

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.08.2019

PRONOUNCED ON:19.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.NO.174 OF 2016

AND

C.M.P.NO.3534 OF 2016

1. N.Mani
2. N.Durai
3. Rani
4. Padmavathy
5. Ramani

... Appellants/Defendants

Vs.

Babyammal

... Respondent/Plaintiff

Prayer:-

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.10.2015 passed in A.S.No.3 of 2015 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, confirming the judgment and preliminary decree passed in O.S.No.36 of 2006 dated 19.12.2014 on the file of the Subordinate Judge, Ranipet.

For Appellant : Mr.R.Natarajan

For Respondent : Mr.T.P.Prabhakaran

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 30.10.2015 passed in A.S.No.3 of 2015 on the file of the II Additional District and Sessions Court, Vellore at Ranipet, confirming the judgment and decree dated 19.12.2014 passed in O.S.No.36 of 2006 on the file of the Subordinate Court, Ranipet.

2. The Second Appeal has been admitted on the following substantial questions of law:

i. Whether the Courts below have committed legal error in admitting and clubbing the "B" Schedule property belonged to mother Valliammal in the partition claim, by construing as joint family property, ignoring section 14(1) of the Hindu Succession Act, 1956?

ii. Whether the Courts below have committed legal error in countenancing the claim of the respondent/plaintiff for partition with regard to "B" schedule property belonged to mother Valliammal who disposed of the same in her own life time by executing two settlement deeds dated 21.04.1997 and 25.04.1997 marked under Exs.B19 and B20 respectively in exercise of her rights u/s.14(1) of the Hindu Succession Act, 1956?

iii. Whether the Courts below have committed jurisdictional error in declaring the two settlement deeds dated 21.04.1997 and 25.04.1997 marked under Exs.B19 and B20 executed by mother Valliammal in favour of the second appellant with regard to "B" schedule property as illegal and invalid suo motu, unilaterally, without any challenge to the same as per law established by the respondent/plaintiff with necessary pleadings in the plaint in accordance with Sec.34 of the Specific Relief Act 1963?

3. 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 the case in detail.

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

5. Suit for partition and mense profits.

6. The Courts below had granted the relief of partition in favour of the plaintiff as prayed for in respect of the items 1 to 8 described in the plaint A schedule, item 10 described in the plaint B schedule and accordingly granted the relief of partition and mense profits in favour of the plaintiff with reference to the abovesaid items and granted the preliminary decree in favour of the plaintiff and dismissed the plaintiff's suit in respect of the other items of the plaint schedule properties. Against the determination of the Courts below declining the partition in respect of the suit items as above pointed out, the plaintiff has not preferred any challenge.

7. From the pleas setout by the respective parties, it is found that the plaintiff and the defendants are the legal heirs of the deceased Natesa Naicker and Valliammal. Both the plaintiff and the defendants have pleaded that the plaint A schedule properties belonged to Natesa Naicker and the plaint B schedule properties belonged to Valliammal. As regards the plaint C schedule properties, as there has been no challenge putforth by the plaintiff, challenging the dismissal of the same by the Courts below, it is unnecessary to consider the issues qua the plaint C schedule properties as putforth by the respective parties.

8. The plaint A schedule properties belonging to Natesa Naicker and when it is admitted that the plaintiff and the defendants are the legal heirs of Natesa Naicker, it is found that on the demise of Natesa Naicker, the plaintiff and the defendants would be each entitled to equal share in the plaint A schedule properties. However the defendants would putforth the case that Valliammal and the defendants 1 and 2 had effected the partition amongst the family members by way of a partition deed dated 31.08.1998 marked as Ex.B1 and further also putforth the case that in the family arrangement amongst the family members, it is their case that jewels and cash were given to the daughters including the plaintiff and thereby the daughters had relinquished their right in the family properties and accordingly the plaintiff is not entitled to claim any share in the family properties i.e., the plaint A schedule properties. However, the abovesaid plea of family arrangement and the alleged relinquishment said to have been made by the plaintiff in respect of her share in the family properties has been stoutly challenged by the plaintiff and despite the same, the defendants have not placed any acceptable and reliable materials to establish that the so called family arrangement said to have been effected between the family members is true and validly effected. As rightly held by the Courts below, considering the materials placed on record, when the defendants are unable to putforth the clear case that the daughters had been given jewels and cash in lieu of their shares in the family properties and when the defendants have not tendered clear evidence as to when actually the jewels and cash were given to the daughters and when according to the evidence tendered by D.Ws.1 and 2, the handing over of the jewels and cash to the daughters is not known to anyone and the independent witness D.W.4 is also unable to throw a clear picture on the same, in such view of the matter, we cannot safely accept the case of the defendants that a valid family arrangement had been effected and the daughters had been given jewels and cash in lieu of their shares and that the daughters had thereby relinquished their right in respect of their family properties. In this connection, the defendants would rely upon the agreements said to have been executed by the

daughters marked as Exs.B21 to B24. On a perusal of Exs.B21 to B24, when it is found that by way of the same, the daughters are alleged to have relinquished their interest in their family properties and when such instruments are required by law to be compulsorily registered and when it is found that Exs.B21 to B24 are found to be not registered, in such view of the matter, no safe reliance could be made on the abovesaid documents for sustaining the defence version and the Courts below had rightly rejected the abovesaid documents.

