

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.163 of 1998

Sivaparvathi (died)

2.P.Veerappan

3.V.Lakshmidevi

(Appellants 2 and 3 have been brought on record as Lrs of the deceased sole appellant as per order of Court dated 26.11.2001 in CMP.Nos.18248 & 18249 of 2001)

..Appellants

vs.

1.Sivagami

2.Sivanatarajan

3.Sivasankarai

4.Sivasankaran

..Respondents

Appeal under Section 96 of C.P.C., against the judgment and decree dated 15.10.1996 made in O.S.No.20/94 on the file of the Court of the First Additional Sub Judge at Pondicherry.

For Appellants : Mr.Sundara Gopal
For Mr.T.P.Manoharan

For Respondents: Mr.R.Sunil Kumar
[For R4]

Not ready in Notice
[For R1 to R3]

J U D G M E N T

The Appeal suit on hand is filed against the judgment and decree passed in O.S.No.20 of 1994 dated 15th October 1996.

2. The Suit is for Partition. The plaintiff is the appellant in the appeal suit. The suit was filed to declare that the Will dated 06.08.1984, registered on 11.08.1994 by Sivaprahasam is null and void and in the alternative to declare that the Will is invalid to the extent of 7/8th portion of the suit properties and for passing a preliminary decree for partition of 1/5th share in the suit properties or in the alternative for passing a preliminary decree for partition of 7/40 share in favour of the plaintiff and separate possession of the same to the plaintiff after final decree.

3. The contention of the plaintiff before the Trial Court was that the properties described in the plaint originally belonged to Sivaprahasam, the father of the plaintiffs and defendants. He died on 31.10.1987 and his wife Kamalambal predeceased him. The said Sivaprahasam was a Hindu and he acquired the suit properties prior to the year 1963, when customary Hindu Law was in force at Pondicherry. However, some of the properties were ancestral properties. The first item of the suit properties was acquired by him prior to the year 1963, when Hindu Customary Law was in force at Pondicherry and the other items of properties specified in the schedule are all ancestral properties. After the introduction of the Hindu Succession Act, the plaintiff and the defendants 1 to 4 became class I heirs. The plaintiff, after the death of her father, approached the defendants 1 to 4 for amicable partition of the suit properties. But, it avoked no positive response. Hence, the plaintiff issued her lawyer's notice dated 15.05.1990, demanding partition. The defendants 2 to 4, after receiving the notice replied, informing her about the Will executed by the deceased Sivaprahasam. The plaintiff's father Sivaprahasam executed the Will on 6th August 1984 in favour of D2 and D4, bequeathing the suit properties in their favour. The recitals in the Will would show that the testator had no intention to bequeath any portion of the suit properties in favour of the plaintiff. Because she married a man of her choice namely one Veerappan, who belonged to a different caste. The said Kamalammal did not die out of the plaintiff's act but because of cancer. Under the Customary Hindu Law as applicable to Pondicherry, prior to the Hindu Succession Act, 1956, a Hindu father cannot dispose off more than 1/8th share. Section 4 of the Hindu Succession Act did not repeal the said customs. Section 30 of the Hindu Succession Act gives power for a Hindu and it does not prevent the application of the said

custom envisaged under the Hindu Customary Law. The right of legitim for Hindu will continue to exist despite the introduction of the Hindu Succession Act. The plaintiff contains various precedents in support of the said contentions and per contra, the defendants in their written statements, denied the averments as well as the allegations. The defendants have stated that they are not residing in one and the same address. The defendants 2 and 3 resides in France and the defendant No.1 resides at Pondicherry and the defendant No.4 resides at Delhi. The Will executed by late Sivaprahasam, the father of the plaintiffs and the defendants is in order as per the Hindu Succession Act and the Indian Succession Act. It is false to claim by the plaintiff that the Will is void. The plaintiff is not justified in claiming the relief under the Hindu Succession Act, 1956, the French Code Civil and the Sanner's Hindu Customary Law. The Customary Hindu Law is not applicable in this case. Even under the Customary Hindu Law, only the son could have the right of legitim in respect of his father's property and the daughter cannot claim right of legitim in respect of her father's property. Sanner's Hindu Law on this point is very clear. There is no violation of public policy or human rights in executing the will by the deceased Sivaprahasam. There is no violation of Section 23 of the Indian Contract Act. Even though the plaintiff is earning Rs.3000/- per month, as teacher in the Alliance Franchise yet. She has chosen to file the suit informa properties. Thus, there is no cause of action and the suit is to be rejected.

