

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.687 of 2005

and

C.M.P.No.9634 of 2005

A.Kannammal (died)
1. G.Radhakrishnan
2. G.Doraiswamy
3. G.Rajendran
4. G.Sarada (died)
5. G.Kasturi
6. G.Malathy
7. R.K.Anbu
8. R.K.Sampath
9. R.Senthamari
10.B.Poongodi
11.J.Valarmathi
12.S.Karpagam
13.R.Geetha

1 to 6 Appellants/Defendants

(Appellants 7 to 13 brought on record
as LRS of the deceased 4th Appellant
viz., Sarada Vide Order of Court dated
04.09.2019 made in CMP.No.10860/2006
in S.A.No.687/2005) ... 7 to 13 Appellants

Vs.

Saroja

... Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the decree and judgment made in A.S.No.10 of 2004 on
the file of the Subordinate Judge, Gudiyatham, Vellore
District dated 25.02.2005 partly allowing the appeal by
modifying the judgment and decree made in O.S.No.598 of 1986
on the file of the District Munsif, Gudiyatham, Vellore
District dated 27.02.2004.

For Appellants : Mr.S.Gowsik Sundar
for Mr.M.Arul Simi

For Respondent : Mr.R.Thirupurasundari
for T.Dhanyakumar

JUDGMENT

This Second appeal has been filed by the defendants 2 to 7 against the judgment and decree passed by the Sub-Judge, Gudiyatham, Vellore District in A.S.No.10 of 2004 dated 25.02.2005.

2. The respondent herein had filed a suit in O.S.No.598 of 1986 on the file of the District Munsif, Gudiyatham, Vellore District to divide the suit properties into five equal shares and allot one such share to her. The learned District Munsif, Gudiyatham by the judgment dated 27.02.2004 passed a preliminary decree, to divide the suit properties into five equal shares and allot one such share to the plaintiff. Aggrieved by the same, the defendants had filed an appeal in A.S.No.10 of 2004 on the file of the Sub Judge, Gudiyatham. The learned Sub-Judge, Gudiyatham by the judgment dated 25.02.2005 had partly allowed the appeal and modified the judgment and decree passed by the Trial Court to the effect that the plaintiff is entitled to get 343/1470 shares in the suit properties. Feeling aggrieved, the defendants have filed the present second appeal.

3. This Court at the time of admitting the second appeal had formulated the following substantial question of law:

" Whether the Courts below are right in decreeing the suit for partition of dwelling houses when the right of the plaintiff to claim partition of her share shall not arise until the male heirs choose to divide their respective shares therein in the dwelling house as per Section 23 of the Hindu Succession Act 1956?"

4. Heard Mr.S.Gowsik Sundar, the learned counsel for the appellants and Ms.R.Thirupurasundari, the learned counsel for the respondent.

5. The learned counsel for the appellants has submitted that the respondent/plaintiff is the female heir and the subject matter of suit are two dwelling houses. He further submitted that at the relevant time, Section 23 of the Hindu Succession Act, 1956 was in force. As per the said provision, the female heir is not entitled to claim partition of the dwelling houses until the male heirs choose to divide their respective shares therein. However, the Courts below had granted decree for partition of the dwelling houses and therefore he prayed to allow the second appeal and set aside the judgments and decrees of the courts below and dismiss the suit. Hence, the second appeal now become Infructuous and hence he requests to pass an appropriate Order.

6. Per contra, the learned counsel for the respondent/plaintiff has submitted that the Trial Court taking

in to consideration of the facts and circumstances, has rightly decreed the suit to divide the suit properties in to five equal shares and allot one such share to her. She further submitted that as against the said judgment and decree, the defendants had filed an appeal before the Sub Court, Gudiyatham. She further submitted that the learned Sub-Judge also found that the plaintiff is entitled to claim partition in the aforesaid properties. However, he modified the share to the effect that the respondent/plaintiff is entitled to 343/1470 shares in respect of the suit properties. She further submitted that the only grievance of the appellants is that the suit properties are dwelling houses and in view of Section 23 of the Hindu Succession Act, the plaintiff being the female heir is not entitled to claim share. She further submitted that during pendency of the second appeal, the said provision itself has been deleted by the Act 39 of 2005 and now nothing survives. Hence, she prayed to dismiss the appeal.

7. The only substantial question of law formulated is that "Whether the Courts below are right in decreeing the suit for partition of dwelling houses when the right of the plaintiff to claim partition of her share shall not arise until the male heirs choose to divide their respective shares therein in the dwelling house as per Section 23 of the Hindu Succession Act 1956?".

8. Admittedly, during pendency of the second appeal, the Hindu Succession Act, 1956 has been amended by the Act 39 of 2005 and Section 23 of the Hindu Succession Act has been repealed and as such, there is no bar for the female heir to seek partition in the dwelling houses. Accordingly, the substantial question of law is answered against the appellants.

9. In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

Vv

To

1. The Subordinate Judge,
Gudiyatham, Vellore District

2. The District Munsif,
Gudiyatham, Vellore District.

Copy To : The Section Officer, VR Section,
High Court, Madras.

S.A.No.687 of 2005
and
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CP (CO)
GMV (15/06/2020)



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