

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2019

PRONOUNCED ON : 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.706 of 2019
and CMP.NO.15535/2019

Sundarambal .. Appellant/Plaintiff

Vs.

1.Madeswaran

2.Pavayee

3.Krishnakumar

4.Minor Prakash

Rep.by its Next Friend

Mr.Madeswaran

5.Saraswathi .. Respondents/ Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.01.2019 passed in A.S.No.30 of 2015 on the file of the Principal District Court, Namakkal, reversing the Judgment and Decree dated 12.06.2015 passed in O.S.No.306 of 2010 on the file of the Subordinate Court, Namakkal.

For Appellant : Mr.J.Srinivasa Mohan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.01.2019 passed in A.S.No.30 of 2015 on the file of the Principal District Court, Namakkal, reversing the Judgment and Decree dated 12.06.2015 passed in O.S.No.306 of 2010 on the file of the Subordinate Court, Namakkal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff has come forward with the suit seeking the reliefs of partition and permanent injunction.

4.Claiming that the suit properties are the ancestral properties of the first defendant Palaniappa Gounder and the same had been allotted to the share of Palaniappa Gounder by way of a partition deed dated 06.11.1971 and on that footing, claiming that the plaintiff is entitled to obtain $\frac{1}{4}$ share in the suit properties as per the Hindu Succession (Amendment) Act, 2005 the suit has come to be laid by the plaintiff for appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that the father of the first defendant Kali Gounder had got the suit properties by way of a partition as well as by way of purchase on 28.03.1962 and it is further stated that the abovesaid properties belonging to Kali Gounder had come to be partitioned between the first defendant Palaniappa Gounder and his brother Ramasamy Gounder and hence, it is put forth that the properties acquired by the first defendant by way of the abovesaid partition deed are only his separate properties and not the ancestral properties of the first defendant as put forth by the plaintiff and therefore, contended that the plaintiff is not entitled to seek the relief of partition as prayed for and the other reliefs and sought for the dismissal of the plaintiff's suit.

6.Considering the materials placed on record, both oral and documentary, the trial Court was pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff as prayed for. However, the first appellate Court, on a consideration of the materials placed on record and the submissions made and the principles of law governing the issue involved between the parties, noting that the properties inherited by Palaniappa Gounder by way of the partition deed dated 06.11.1971 are only his separate and independent properties and not the ancestral properties and the plaintiff is not entitled to claim any right over the same during the life time of her father, the first defendant and accordingly, considering the principles of law outlined with reference to the same in the decisions referred to in its judgment and applying the same, it is found that when the character of the properties derived by the first defendant Palaniappa Gounder by way of the partition deed dated 06.11.1971 would only be his separate and independent properties and the character of the joint family properties belonging to the family of the first defendant and his brother ceasing to operate thereafter and the parties to the partition deed abovestated had derived their right as per Section 8 of the Hindu Succession Act on the principles of intestacy, it is evident that as determined by the first appellate Court and the principles of law outlined in the decisions referred to in its judgment, the parties to the partition deed abovestated would derive their shares as tenants in common and not as joint tenants. The first appellate Court is justified in not accepting the plaintiff's case considering the devolution of interest under the abovesaid partition deed as per Section 8 of the Hindu Succession Act and rightly held that the first defendant is the absolute owner of the properties derived by him by way of the partition deed and entitled to dispose of the same by way of a Will executed in favour of his grandsons viz., the defendants 5 & 6 as the suit properties are his separate properties.

7.With reference to the abovesaid position of law, I also had occasions to consider the same in various decisions and one of the cases decided by me has also been reported in (2017) 1 MLJ 759 (Chinna Palanisamy Gounder Vs. Latha and others).

8.In such view of the matter, no valid reason is made out by the plaintiff's counsel for interfering with the judgment and decree of the first appellate Court dismissing the plaintiff's suit by setting aside the judgment and decree of the trial Court.

9.In the light of the abovesaid position, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is found to be devoid of merits and is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Principal District Court, Namakkal.

2.The Subordinate Court, Namakkal.

+1cc to Mr.J.Srinivasa , Advocate SR.No. 56998

in S.A.No.706 of 2019

skv

A.SK(18/11/2019)

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