

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2019

DATED: 04.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 1471 of 1998

Vedanayaki .. Plaintiff/Appellant/Appellant

Vs.

1. C.V.Narayanasamy (deceased)
2. C.V.N.Chakrapani
3. C.V.N.Thiruvengadam
4. C.V.N.Varadharaj
5. N.Vijaya Chamundeswari
6. N.Kalavathi
7. Indhirani
8. S.Gomala
9. N.Danalakshmi .. Defendants/Respondents/Respondents
(RR8 & 9 are impleaded vide order of this Court
dated 07.12.2018 made in CMP No.114/2008 in SA 1471/1998

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment's and Decree dated 27.02.1998 made in A.S.No. 86 of 1997 on the file of the Principal District Court, Periyar, at Erode pursuant to the Judgment and Decree dated 16.11.1996 made in O.S.No. 446 of 1996 on the file of the Principal District Munsif's Court, Erode.

For Appellant : Mr.V.Manohar

For RR R2 to 7 : Mr.T.Murugamanickam
Senior Counsel for Mrs. Zenath Begum

R8 & 9 : Not ready in No time

JUDGMENT

The plaintiff in O.S.No. 446 of 1996 on the file of the Principal District Munsif Court, Erode, is the appellant herein.

2. O.S.No. 446 of 1996 had been filed by the plaintiff Vedanayaki against her father, brothers and sisters seeking a preliminary decree for division of the suit schedule property into 8 equal shares and for separate possession of one such share and for future mense profits of Rs.1,000/- per month and for costs. By Judgment and Decree dated 16.11.1996, the suit was dismissed.

3. The plaintiff then filed A.S.No. 86 of 1997 on the file of the Principal District Court, Erode. By Judgment and Decree dated 27.02.1998, the appeal was also dismissed.

4. The plaintiff had then filed the present Second Appeal. The Second Appeal had been admitted on the following substantial questions of law:-

"(i) Whether the Courts below were right in law in treating the marriage of the appellant/plaintiff annulled by a Decree of nullity under Section 12(i)(a) of the Hindu Marriage Act of 1955 as valid under law and proceeded on that footing to negative the relief of partition prayed for by the appellant/plaintiff?;

(ii) Whether the Courts below are correct in law in not advertng to the principle of law that a marriage annulled under Section 12 (i)(a) of the Hindu Marriage Act of 1955 is void ab-initio as if no marriage had taken place?; and

(iii) Whether the appellant/plaintiff is entitled to the relief of partition of the suit properties on the basis of the Tamilnadu Hindu Succession Amendment Act of 1989 (Act 1/90)?"

5. Pending the Appeal, the first respondent/defendant died. His sons and three daughters were already on record as respondents 2 to 7. His two further daughters were then impleaded as respondents 8 and 9.

O.S.No. 446 of 1996 - Principal District Munsif Court, Erode:

6. The plaintiff was the daughter of the first defendant C.V.Narayanaswamy. The 2 to 6th defendants were the other sons and daughters of the defendants. It was claimed in the plaint that the suit property was ancestral property. The first defendant was allotted the property by partition deed dated 29.11.1973. It was claimed that the plaintiff was entitled to an undivided 1/7th share in the suit property. The plaintiff got married on 18.06.1990. She demanded partition on 10.06.1994. By amendment, the plaintiff had impleaded another sister and hence she claimed 1/8th undivided share in the suit property.

7. In the written statement filed by the first defendant, it was claimed that the plaintiff was not entitled to claim any share under the Hindu Succession Act, 1956 as amended by Hindu Succession Tamil Nadu (Amendment Act), 1989. It was stated that the plaintiff had married on 04.02.1985. It was stated that the Tamil Nadu Act 1 of 1990 would apply only to daughters, who married after 25.03.1989. It was also stated that a partition had already been recorded on 29.04.1985 in O.S.No. 47 of 1985 on the file of the Second Additional Sub Court, Erode. It was stated that the marriage on 18.06.1990 was the second marriage of the plaintiff. It was therefore stated that the plaintiff was not entitled for partition and separate possession and consequently, it was stated that the suit should be dismissed.