9. In the light of the abovesaid factors, the Courts below are found to be justified in not accepting the defence version as regards the plaint A schedule properties and after holding that the items 1 to 8 described in the plaint A schedule are liable to be partitioned amongst all the legal heirs of the deceased Natesa Naicker and accordingly and rightly granted the reliefs of partition in favour of the plaintiff in respect of the abovesaid items.

10. The plaintiff has come forward with the case that the plaint B schedule properties belonged to Valliammal. It is not the case of the plaintiff that the plaint B schedule properties particularly the item 10 described thereunder belong to Natesa Naicker and that the same had been acquired by Natesa Naicker as benami in the name of Valliammal. In the light of the abovesaid position, when the plaintiff has come forward with the case that the plaint B schedule properties belonged to Valliammal and not putforth the case that the same belonged to Natesa Naicker and that he had purchased the same in the name of Valliammal, in such view of the matter, the Courts below are found to have committed a serious error in determining that the plaint B schedule properties belonged to Natesa Naicker and that he had acquired the same in the name of his wife Valliammal. When no such plea has been putforth by the plaintiff and furthermore, when no material with reference to the same has also been projected to buttress the abovesaid version, in such view of the matter, as rightly contended by the defendants' counsel, the Courts below had erred in proceeding with the case as if the plaint B schedule properties belonged to Natesa Naicker and he had acquired the same in the name of Valliammal and on the other hand as could be seen from the materials available on record, it is found that the plaint B schedule properties particularly item No.10 belonged only to Valliammal.

11. According to the defendants, Valliammal during her life time had executed the settlement deeds in favour of the second defendant in respect of the plaint B schedule properties by way of the settlement deeds dated 21.04.1997 and 25.04.1997 marked as Exs.B19 and B20. By virtue of the abovesaid settlement deeds, it is the case of the defendants that it is only the second

defendant who is the absolute owner of the plaint B schedule properties.

12. The plaintiff in her plaint has not putforth any challenge to the case of the defendants that Valliammal has settled the plaint B schedule properties in favour of the second defendant. Despite the clear pleas setout by the defendants with reference to the same in the written statement, the plaintiff has not repudiated the same by filing a reply statement. Furthermore, the plaintiff during her chief examination has not whispered anything about the abovesaid settlement deeds executed in favour of the second defendant qua the plaint B schedule properties by Valliammal. It is found that the execution of the settlement deeds by Valliammal in favour of the second defendant has not been specifically denied by the plaintiff either by way of pleas or by way of evidence and only during the course of cross examination, when the suggestion has been putforth about the execution of the settlement deeds by Valliammal with reference to the plaint B schedule properties in favour of the second defendant, she has denied the suggestion. The abovesaid denial of the execution of the settlement deeds in favour of the second defendant cannot be construed as denial of the exemption of the settlement deeds as contemplated under section 68 of the Indian Evidence Act, 1872.

13. To sustain that Valliammal had executed the settlement deeds in favour of the second defendant, the defendants have examined one of the attesting witnesses to the settlement deed as D.W.5 and D.W.5 has clearly deposed about the execution of the settlement deed Ex.B20 by Valliammal in favour of the second defendant and his attestation of the same. His evidence appears to be reliable, convincing and acceptable. According to the defendants, the attestors to the other settlement deed are no more and the second defendant has tendered evidence with reference to the same. As above pointed out, when the plaintiff has not specifically denied about the execution of the settlement deeds by Valliammal in favour of the second defendant as contemplated under section 68 of the Indian Evidence Act, 1872 and from the available materials on record, when it is found that the defendants have established that Valliammal had executed the settlement deeds in favour of the second defendant qua the plaint B schedule properties, in such view of the matter, it is found that it is only the second defendant who would be entitled to claim title to the plaint B schedule properties and the plaintiff would not be entitled to claim any partition with reference to the same. The Courts below had failed to appreciate the abovesaid factors in the right perspective and thereby erred in granting the relief of partition in favour of the plaintiff in respect of the item 10 of the plaint B schedule and the same is liable to be setaside.