4. The Trial Court framed the issues: Whether the suit is barred by limitation; Whether the Will dated 11.08.1994 is invalid in view of the grounds set out in the plaint; Whether the plaintiff has got the right of legitim or right of reserve in the properties of her father Sivaprahasam? If so, whether the Will dated 11.08.1984 executed by Sivaprahasam is null and void or it is not valid for more than 1/8 of the properties; Whether the plaintiff is entitled to 7/40 share in the suit properties as the daughter of deceased Sivaprahasam and Whether the plaintiff is entitled to 7/40 share in the suit properties as the daughter of deceased Sivaprahasam.

5. The father of the plaintiff and the defendants was a retired Principal of Tagore Arts College, Pondicherry and died on 31.10.1987, leaving behind the plaintiff and the defendants as his children. His wife predeceased him on 04.07.1984. The relationship between the plaintiffs and the defendants is an admitted one. The plaintiff, D1 and D3 are the daughters of Sivaprahasam and the defendants 2 & 4, are the sons of the said Sivaprahasam. According to the defendants, the said Sivaprahasam

during his life time, executed the Will dated 06.08.1984 in favour of the defendants 2 & 4, his sons to the exclusion of his daughters in respect of the suit properties, which comprise of three items of the properties. During the pendency of the suit Exs.B5 and 6, the certified copies of the sale deeds dated 13.06.1985 and 28.05.1986 in respect of the items 2 and 3 of the suit properties were marked by consent. As such the Will Ex.B1 would have operative force only in respect of the item No.1 of the suit properties and it is a house situated at Ambalathadayar Madam Street, Pondicherry.

6. The plaintiffs has raised two grounds, more specifically, on the ground that the Will was not executed by the testator out of his own free Will and No.2 was that the Will was not executed adhering to the principle of legitim as contemplated under the Coramandal Hindu Law. With reference to the grounds raised in the plaint, the trial Court had elaborately discussed the factual details and with reference to the exclusion of the plaintiffs in respect of her right to get the properties of her father and arrived a conclusion that the Will is a valid one and the findings of the trial court unambiguously portrays that to prove the Will, DW.2 was examined on the side of the defendants 2 and 4. Ex.DW.2 is the first attesting witnesses to the Will Ex.B1. The said attesting witnesses has deposed before this Court that he was the student of Tagore Arts College, Pondicherry and as such, he was the student under the testator that as a former student of the testator removed with him closely that the testator executed the Will Ex.B1 in his presence and also in the presence of the other attesting witness Mr.Ismail Sait, who died subsequently, that the said Ismail was the classmate of the said testator and that both the attesting witnesses after witnessing the testator, executing the Will by putting his signature, they put their signature. The Trial Court arrived a conclusion that there is no ambiguity or doubt in respect of the deposition of these attesting witnesses and the signatures of the testators. Accordingly, the trial Court arrived a conclusion that it is crystal clear from the evidence of DW.2 that both the attesting witnesses witnessed the testator, putting his signature in Ex.B1 and accordingly, executed the same. Section 68 of the Indian Evidence Act envisages that atleast one of the attesting witnesses should be examined to prove the Will. In this case, one other attesting witness died and the only attesting witness, who is alive has been examined as DW.2. As such, the Will Ex.B1 is strictly in accordance with Section 63 of the Indian Succession Act and it has been duly proved in accordance with Section 68 of the Indian Evidence Act.

7. It is an admitted fact that the Will was executed on 06.08.1984 and Mr.Sivaprahasam died only on 31.08.1987. As such, there was more than three years gap between the date of execution of the Will and the date of the death of testator. Thus, in these circumstances by no stretch of imagination, it can be stated that the testator was suffering from disability of health or any other health issues.

