, if the deceased male left him surviving a family and relative specified in Class-I of the schedule. In this case, admittedly, after the death of Thiru.Andi, survivors were his son and three daughters and a wife. Hence, the half share of the father will devolve on his daughters as per Section 8 of Hindu Succession Act, 1956. Thus, the plaintiffs 1 and 7, who are the daughters of Thiru.Andi and the sons and daughters of predeceased daughter of Thiru.Andi, are entitled to equal share along with his son in respect of the property of father.

9.Thus, the appellate Court has rightly granted a decree for partition in favour of plaintiffs 1 and 7, 1/8 share each. The plaintiffs 2 to 6, were also granted 1/8 share. However, the first defendant is entitled to ½ share as a coparcener and another 1/8 share as the son of Thiru.Andi. Hence, the judgment and decree of the lower appellate Court is perfectly in tune with the provisions of Hindu Succession Act, 1956. Hence, the substantial questions of law raised by the appellants have no legal basis.



10.As a result, this second appeal is dismissed and the judgment and decree of the learned Subordinate Judge, Periakulam, in A.S.No.5 of 2012, dated 02.01.2013, reversing the decree and judgment of the learned District Munsif, Periakulam, dated 06.09.2011, made in O.S.No.190 of 2009 is affirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Periakulam.

2.The District Munsif,
Periakulam.

Copy to
The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2Copies).

+1CC to Mr.S.Palani Velayutham, Advocate in SR.No.67734.

+1CC to Mr.Thalaimutharasu Advocate in SR.No.67647.

CMR

DS/SKN-RSK/SAR- 1: 09.07.2018: 4P/7C

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