

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2019

PRONOUNCED ON : 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.24 of 2011

C.Arunachalam ... Appellant/Plaintiff

Vs.

N.Seerathal ... Respondent/ Defendant

Prayer :- First Appeal has been filed under Section 96 CPC against the Judgement and Decree dated 30.04.2010 passed in O.S.No.89 of 2008 on the file of the Additional District Judge, Fast Track Court No.4, Coimbatore at Tiruppur.

For Appellant : Mr.V.Nicholas

For Respondent : Mr.P.M.Duraisamy

JUDGMENT

Aggrieved over the judgment and Decree dated 30.04.2010 passed in O.S.No.89 of 2008 on the file of the Additional District Judge / Fast Track Court No.4, Coimbatore at Tiruppur, the plaintiff has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for Partition.

4.The case of the plaintiff, in brief, is that he is the brother of the defendant and he and the defendant are the son and daughter of Chellappa Gounder and the defendant is the daughter of Chellappa Gounder through his second wife Masathal and the plaintiff is the son of Chellappa Gounder through his first wife Periammaini. Chellappa Gounder married Masathal, after the death of his first wife. The plaint schedule property belonged to Masathal by way of the registered settlement deed dated 23.11.1949 and Masathal enjoyed the suit property, till she died and her husband Chellappa Gounder died subsequently in the year 1992, Masathal died intestate leaving behind the plaintiff and the defendant and thus, the plaintiff is entitled to half share in the suit property and inasmuch as the defendant did not accede to the demand of the plaintiff for effecting division of his half share in the suit property,

despite the issuance of the notice dated 30.11.2006, according to the plaintiff, he has been necessitated to institute the suit against the defendant for partition.

5.The defendant resisted the plaintiff's suit contending that she is the daughter of Chellappa Gounder through his second wife Masathal and the plaintiff is the son of Chellappa Gounder through his first wife Periammaini and also admitted that the plaint schedule property belonged to her mother by virtue of the settlement deed dated 23.11.1949 executed by her brothers and therefore, according to her, the plaint schedule property is the separate property of her mother Masathal and the same has been enjoyed by her till her demise and further, according to the defendant, her father Chellappa Gounder died in the year 1992 and her mother Masathal died on 17.01.1998 and therefore, the claim of the plaintiff that he is also one of the legal heirs of Masathal and entitled to claim of half share in the suit property is false. Chellappa Gounder died prior to the death of Masathal and therefore, the claim of the plaintiff that after the demise of Masathal, the suit property was enjoyed by Chellappa Gounder, the plaintiff and the defendant is false. The patta, in respect of the suit property, had been mutated in the name of the defendant and the plaintiff is not entitled to claim share in the suit property as put forth and hence, according to the defendant, the plaintiff has no cause of action to lay the suit and prayed for the dismissal of the plaintiff's suit.

6.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1.Whether the plaintiff is entitled to seek partition in the suit property into two equal share and get on a such equal share and put him in possession of the suit property?

2.Whether the settlement deed dated 23.11.1949 in favour of Masathal is true and valid?

3.To what relief the plaintiff is entitled?

7.In support of the plaintiff's case, PWS1 & 2 were examined and no Exhibit has been marked. On the side of the defendant, DW1 was examined and Exs.B1 to B12 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit.

Impugning the same, the present first appeal has been preferred.

9.The following points arise for determination in this first appeal:

(i).Whether the plaintiff is entitled to claim partition and separate possession of half share in the suit property as put forth in the plaint?

(ii).To what relief the plaintiff/appellant is entitled to?

(iii)To what relief the defendant/respondent is entitled to?

10.Point No.I

The plaintiff is the son of Chellappa Gounder through his first wife Periammaini. After the demise of his first wife, Chellappa Gounder had married Masathal as his second wife. The defendant is the daughter born to Chellappa Gounder through his second wife Masathal. With reference to the abovesaid facts, there is no dispute between the parties.

11.It is found that the plaint schedule property is the separate property of Masathal acquired by her by way of the settlement deed dated 23.11.1949 and even as regards the abovesaid case, there is no issue between the parties. It is thus found that the plaint schedule property is the absolute and separate property of Masathal.

