

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.02.2019

PRONOUNCED ON: 05.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.520 of 2006
and
M.P.Nos.1 & 2 of 2008

1.Jaibunnisa

2.Shajahan

3.Mumthaj ... Appellants/Defendants 1, 2 & 5

Vs.

1.Kamarunnisa

2.Minor Mohammed Roahan
[Rep. By his Mother and Next friend
Kamarunnisa]

3.Humayun Kabir

4.Mansur Ali Respondents/Plaintiff Defendants 3 & 4

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.19 of 2005 on the file of the District Court at Nagapattinam dated 06.10.2005 as the same confirmed the decree and judgment dated 16.09.2004 made in O.S.No.206 of 2003 on the file of the Court of Additional Subordinate Court at Myladudurai.

For Appellants : Mr.V.Manohar

For RR1 and R2: Mr.S.Sounthar

For RR3 and R4 :Dismissed vide Court order dated
20.03.2018

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 06.10.2005 passed in A.S.No.19 of 2005 on the file of the District Court, Nagapattinam confirming the judgment and decree dated 16.09.2004 passed in O.S.No.206 of 2003 on the file of the Additional Subordinate Court at Myladudurai.

2.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of case in detail.

3. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

4. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1. Whether the Courts below properly followed the provisions of the Islamic Succession as contemplated under the said Enactment?
2. Whether the plaintiff established the case to acquire the right in the A-schedule property, when it was the admitted case of the parties the same was acquired by the late father of the husband of the plaintiff and exclusively by the husband of the plaintiff?

5. The suit has been laid by the plaintiffs for recovery of possession, partition, past and future profits. The parties are governed by Mohamedan law. According to the plaintiffs, the property setout in the A schedule belong to the estate of Abdul Masjid. It is stated that he had two wives namely Mallika Beevi and Jalma Beevi and through the first wife, he had two sons namely Abdul Jabaar and Basheer Mohamed and through his second wife, he had one daughter namely Mumthaj, the 5th defendant in the suit. The plaintiffs are the legal representatives of Basheer Mohamed and the defendants 1 to 4 are the legal representatives of Abdul Jabaar. The relationship between the parties is not in dispute. As abovenoted, the parties being governed by Mohamedan law, accordingly as regards the A schedule property, the plaintiffs had claimed 14/40 shares in the same and the plaintiffs had clearly set out the shares to which the legal heirs are entitled to in the plaint. Further, it is the case put forth by the plaintiffs that Basheer Mohamed went abroad and earned separately and purchased the properties in his name and accordingly the plaintiffs had described the

separate properties of Basheer Mohamed in the B schedule and accordingly claiming that as the legal heirs of Basheer Mohamed, they alone are entitled to his separate properties described in the B schedule and claiming the recovery of the possession of the same from the defendants had sought for the appropriate reliefs in connection with the same. Similarly, claiming the recovery of the movable properties described in the C schedule, putting forth the case that they had been kept in the A schedule house and not given to the first plaintiff, when she went to live with her father, after the demise of Basheer Mohamed, the plaintiffs had sought for the reliefs as regards the movable properties. Accordingly, further putting forth the case that the defendants 1 to 4 are liable to pay the income derived by them from the lands described in the B schedule at the rate of Rs.125/- per kalam, the plaintiffs have come forward with the case for the relief of past and further profits.

6. The defendants resisted the plaintiffs' suit contending that the A schedule property does not belong to Abdul Masjid and on the other hand, put forth the case that the same belong to the first defendant independently and it is only the first defendant, who had been paying the Paguthi to the temple and it is only the first defendant, who had put up the construction thereupon and also put forth the case that the properties described in the B schedule are in the possession and enjoyment of the first defendant and accordingly, the first defendant is looking after the needs of the plaintiffs and after the demise of Basheer Mohamed, the first plaintiff left to her parents house and put forth the case of lease as regards the B schedule properties and disputed the existence of the movables described in the C schedule and accordingly sought for the dismissal of the plaintiffs' case in all aspects.