8. On the basis of the above pleadings, the learned Principal District Munsif, Erode, framed the following issues for trial:-

(i) Whether the plaintiff is entitled for a preliminary decree of partition and separate possession?;

(ii) Whether the plaintiff is entitled for future mense profits?; and

(iii) To what other reliefs is the plaintiff entitled to?

9. During trial, the plaintiff examined herself as PW-1. The first defendant examined himself as DW-1. The plaintiff marked Ex.A-1, namely, wedding invitation dated 08.06.1990 and Ex.A-2 which was a copy of the partition deed dated 29.11.1973. The defendants marked Exs. B-1 to B-4. Ex.B-1 was the wedding invitation of the first marriage of the plaintiff dated 04.02.1985; Ex.B-2 was the wedding invitation of the second marriage of the plaintiff dated 18.06.1990; Ex.B-3 was the Judgment in H.M.O.P.No. 83 of 1987 and Ex.B-4 was the Judgment in O.S.No. 67 of 1985.

10. On the basis of the above oral and documentary evidence, by Judgment dated 16.11.1996, the learned Principal District Munsif, Erode, found that the plaintiff had already married on 04.02.1985 and annulment of the said marriage would not be of any consequence and she being married for a second time on 18.06.1990 would also be of no consequence and she was therefore declared to be disentitled to seek partition since she had already married before 25.03.1989. It was therefore held that the Tamil Nadu Act 1 of 1990 was not applicable for the plaintiff. The suit was dismissed.

11. The plaintiff then filed A.S.No. 86 of 1997 before the Principal District Court, Erode. By Judgment dated 27.02.1998, the learned Principal District Judge framed points for consideration and reappraised the evidence. The learned Principal District judge also found that the plaintiff was already married on 04.02.1985 and by Judgment dated 30.10.1987 in H.M.O.P.No. 83 of 1987, the marriage had been annulled and divorce was granted. It was found that she remarried on 18.06.1990. It was found that she was not entitled to seek partition. It was also found that a partition was already recorded in O.S.No. 67 of 1985 and a final decree was also passed. Consequently, the learned Principal District Judge also dismissed the appeal stating that the plaintiff was not entitled for partition and separate possession.

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12. Challenging that Judgment, the plaintiff filed the above Second Appeal.

13. The Second Appeal had been admitted on the following substantial questions of law:-

"(i) Whether the Courts below were right in law in treating the marriage of the appellant/plaintiff annulled by a Decree of nullity under Section 12(i)(a) of the Hindu Marriage Act of 1955 as valid under law and proceeded on that footing to negative the relief of partition prayed for by the appellant/plaintiff?;

(ii) Whether the Courts below are correct in law in not advertng to the principle of law that a marriage annulled under Section 12 (i)(a) of the Hindu Marriage Act of 1955 is void ab-initio as if no marriage had taken place?; and

(iii) Whether the appellant/plaintiff is entitled to the relief of partition of the suit properties on the basis of the Tamilnadu Hindu Succession Amendment Act of 1989 (Act 1/90)?"

14. For the sake of convenience, since the plaintiff is the appellant, the parties will be referred as the plaintiff and the defendants.

15. The plaintiff was the daughter of the first defendant. The other defendants are her sisters and brothers. The first defendant died pending the Second Appeal. At any rate, he contested the claim of the plaintiff, who sought 1/8th undivided share in the suit property. She claimed partition taking advantage of the Tamil Nadu Act 1 of 1990. By the said Act, Section 29A was inserted and it was provided that a daughter who had not been married before 25.03.1989 was entitled to seek partition and separate possession of the co- parcenary. The plaintiff claimed in the plaint that she was married only on 18.06.1990.

