

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.975 of 2013

1.R.C.Subramanian

2.S.Thamilarasan

3.Radhamani ... Appellants/1,2,13 Defendants in Trial Court

Vs

1.S.Sulochana

2.Janaki

3.V.R.Duraisamy

4.V.R.Anandaraj

5.V.R.Mani @ V.R.Manoharan (Deceased)

6.Dhanalakshmi

7.The Thasildar,
Thasildar Office,
Erode Town,
Erode Taluk, Erode District.

8.The Special Thasildar (L.A)
Prub Road,
Rural Project,
Erode through its then Officer
And present Officer in Charge,
the Revenue Divisional Officer,
Revenue Divisional Office,
Prub Road,
Erode, Erode District.

9.The District Collector,
District Collector Office,
Deeran Chinnamalai Building,
Erode Town, Erode District.

10.The Executing Engineer cum
Managing Director,
Tamilnadu Housing Board,
Tamilnadu Housing Board Unit Complex,
Soorampatti Four Road,
Erode Town, Erode.

11.The President cum Managing Director,
Tamilnadu Housing Board,
Nandanam Post,
Chennai - 36.

12.N.Mahalingam

13.C.Gomathi

14.P.Sutha

15.P.Jeyabalan

16.C.Selvi

17.S.Eswaramoorthy

.. 2 to 17 Respondents/2 to 17 Respondents/
3 to 17 Respondents

18.R.Thangammal

19.M.Banumathi

20.Minor. M.Sathish Kumar

Rep. by his mother M.Banumathi

21.Minor M.Naveena Shri

Rep. by her mother M.Banumathi

..18 to 21 Respondents/

RR18 to 21 brought on record as LRS 06 Rs5 vide order dated
22/06/16 ordered CMP 7949 to 7951/16

..Respondents in High Court/Plaintiff and
DD3 to 12 and 14 to 19 in Trial Court

PRAYER: Second Appeal filed under Section 100 of the Code of
Civil Procedure as against the judgment and decree dated
20.02.2013 in A.S.No.62 of 2012 on the file of I Additional Sub-
Court, Erode confirming the judgment and decree in O.S.No.103 of
2008 dated 27.04.2012 on the file of Principal District Munsif,
Erode.

For Appellant 1 : Mr.R.C.Subramanian (Party-in-Person)
For Appellants 2 & 3 : No appearance
For Respondent 1 : Mr.M.Guruprasad
For Respondent 2 : Mr.R.Jayaprakash
For Respondents 3, 4,
& 6 to 9 & 12 to 21 : No appearance
For respondents 18 & 19: No appearance
For respondents 10 & 11: Mr.R.Jayaseelan (TNHB)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the courts below.

Brief facts leading to the filing of the second appeal:

2. The Appellants 1, 2 and 3 are the defendants 1, 2 and 13 respectively in the suit O.S.No.103 of 2008 on the file of the Principal District Munsif Court, Erode. The first respondent is the plaintiff, the respondents 2 to 11 are the defendants 3 to 12, the respondents 12 to 17 are the defendants 14 to 19 in the suit O.S.No.103 of 2008. During the pendency of this second appeal, the fifth respondent died and respondents 18 to 21 were brought on record as his legal representatives by order of this Court dated 22.06.2016 passed in CMP.Nos.7949 to 7951 of 2016.

3. For the purpose of convenience, the parties are referred to as per their ranking before the Trial Court.

4. The plaintiff filed a suit O.S.No.103 of 2008 before the Principal District Munsif Court, Erode against the defendants seeking for partition of her 1/6th share in the suit schedule properties. It is the case of the plaintiff that Chinnappa Gounder died on 21.04.1998 leaving behind the plaintiff who is his daughter, the first defendant who is his son, the third defendant who is also his daughter and Thangammal who is his wife as his legal heirs. It is also the case of the plaintiff that the wife of Chinnappa Gounder namely Thangammal also died on 14.05.2001. According to the plaintiff, the suit schedule properties are joint family properties and Chinnappa Gounder and the first defendant were coparceners and in joint ownership. It is her case that after the demise of her father, Chinnappa Gounder, she is entitled to 1/6th share in the suit schedule properties. With these averments, the plaintiff filed the suit for partition seeking 1/6th share in the suit schedule properties.