7. Based on the materials placed on record by the respective parties, both oral and documentary, the Courts below were pleased to accept the plaintiffs' case and granted the reliefs in favour of the plaintiffs. Impugning the same, the second appeal has been preferred.

8. As rightly determined by the Courts below, based on the sale deed marked as Ex.A1 dated 21.01.1956, it is seen that the property described in the plaint A schedule belonged to Abdul Masjid. Though the first defendant claims title to the plaint A schedule property, with reference to the abovesaid case projected by the defendants, there is absolutely no proof placed on their part. The documents projected by the defendants being found to be pertaining to survey No.57/37C and when the plaintiffs had not claimed any relief in connection with the same, the abovesaid document would not serve any purpose to sustain the defence version projected in the matter by the

defendants.

9. It is found that Basheer Mohamed had purchased the lands described in the B schedule by virtue of the sale deed dated 08.01.1988 marked as Ex.A2 and though the defendants would claim that the first defendant has been enjoying the same on the basis of lease, however, with reference to the abovesaid case, there is no acceptable materials placed on their part. Furthermore, though some endeavor had been made by the defendants to put forth the case that the abovesaid properties described in the B schedule had been jointly purchased by Basheer Mohamed and one Nainaar Mohamed, however, as rightly determined by the Courts below, if really, Nainaar Mohamed had contributed any amount for the acquisition of the abovesaid properties, the sale transaction would have been entered both in the name of Basheer Mohamed and Nainaar Mohamed. Therefore the above defence projected by the defendants as regards the B schedule properties had been rightly analysed and rejected by the Courts below. As regards the other properties described in the B schedule, it is found that the same had been acquired by Basheer Mohamed by virtue of the sale deed marked as Ex.A3 dated 11.12.1985 and the same has not been controverted by the defendants.

10. Materials placed on record go to show that the parties had been competing with each other as regards the ownership of the suit properties one way or the other and the Panchayat had also been convened in connection with the same. However, inasmuch as no settlement had been entered into with reference to the same, it is found that the plaintiffs had been necessitated to institute the suit for claiming the reliefs as prayed for in the suit.

11. As regards the movables comprised in the C schedule, the Courts below had rightly held that plaintiffs had failed to establish their claim of title to the Ambassidar Car and Hero Honda Motor cycle described therein and as regards the other movable properties described in the C schedule, based on the reply notice issued by the defendants marked as Ex.A10 and on that basis, the Courts below had granted the reliefs in favour of the plaintiffs with reference to the movable properties, and in my considered opinion, the same do not warrant any interference.

12. Considering the nature of the lands involved in the matter and accordingly the Courts below had rightly accepted the claim of profits that would have been derived by the defendants by enjoying the same and therefore the determination of the past profits by the Courts below also do not warrant any interference as such.

13. In the light of the above discussions, it is seen that the plaintiffs having come forward with the claim of partition

as per the Mohamedan Law governing them and also detailed the shares to which they are entitled to and also having established their entitlement to the same and placed acceptable and reliable materials with reference to the same, in such view of the matter, it is seen that the Courts below had also appreciating the materials placed on record both oral and documentary and the submissions made by the parties, determine their rights as per the Islamic law governing them. In all, it is seen that the Courts below are found to be fully justified in granting the reliefs in favour of the plaintiffs as determined by them. In such view of the matter, in my considered opinion no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiffs.

14.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The District Judge,
District Court at Nagapattinam.
- 2.The Additional Subordinate Judge,
Additional Subordinate Court at Myladudurai.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr. V.Manohar, Advocate, S.R.No. 20567
+1cc to Mr. S.Sounthar, Advocate, S.R.No. 20697

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and

M.P.Nos.1 & 2 of 2008

NMI (CO)
GN(10/06/2019)