

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

S.A.No.1429 of 2008

Thamaraiselvi

.. Appellant/Plaintiff

Versus

Govinda Gounder (Died)

1.Lakshmi Ammal

2.Ramaswamy Gounder

3.Egambara Gounder

4.Kuppammal

5.Valliyammal

6.Muthu Gounder

.. Respondents/Defendants

Second Appeal is filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree made in A.S.168 of 1999, dated 31.10.2001 on the file of the II Additional Subordinate Judge, Villupuram, confirming the Judgment and Decree in O.S.No.614 of 1993, dated 29.1.1999 on the file of the Principal District Munsif, Thirukoilur.

For Appellant : Mr.G.Ethirajulu

For Respondents : No appearance
for R 2, R3 and R6
Mr.S.Ramakrishnan
for R4 and R5

JUDGMENT

Aggrieved over the concurrent findings of the Courts below, the plaintiff has come up with the present Second Appeal.

2. The brief facts leading to the instant Appeal are as follows :

The suit properties which are joint family properties, originally belonged to one Valliammal and she executed a settlement deed in favour of her grand children viz., Thangavel and Balakrishnan. The plaintiff is the wife of Thangavel and she has no issues and her husband died in the year 1990. Similarly,

Balakrishnan also died in the year 1965. After the death of Thangavel and Balakrishnan, their mother viz., Lakshmiammal, who is the Class-I legal heir is entitled to 3/4th share and the plaintiff being the Class-I legal heir of Thangavel is entitled to the remaining 1/4th share in the suit properties. Hence, she filed a suit in O.S.No.614 of 1993, for partition of the suit properties and also claiming 1/2 share in the entire suit properties. The first defendant executed a Will dated 18.11.1991 in favour of the defendants 5 and 6. However, the trial Court, after hearing found that the plaintiff is entitled to 1/4th share in the suit properties except Item Nos.1 to 12, 23 and 26, decreed the suit. A preliminary decree was also passed in respect of the schedule mentioned properties allotting 1/4th share to the plaintiff. The first Appellate Court also confirmed the judgment and decree of the trial Court, against which, the present Second Appeal has been filed.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents 4 and 5 and also perused the entire materials available on record.

4. It is the contention of the learned counsel for the appellant that the plaintiff is entitled to 1/2 share from her husband's property, whereas the trial Court has granted only 1/4th share.

5. The learned counsel for the respondents 4 and 5 submitted that the trial Court found that the plaintiff is entitled to 1/4th share in the suit properties, as per law. Since Lakshmiammal, mother of the plaintiff's husband became the absolute owner of the property, her property will be dealt with under Section 15 of the Hindu Succession Act. The same was fairly conceded by the learned counsel appearing for the appellant.

6. The relationship between the parties is not disputed. Originally, the property was owned by one Valliammal and she has executed a settlement deed in favour of her two grand children viz., Thangavel and Balakrishnan. The plaintiff is the wife of Thangavel, who died in the year 1990 and Balakrishnan died in the year 1965 as a minor. The entire property of Balakrishnan was devolved upon Lakshmiammal, being a Class-I legal heir. Similarly, after the death of Thangavel, 1/2 share of the property was devolved upon Lakshmiammal, being a Class-I legal heir and the remaining 1/2 share of the property is devolved upon the plaintiff. In view of the same Section 15 of the Hindu Succession Act, will come into play with respect to the properties devolved upon the mother of Lakshmiammal. That being the position, the Courts below have rightly concluded that the plaintiff is entitled to 1/4th share in all the items, except

Item Nos.1 to 12, 23 and 26, since these items were repeated in other items and accordingly passed a preliminary decree. Therefore, I do not find any substantial question of law in favour of the appellant. Accordingly, this Second Appeal is liable to be dismissed.

7. At this juncture, it is submitted by the learned counsel for the appellant that during the pendency of the suit and appeal, the defendants 5 and 6 have made alienation and transferred the properties i.e., the 5th defendant sold the properties to the third parties and the 6th defendant executed a settlement deed in favour of his son and the appellant, who is poor widow is unable to get her shares in the suit properties. The learned counsel for the appellant further submitted that final decree application is still pending before the Principal District Munsif, Tirukoilur.

8. This Court is of the view that such transaction i.e. alienation and transfer of the properties stated by the learned counsel for the appellant will not affect 1/4th share of the plaintiff and the same is in fact, invalid as far as the share of the plaintiff in the suit properties. Hence, the Principal District Munsif, Tirukoilur, is directed to dispose of the final decree proceedings, within a period of six months from the date of receipt of a copy of this order. The Court below shall permit the appellant herein to implead all the subsequent transferees in the final decree proceedings.

9. With the above observation, the Second Appeal is dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The II Additional Subordinate Judge,
Villupuram.
2. The Principal District Munsif,
Thirukoilur.

+1 CC to Mr.G.Ethirajulu, Advocate sr 38457.

+1 CC to Mr.J.Ramakrishnan, Advocate sr 38930.

S.A.No.1429 of 2008

TM(CO)

SP(26/06/2019)