5. The first defendant who is the son of Chinnappa Gounder has filed a written statement denying the allegations of the plaintiff. According to him, the plaintiff as well as the third defendant have been adequately compensated through gifts/seers at the time of their respective marriages. It is the case of the first defendant that he only performed the marriages for both the plaintiff as well as the third defendant by spending considerable sum of money and by providing articles during the time of their respective marriages. Therefore, according to the first defendant, the plaintiff is not entitled for partition. It is also the case of the first defendant that Chinnappa Gounder was taken care of till his death only by him and the plaintiff did not have cordial relationship with Chinnappa Gounder. The third defendant who is the sister of the

plaintiff remained exparte before the Trial Court, however, she is represented by a learned counsel before this Court. The defendants 2 and 13 who are the son and wife of the first defendant respectively have adopted the written statement of the first defendant. The defendants 4, 5 and 7 are the purchasers of the second item of the property from the first defendant and they remained ex parte before the Trial court. The defendants 8, 9 & 10 who are the revenue authorities remained exparte before the Trial Court. The defendants 14 to 19 are the purchaser of a portion of the third item of the suit schedule properties from the first defendant. They were represented by a counsel before the lower appellate court, but before this court, eventhough they have been duly served, they are unrepresented.

6. The Trial Court after framing issues and after trial, passed a preliminary decree in the suit as prayed for by the plaintiff by its judgement and decree dated 27.04.2012 passed in O.S.No.103 of 2008. Aggrieved by the same, the defendants 1, 2 and 13 preferred an appeal before the lower appellate court namely First Additional Sub Court, Erode in A.S.No.62 of 2012. The lower appellate court also confirmed the findings of the Trial Court and dismissed the appeal by its Judgment and decree dated 20.02.2013. Aggrieved by the same, the defendants 1, 2 and 13 preferred this second appeal.

Submissions:

7. Earlier, the Appellants were represented by a counsel who withdrew his vakalat and now they are represented by the first Appellant Mr.R.C.Subramanian, as a party in person. The names of the Appellants have also been printed in the causelist today and Mr.R.C.Subramanian, the first Appellant, the father of the second Appellant and the husband of the third Appellant represented that he is representing all the Appellants in this matter and does not have the intention of engaging a new counsel to argue the matter. Heard, Mr.R.C.Subramanian, the first Appellant, Mr.M.Guruprasad, learned counsel for the first respondent, Mr.R.Jayaprakash, learned counsel for the second respondent and Mr.R.Jayaseelan, learned counsel appearing for Tamil Nadu Housing Board namely R10 and R11. Despite service of notice on the respondents 3, 4, 6 to 9 and 12 to 21 and their names having been printed in the cause list today, no one has entered appearance on their behalf.

8. According to the first Appellant/first defendant, his sisters have been adequately compensated at the time of their respective marriages and it is he who performed their marriages and all the expenses for the same were met only by him. Therefore according to him, the plaintiff as well as the third defendant in the suit are not entitled for any share in the joint family properties of their father Chinnappa Gounder.

9. The written submissions filed by the Appellants/defendants 1, 2 and 13 on 27.08.2019 is taken on record. As seen from the written submissions, it is the case of the defendants 1, 2 and 13 that the suit properties (item-1 to 4) were ancestral properties and male heirs can only be coparceners. According to them, originally Maarappa Gounder (great grand father) was a coparcener and after his life time, Raamana Gounder (grand father) became a coparcener and after his life time, Chinnappa Gounder (father) became a coparcener. It is their case that after the death of Chinnappa Gounder, the defendants 1 and 2 became the coparceners. It is their case that being ancestral properties, a Hindu female heir cannot ask for partition in respect of ancestral properties. According to the defendants 1, 2 and 13, both the courts below have erroneously upheld the case of the plaintiff, without any evidence to prove that the suit properties belongs absolutely to R.Chinnappa Gounder. They also state that the plaintiff as well as the third defendant were not having cordial relationship with them, ever since their marriage.