8. The trial Court considered all such possible circumstances with reference to the grounds raised by the plaintiff in the plaint. The plaintiff raised the ground regarding the exclusion and pleaded that the defendants 2 and 4 had influenced her father. In order to cull out the truth, the trial Court did not stop with the mere examination of the witnesses. However, one elaborately and made an attempt to identify whether there is any such influence or not, on the part of the defendants 2 and 4 in the matter of execution of Will by the testator during the year 1984. Elaborate discussions made in this regard by the Trial Court is undoubtedly candid and convincing and there is no ambiguity.

9. The trial Court with reference to the validity of the Will, relied on certain judgments and based on the legal principles enunciated in those judgments, arrived a conclusion that the Will executed by the testator Mr.Sivaprahasam is a valid will and the plaintiffs have not disproved the Will with any documents or evidences. In other words, the grounds raised by the plaintiffs are not established by way of an acceptable document or evidences and accordingly, arrived a conclusion that the Will is a valid one and the exclusion of daughters was the wish of the testator, which cannot be interfered with by the Civil Court.

10. The Trial Court has taken a classic example of an expert from the Article by the Hon'ble Justice Dr.David Annoussamy in His Lordship's Article about the right of the legitim among the Hindus in Pondicherry published in the Journal of the Indian Law History was extracted and it is meaningful to extract the same hereunder:

"It was expected that with the extension of the Indian Laws to this part of the country the local custom of legitim would stand abolished. The said Act in the field namely, the Hindu Succession Act, 1956 was extended with effect from 1st October 1963, but it contains no provision which would affect the right of legitim. Section 30 dealing with the testamentary Succession only reiterates the power of a Hindu to dispose of his properties by Will or testament, the

power which was once open to question, but the property capable of disposal is left in that section to be determined by the law in force, that is to say, as far as Pondicherry is concerned, the custom relating to legitim. But the substitution of Hindu Succession Act to the old customary Successoral law raises two questions regarding the legitim. The first question which arises now is whether the daughters have a right of legitim in the estate of their father and whether the sons have the same right in the estate of their mother since they are now heirs with equal rights. The right conferred under the Hindu Succession Act is only in respect of interstate properties. The fact of having equal rights in such properties cannot be extended so as to give a right to properties disposed of to which the right of legitim would imply. Such a right has been found to exist as a customary one in Pondicherry and the customary right has to be applied as it is and cannot be stretched to other categories. If the daughters are made forced heirs, there is no reason for not extending the same privilege to other Class-I heirs. Such an extension would constitute an attempt on the right of disposal of a person and that can be achieved only through an Act of legislature."

11. Section 30 of the Hindu Succession Act is clear to the effect that the customary practice concerning the execution of the Will is preserved by the Hindu Succession Act. Section 4 of the Pondicherry Administration Act 1962 also is worthy of being reproduced hereunder:

"All Laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent Legislature or other competent authority...."

12. As per Section 4 of the said Act, the Laws which were in existence anterior to the merger of the Pondicherry shall continue to have effect unless those laws are in conflict with the Indian laws. In view of Section 30 of the Hindu Succession Act, the legitim principle as contained in Coramandal Hindu Law, which was applicable to during the French Regime, has not been repealed and hence, it has to be held that the principle legitim as envisaged in Coramandal Hindu Law is still applicable to the hindus of Pondicherry. The testator was admittedly the Native Hindu of Pondicherry and hence, the principle legitim was applicable to him. However, the pertinent question arise as to whether a daughter can pressed into service, the principle

legitim as against her father's property. No doubt as per the schedule appended to the Hindu Succession Act both the sons and the daughters of a Hindu male are Class-I heirs but the particular schedule is pertaining to intestate Succession of the deceased male Hindus. Now, the problem is pertaining to testament. No where in the Hindu Succession Act, it is contemplated that the testator should not discriminate between a male and a female. Under the Coramandal Hindu law, a testation can discriminate male heirs and female heirs but in fact only the sons are entitled to press into service the principle legitim to the effect that the Hindu father could dispose of by gift of testament only to an extent of 1/8 share in his properties throughout his life. The customary law will not get automatically enlarged application. The pristine customary law should be understood as such no analogy can be made with reference to the intestate succession as contemplated in the Hindu Succession Act. With reference to article of His Lordship Justice Dr.David Annoussamy, the trial court had taken a view that the plaintiff is having no right to press into service the principle legitim as against her father's will as envisaged in Ex.B1.