12.According to the plaintiff, Chellappa Gounder died subsequent to the demise of Masathal and that, he had died in the year 1992. Further, according to the plaintiff, the plaint schedule property was enjoyed by Masathal till her demise and thereafter, was enjoyed by Chellappa Gounder, the plaintiff and the defendant. The abovesaid case of the plaintiff is being challenged by the defendant. According to the defendant, Chellappa Gounder died prior to the demise of Masathal i.e. he died in the year 1992 and that, her mother Masathal died on 17.01.1998. Therefore, according to the defendant, Masathal did not leave behind her husband Chellappa Gounder to succeed to her estate. In the light of the abovesaid position, as rightly determined by the trial Court, it is for the plaintiff to establish that Chellappa Gounder had died subsequent to the demise of Masathal. However, as rightly found by the trial Court, the plaintiff has not come forward with any specific case as to when Masathal had actually died. He would only plead that Masathal enjoyed the plaint schedule property till her demise. When according to him, Chellappa Gounder died after the demise of Masathal, as rightly determined by the trial Court and also contended by the defendant, the plaintiff should have come forward with the specific and clear case as to when Masathal had died and also

further established that Chellappa Gounder died after the demise of Masathal. However, the plaintiff has neither pleaded nor proved as to when Masathal had actually died. He has only averred that Chellappa Gounder had died in the year 1992. However, the abovesaid plea alone would not be sufficient to hold safely that Chellappa Gounder died subsequent to the demise of Masathal. No evidence has been adduced by the plaintiff to establish the date, month and year of the demise of Masathal. In such view of the matter, the plaintiff being the suitor and claiming right in the suit property only on the basis that Chellappa Gounder died after the demise of Masathal and when the abovesaid case of the plaintiff has been stoutly repudiated by the defendant, as held by the trial Court, the plaintiff should have, at the foremost, established that Masathal had died prior to the demise of Chellappa Gounder. When as above pointed out, the plaintiff having not pleaded as to when Masathal had actually died and also not established as to when she died and also not established Chellappa Gounder had died actually in the year 1992, in such view of the matter, the trial Court is wholly justified in not accepting the case of the plaintiff that Masathal had died prior to the demise of Chellappa Gounder as put forth by the plaintiff.

13. Per contra, as could be seen from the materials placed by the defendant, considering the patta and kist receipts marked on her side and when from the kist receipts projected by her, we could gather that Masathal had been paying kist directly in respect of the plaint schedule property till 1997 and after 2000, it is only the defendant, who had been paying kist, in such view of the matter, the defendant's case is more probalised that Masathal had died only in the year 1998 as held by the trial Court. As held by the trial Court, even the defendant has not established the actual death of Masathal. Be that as it may, considering the available materials placed on record, when the same point out it is only Masathal, who had been paying kist in respect of the suit property directly for the period from 1994 to 1997, in all, it is found that Masathal had remained alive even after 1992, the alleged year of the death of Chellappa Gounder and accordingly, it is found that as held by the trial Court, Masathal had died only during 1998 much after the demise of Chellappa Gounder. Therefore, the plaintiff's case that Chellappa Gounder had succeeded to the estate of Masathal, as such, cannot be accepted in any manner.

14. When the suit property is found to be the absolute and separate property of Masathal and when her husband Chellappa Goudner had died prior to the demise of Masathal, in such view of the matter, the plaintiff being only the son of Chellappa Gounder born through his first wife and the defendant alone being the daughter of Masathal, in such view of the matter, it is only the defendant, who is legally entitled to inherit the plaint schedule property as the only heir of Masathal and the

plaintiff would not be entitled to claim any title, right or interest in the suit property as put forth in the plaint.

15.In the light of the abovesaid discussions, the trial Court has rightly determined that the plaintiff is not entitled to claim any share in the suit property as put forth in the plaint. For the reasons aforesaid, the plaintiff is not entitled to obtain partition and separate possession of half share in the plaint schedule property as put forth in the plaint. Accordingly, the point No.I is answered against the plaintiff and in favour of the defendant.

16.Point Nos.2 & 3

In the light of the abovesaid discussions, the Judgement and Decree dated 30.04.2010 passed in O.S.No.89 of 2008 on the file of the Additional District Judge / Fast Track Court No.4, Coimbatore at Tiruppur, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms
To

The Additional District Judge, Fast Track Court No.4,
Coimbatore at Tiruppur.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+2ccs to Mr.V.Nicholas , Advocate SR.No. 70005

+1cc to Mr.P.M.Duraisamy , Advocate SR.No. 70053

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A.SK(13/02/2020)

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