10. Per contra, learned counsels appearing for the plaintiff/first respondent as well as the third defendant/second respondents who are sailing together would submit that though the suit schedule properties are ancestral properties, on the death of Chinnappa Gounder in 1998, the plaintiff as well as the third defendant who are the sisters of the first defendant are entitled to 1/6th share each in the suit schedule properties. According to them, being an ancestral property, on the death of Chinnappa Gounder, notional partition has taken place as per Section 6 and 8 of the Hindu Succession Act and Chinnappa Gounder's $\frac{1}{2}$ share is devolved upon his legal heirs namely the plaintiff, first defendant and the third defendant. The plaintiff being a daughter is entitled to 1/6th share and similarly, the third defendant is also entitled to 1/6th share.

11. According to them, the Trial Court has considered the evidence available on record and only in accordance with Sections 6 and 8 of the Hindu Succession Act, the suit was decreed in favour of the plaintiff by allotting her 1/6th share in the suit schedule properties. According to them, the lower appellate court has also rightly confirmed the findings of the Trial court and dismissed the appeal filed by the defendants 1, 2 and 13.

Discussion:

12. This Court has perused and examined the materials and evidence available on record. The defendants 1, 2 and 13 who are the contesting defendants have admitted in their deposition (DW1) that the suit schedule properties are ancestral properties held by Chinnappa Gounder and the first defendant. It is also admitted by DW1 that Chinnappa Gounder died intestate and has not executed any instrument in favour of either of the defendants 1, 2 and 13, during his lifetime conveying his share in the suit schedule properties.

13. The Trial Court framed four issues in the suit with regard to entitlement of shares and with regard to nature of property viz., (1) Whether the plaintiff is entitled to 1/6th share of the compensation amount in respect of the lands acquired by the defendants 9 to 12 being the first item in the suit schedule properties; (2) Whether the plaintiff is entitled to 1/6th share of the items 2 to 4 of the suit schedule properties? (3) Whether the plaintiff is a co-sharer under the Hindu Succession Act? and (4) whether the plaintiff is entitled to any alternative reliefs?

14. According to Section 6 of the Hindu Succession Act, prior to amendment (Amendment Act, 2005) when a coparcener dies leaving behind any female relative specified in class I of the schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the coparcenary property would not devolve upon the surviving coparcener by survivorship but upon his heirs by intestate succession. Explanation I to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained. As per Explanation I, the interest of the coparcener shall be deemed to be the share in the property that would have been allotted to him, if a partition of the property had taken place immediately before his death, irrespective of whether he is entitled to partition or not. It means for the purposes of finding out undivided interest of a deceased coparcener, notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got notional partition.

15. In the case on hand, notional partition of the suit properties between Chinnappa Gounder and the first defendant who is his son has to be assumed immediately before the death of Chinnappa Gounder and that being so, Chinnappa Gounder's half undivided interest in the suit property which devolved upon his three children namely the plaintiff, the first and the third defendants in equal proportion. The first defendant would get half of the entire joint family property which right he acquired prior to the death of Chinnappa Gounder and in addition to that $\frac{1}{3}^{\text{rd}}$ of the remaining half which devolved upon him by succession from his late father Chinnappa Gounder as stated above. Upon the death of Chinnappa Gounder, the property being ancestral, the half undivided interest of Chinnappa Gounder in the coparcenary properties devolved by rule of succession upon his three legal heirs which includes the plaintiff. This being the case, each of the daughters would be entitled to $\frac{1}{6}^{\text{th}}$ share in the suit schedule properties and the remaining interest would go to the first defendant, the son.

16. The Trial Court while decreeing the suit and granting $\frac{1}{6}^{\text{th}}$ share to the plaintiff has correctly applied the concept of notional partition under Section 6 of the Hindu Succession Act.