13. This being the elaborate adjudication of the trial Court, resulted in arriving a conclusion that the plaintiff cannot pressed into service the principle legitim as against her father and further, the will was established as a valid will, there is no reason to consider the relief sought for in the plaint. The conclusion arrived by the Trial Court is crystal clear and in consonance with the settled legal principles as well as the documents and evidences produced before the Court by the respective parties to the Civil Suit.

14. This being the factum established, this Court has no hesitation for arriving a conclusion that there is no perversity or infirmity either in appreciating the facts and circumstances as well as in respect of the application of legal principles with reference to the statutes in force and consequently, this Court is not inclined to interfere with the judgment and decree of the trial Court dated 15th October 1996 passed in O.S.No.20 of 1994 and the same stands confirmed. Consequently, A.S.No.163 of 1998 stands dismissed. No costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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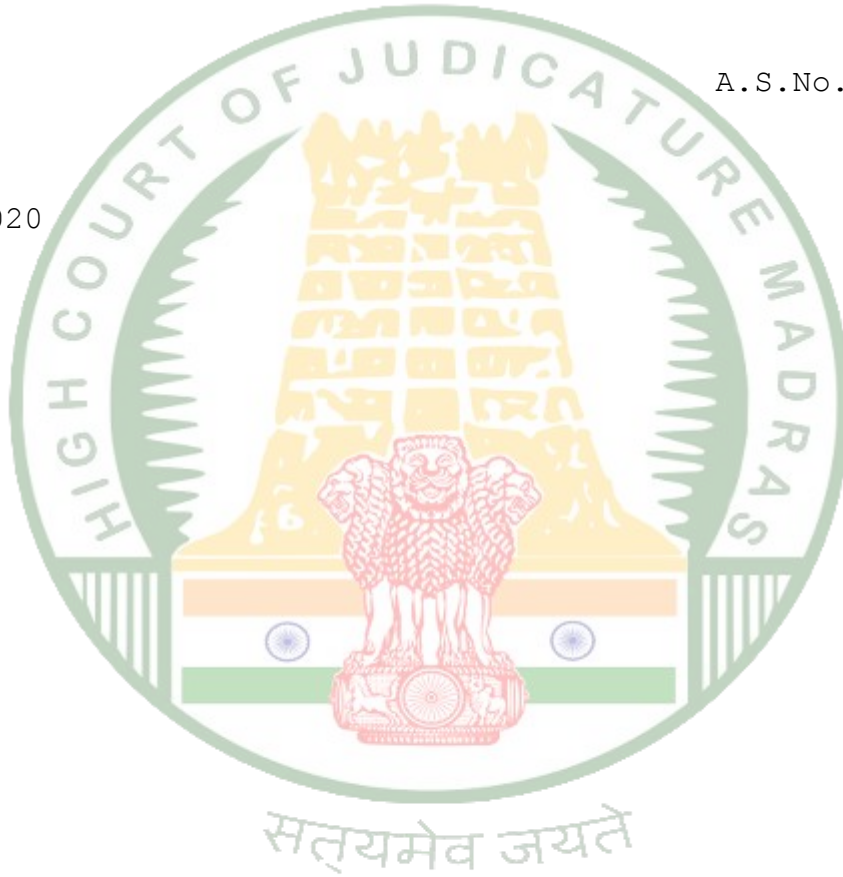
The First Additional Sub Judge,
Pondicherry.

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+1 cc to Mr.T.P.Manoharan Advocate sr101995

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