16. The first defendant resisted the claim by stating that she was actually married on 04.02.1985 to one V.Dhandapani. The marriage invitation had been produced as Ex.B-1. However, Ex.B-3 is a decree of the Sub Court, Erode, dated 30.10.1987 wherein, in H.M.O.P.No. 83 of 1987, the marriage solemnised on 04.02.1985 between the petitioner Vedanayaki and the respondent Dhandapani was annulled by a decree of nullity. The plaintiff therefore claimed that the marriage having been annulled, she stood on a different footing from that of a divorcee. A marriage which is void ab-initio is annulled and by that Judgment, a Court declares that the said marriage is null and void. A divorce is granted based on events subsequent to a valid marriage.

17. Section 12 of the Hindu marriage Act deals with voidable marriages. Section 12 is as follows:-

"12 Voidable marriages .?

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:?

(a) that the marriage has not been consummated owing to the impotence of the

respondent; or]

....."

18. It is the contention of the learned Senior Counsel for the defendant that the effect of a marriage being annulled and the effect of the marriage being divorced is the same. It had been urged that the fact that the plaintiff had married on 04.02.1985 cannot be denied.

19. However, a lady whose marriage has been declared as void has not been gone through a legal marriage as envisaged by law and consequently, a void/voidable marriage cannot be a bar for a daughter claiming partition. The marriage had been annulled by Court. It was declared to be a non event.

20. In the present case, the first defendant has also resisted the claim for partition in view of Ex.B-4 which is a decree in O.S.No. 67 of 1985 on the file of the II Additional Sub Court, Erode. A final decree for partition was granted in a suit filed by C.V.Chakkarapani, son of C.V.Narayanaswamy. It must be remembered that C.V.Narayanaswamy was the first defendant in the present suit. In O.S.No. 67 of 1985 claiming that the suit properties were ancestral properties, the sons of C.V.Narayanaswamy and C.V.Narayanaswamy were involved in a litigation for partition and by Judgment dated 29.04.1985 final decree of partition was granted allotting specific shares by metes and bounds to each one of the co-parceners.

21. Section 29 of the Hindu Succession Act as amended by Tamil Nadu Act 1 of 1909 also provides as follows:-

"Nothing in Clause 2(ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989. The Tamil Nadu Amendment Act 1 of 1990 came into effect from 25.03.1989."

22. The partition in the family of the first defendant between himself and his sons was recognised by a Court decree in O.S.No. 67 of 1985 dated 29.04.1985. This was much before the date of coming into effect of Tamil Nadu Act 1 of 1990.

23. Additionally the Kertha C.V.Narayanaswami died on 09.10.2001, before the introduction of the amendment by the Central Government to the Hindu Succession Act in the year 2005. In 2006 (8) SCC 581 Sheela Devi Vs Lal Chand, the Hon'ble Supreme Court held that the Hindu Succession Act 39 of 2005 is prospective in nature and in order to qualify as a co-parcener,

the daughter should show that her father was alive on 09.09.2005 when the Act came into force. Admittedly in this case, the father of C.V.Narayanaswamy had died on 09.10.2001. Consequently, even on that ground, the plaintiff would not be entitled to seek partition.

24. The three substantial questions of law were framed on the basis of the Tamil Nadu Amendment Act 1 of 1990 and whether a marriage annulled under Section 12(i)(a) of the Hindu Marriage Act is void ab-initio. The marriage is void ab-initio and the plaintiff herein was qualified to seek partition even though she was married prior to 25.03.1989, since that marriage had been declared as void and annulled by Court of law. However, the plaintiff in this case is disentitled to seek partition owing to the fact there was an earlier partition in the family dividing the properties by metes and bounds and she cannot also seek the benefit of the Hindu Succession Act 39 of 2005 since her father died on 09.10.2001.

25. For all the reasons stated above, the Second Appeal is dismissed, however taking into consideration the relationship among the parties without costs. The Judgment and decree of both the trial Court and the First Appellate Court are confirmed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsg

To

1. The Principal District Court,
Periyar, at Erode.
2. The Principal District Munsif Court, Erode.
3. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.AL.Ramamurthy, Advocate SR.No.9502

S.A. No. 1471 of 1998

CNR(CO)
GMY(29/03/2019)