17. In the case on hand, Chinnappa Gounder is the father and the first defendant is his only son. They are coparceners having equal shares (undivided interest) in the suit schedule properties. Chinnappa Gounder died on 21.04.1998 without a will or any instrument executed during his lifetime in favour of the first defendant conveying his share in the suit schedule properties to him. The plaintiff and the third defendant are Chinnappa Gounder's daughters. The plaintiff is claiming $\frac{1}{6}^{\text{th}}$ share out of the 50% share held by Chinnappa Gounder in the suit schedule properties. In an identical case, the Hon'ble Supreme Court in the case of Anar Devi and other vs. Parameshwari Devi and others reported in 2006 (8) SCC 656 held that since the father and son had formed the coparcenary, notional partition should be done as if it was effected just before the death of the father. The Apex Court concluded that the 50% of the property would have to be notionally partitioned between the father and his son on 50:50 basis and after the death of the father, his share of the 50% property should be divided equally amongst all his heirs. The Trial Court has rightly applied the well settled proposition of law laid down by the Hon'ble Supreme Court and granted the relief of partition to the plaintiff as prayed for in the suit. Based on these factors, the Trial Court has given a clear finding that the plaintiff is entitled to $\frac{1}{6}^{\text{th}}$ share in the suit schedule property. The lower appellate court has also rightly confirmed the findings of the Trial Court and dismissed the appeal.

18. Before the Trial Court, the plaintiff filed 29 documents which were marked as Ex.A1 to Ex.A29. On the side of the defendants 1, 2 and 13, 15 documents were filed which were marked as Ex.B1 to Ex.B15.

19. The Trial Court has considered all the documents as well as the deposition of the plaintiff and the defendants and only thereafter has passed a preliminary decree in favour of the plaintiff which was confirmed by the lower appellate court. Even before this court, the first defendant who is personally present, excepting for stating that the plaintiff as well as the third defendant have been adequately compensated at the time of their respective marriages, is unable to produce any proof to establish that they are not entitled for 1/6th share in the suit schedule properties. The evidence available on record does not also substantiate the case of the defendants 1, 2 and 13. The Trial Court as well as the lower appellate court has considered all the materials and evidence available on record and only thereafter has decreed the suit in favour of the plaintiff as prayed for in the suit O.S.No.103 of 2008.

20. This Court does not find any perversity in the findings of the courts below. The Trial Court as well as the lower appellate court have rightly held that the plaintiff is entitled for decree of partition and held that the suit has been filed within the period of limitation by applying Article 110 of the Limitation Act. Since Chinnappa Gounder died on 21.04.1998 and it is an ancestral property, the suit having been filed in 2008 within 12 years, the suit filed by a person excluded from a joint family property to enforce a right in a share therein is well within the prescribed period of 12 years under Article 110 of the Limitation Act. The Trial Court as well as the lower appellate court has rightly rejected the contention of the defendants 1, 2 and 13 that the suit will have to be filed within three years by following Article 137 of the Limitation Act. Since as per the evidence available on record, the plaintiff is in joint possession with the defendants 1, 2 and 13, the valuation of the suit under Section 37 of the Tamilnadu Court Fees Act is also correct.

21. The Trial Court has rightly accepted the contention of the plaintiff which was also confirmed by the lower appellate court. Therefore, the substantial questions of law raised by the defendants 1, 2 and 13 in the grounds of appeal does not deserve any merit.

Conclusion:

22. For the foregoing reasons, the judgment and decree dated 20.02.2013 passed by the First Additional Sub Court, Erode in A.S.No.62 of 2012 is hereby confirmed. Accordingly, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

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To

1.The I Additional Sub-Court, Erode

2.The Principal District Munsif, Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.No.96291

+1cc to Mr.R.Jayaprakash, Advocate SR.No.96432

+1cc to Mr.R.Jayaseelan, Advocate SR.No.96226

S.A.No.975 of 2013

CP (CO)
GMY (29/11/2019)

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