

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18/01/2019

Coram:

The Hon'ble Mr.Justice N.SATHISH KUMAR

S.A.No.380 of 2012

1.B. Selvi
2.B. Mohana
3.B. Dharmaraj ...Appellants/Plaintiffs

Versus

1. Kanakavalli
2. Lakshmikantha
3. Thirupurasundari @ Sundari
4. K.B.Govindasamy
5. K.V.Parthasarathy
6. V.Sivakumar ...Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree of the learned Principal District Judge, Chengalpattu dated 06.09.2011 in A.S.No.37 of 2010 confirming the Judgment and Decree of the Learned Principal Subordinate Judge, Chengalpattu dated 25.03.2010 in O.S.No.123 of 2008

For Appellants .. Mr. T.M. Hariharan

For Respondents .. Mr. R.Sankarappan for R1 to R3
Mrs.R.Ramya for R4 to R6

JUDGMENT

As against the concurrent findings of the Courts below the present Second Appeal came to be filed. The suit has been laid by the Plaintiffs for dividing the suit property into 18 equal shares and allot 7 shares to them. The trial Court has granted 1/8 shares together to the plaintiffs, which was confirmed by the First Appellate Court. Against which the present appeal has been filed.

2. The suit property was originally purchased by one Raju Naicker on 3.6.1959. The said Raju Naicker died in the year 1969 leaving his only son Jaganathan. Jaganathan died on 30.11.1991 leaving behind his wife Indhirani, sons R.J.Boopathy and Harikrishnan and daughters Kanagavalli, Lakshmikantha and

Thirupurasundari. According to the Plaintiff, in the suit property Jaganathan and his sons Bhoopathi and Harikrishnan had undivided 1/3rd share as members of Hindu joint family. On the death of the Jaganathan his 1/3rd undivided share was succeeded to by his widow Indirani and all his five children each taking 1/18th undivided share. After the demise of Harikrishnan his 7/18th share was succeeded to by his widow and children viz., the plaintiffs. Defendants 4 to 6 submitted that the suit property is absolute property of Raju Naicker. After his death his only son Jaganathan had become the absolute owner of the property. After the death of Jaganathan, his legal heirs are legally entitled to the property. It is the contention of the 4th Defendant that the Defendants 4 to 6 have purchased the property from the Defendants 1 to 3 and their mother Indirani and they are the bonafide purchasers of the property.

3. The trial Court found that the Plaintiffs are entitled 1/8 share in the suit property. The First Appellate Court also confirmed the decree and judgment of the trial Court, against which the present Second Appeal came to be filed.

4. The learned counsel appearing for the Appellants would contend that the allotment made by the Courts below is not correct. In fact, the Plaintiffs are entitled to 7/18 share, since the suit property is ancestral property. Heard the learned counsel for the Respondent.

5. I have perused the entire materials. As per the admission of the Plaintiff itself clearly indicate that the suit property was originally purchased by Raju Naicker individually under the sale deed dated 3.6.1959. He died in the year 1969 leaving behind his only son Jaganathan. It is to be noted that any property of individual male who died after advent of the Hindu Succession Act, the individual property of male Hindu would be dealt under Section 8 of the Hindu Succession Act. After the death of Raju Naicker his only son succeeded the property. Once the property devolves as per Section 8 of the Hindu Succession Act, the above property would be a self acquired property of the son. He can deal with the property. Admittedly, the said Jaganathan died in the year 1991 leaving behind his wife, two sons and three daughters. After his demise, all his legal heirs are equally entitled to the shares. Therefore, this Court do not find any infirmity in the allotment made by the Courts below. Since the property is individual property of Raju Naicker, claiming 1/3rd shares by the sons of Jaganathan did not arise at all as per the Schedule I of the Hindu Succession Act. The grand children other than the grandchildren of predeceased Class-I legal heirs are not Class-I heirs.

6. Hence, this Court does not find any infirmity in the judgment and decree passed by the courts below. No substantial question of law arise in this appeal. The Second appeal is liable to be dismissed.

7. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ggs.

To

- 1) The Principal District Judge,
Chengalpattu.
- 2) The Principal Subordinate Judge,
Chengalpattu
- 3) The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1 cc to Mr.T.M.Hariharan, Advocate, S.R.No.4110

+1 cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.4103

Judgment in:
S.A.No.380 of 2012

BR(CO)
SSM(30/05/2019)

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