14. In support of his contentions, the counsel for the defendants placed reliance upon the decisions reported in

- i. 2014 (4) CTC 862 [ Himayam Engineers and Builders, rep. By its Proprietor P.Ramna Reddy Vs. S.Ravichandran and others]
- ii. 2000 (3) MLJ 718 [ Maya Alias Hira Bai (Died) and others Vs. Prema]
- iii. 2010 (4) SCC 753 [ Karam Kapathi and others Vs. Lal Chand Public Charitable Trust and another]
- iv. 1976 (3) SCC 119 [ Kale and others Vs. Deputy Director of Consolidation and others]
- v. 2008 (17) SCC 491 [ Bachhaj Nahar Vs. Nilima Mandal and another]
- vi. AIR 1995 Supreme Court 1607 [ S.V.R.Mudaliar (dead) by LRs and others Vs. Rajabu F.Buhari (dead) by LRs and others]
- vii. AIR 1995 Supreme Court 1728 [Digambar Adhar Patil Vs. Devram Girdhar Patil (died) and another]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

15. In the light of the abovesaid discussions, the reasonings and conclusions of the Courts below for granting the relief of partition and mense profits in respect of the item 10 of the plaint B schedule cannot be sustained in the eyes of law accordingly the substantial questions of law formulated in the Second Appeal are answered in favour of the defendants and against the plaintiff.

16. In conclusion, the judgment and decree dated 30.10.2015 passed in A.S.No.3 of 2015 on the file of the II Additional District and Sessions Court, Vellore at Ranipet, confirming the judgment and decree dated 19.12.2014 passed in O.S.No.36 of 2006 on the file of the Subordinate Court, Ranipet are set aside insofar as the item 10 of the plaint B schedule and confirmed in other aspects. Resultantly the plaintiff's suit in O.S.No.36 of 2006 is dismissed as against the item 10 of the plaint B schedule. Accordingly, the Second Appeal is allowed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District and Sessions Judge,  
Vellore at Ranipet,  
Vellore District.
2. The Subordinate Judge,  
Subordinate Court,  
Ranipet.

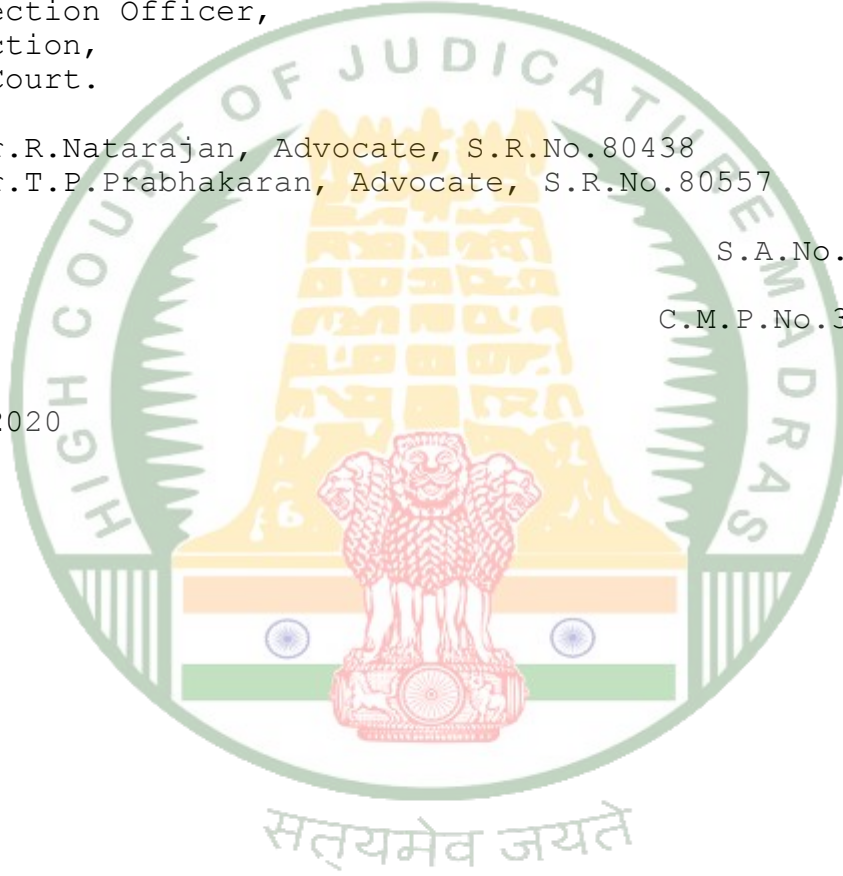
Copy to

The Section Officer,  
VR Section,  
High Court.

+2cc to Mr.R.Natarajan, Advocate, S.R.No.80438  
+1cc to Mr.T.P.Prabhakaran, Advocate, S.R.No.80557

S.A.No.174 of 2016  
and  
C.M.P.No.3534 of 2016

SSV(CO)  
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