

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2019

PRONOUNCED ON : 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.224 of 2016

and

C.M.P. No.16392 of 2019

1. S.Murugan
2. S.Vadivel
3. Kanaga
4. Alamelu
5. Sarasu
6. Indirani

Appellants/Plaintiffs/Petitioners

Vs.

1. K.Sadayan (Died)
2. Kailasam

Respondents/Defendants/Respondents

(1st Respondent died, appellants 1 to 6 are recorded as LRs of the deceased R1 Viz., K.Sadayan vide order of the Court dated 29.07.2019 made in SA No.224 of 2016 as per memo dated 29.07.2019)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.02.2015 in A.S.No.30 of 2013 on the file of Principal District Judge, Salem confirming the decree and judgment in O.S.No. 120 of 2009 dated 14.12.2012 on the file of the II Additional Sub Judge, Salem.

Prayer in CMP No.16392 of 2019:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive additional documents setout in the Schedule to the petition as additional evidence.

S.No	Date	Description of Documents	Remarks
1	19/03/2009	Sale deed dated 19/03/2009 executed by our father Sadayan in favour of the 2 nd respondent vide DOC No. 101041 of 2009, SRO, Salem.	Certified Copy

For Appellants : Mr.R.Subramanian

For R2 : Mr. T.S.Vijayaraghavan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 19.02.2015, passed in A.S.No.30 of 2013, on the file of the Principal District Court, Salem, confirming the judgment and decree dated 14.12.2012, passed in O.S.No. 120 of 2009, on the file of the II Additional Subordinate Court, Salem.

2. The second appeal has been admitted on the following substantial questions of law:

1. Have not the Courts below misread Sec.8 of the Hindu Succession Act which has resulted in perverse findings warranting interference under Sec.100 CPC?

2. Are not the Courts below wrong in holding that the suit properties are separate properties of Sadaiyan, when admittedly he had got it in a partition as Karta of joint family consisting of father and his sons?

3. Are not the Courts below wrong in overlooking that any release/settlement by one co-parcener without the consent of other co-parceners is invalid?

3. Considering the scope of the issues involved between the parties in the 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.

6. Briefly stated, according to the plaintiffs case, the suit property was purchased by the grandfather of the plaintiffs

1 to 5 Kaveri, by way of a sale deed dated 17.08.1940 and enjoying the same and he died intestate leaving behind his wife Perumayammal and three sons, namely, the first defendant Sadayan, Madhu and Palani and accordingly contended that the first defendant Sadayan and his family members are each entitled to 1/4th share in the suit property and further put forth the case that Palani had executed a release deed in respect of his 1/4th share in favour of the first defendant Sadayan, Perumayammal and Madhu, by way of a release deed dated 25.04.1979 and accordingly contended that the plaintiffs and the first defendant, in all, is entitled to equal share in the suit property and inasmuch as the first defendant failed to allot the share of the plaintiffs in respect of the suit property despite several demands and notice, according to the plaintiffs, they had been necessitated to institute the suit against the defendants for appropriate reliefs.

7. The defendants resisted the plaintiffs suit contending that the suit property is the separate and self acquired property of the first defendant's father Kaveri and after his demise, his legal heirs had derived equal share in the suit property and Palani had relinquished his share in the suit property in favour of Perumayammal, the first defendant and Madhu and further, it is also put forth that Madhu left the suit property by occupying another property and as per the family arrangement, the entire property was given to the first defendant and accordingly, the properties derived by the first defendant as abovestated could only be construed as his separate and self acquired property and hence, during his life time, his children cannot lay any claim of share in the suit property and the suit property is not the ancestral property of the plaintiffs and the first defendant as put forth by the plaintiffs and therefore, the suit is liable to be dismissed.

8. Based on the available records and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit. Impugning the same, the present second appeal has been preferred.

9. It is not in dispute that the suit property had been purchased by Kaveri by way of the sale deed dated 17.08.1940, marked as Ex.A1. It is found that Kaveri had three sons, namely, the first defendant Sadayan, Madhu and Palani and he died leaving behind the abovesaid three sons and his wife Perumayammal. Resultantly, it is found that the abovesaid legal heirs of Kaveri would be each entitle to 1/4th share in the suit property.

10. It is also found that Palani had executed a release deed dated 25.04.1979, in respect of his 1/4th share in the suit property in favour of Sadayan, the first defendant, Madhu and

Perumayammal. Perumayammal having died in the year 2005, on her death, her share would devolve upon her three sons namely, the first defendant Sadayan, Madhu and Palani. The plaintiffs 1 to 5 being the children and the 6th plaintiff being the wife of the first defendant Sadayan claim that the suit property is the ancestral property of the plaintiffs and the first defendant. The suit has come to be laid by the plaintiffs demanding 6/7th share in the same.

11. As rightly held by the Courts below, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956, the property derived by the first defendant from his father Kaveri could only be construed as his separate property and the same cannot be held as the ancestral property. In this connection, the Courts below had relied upon the decision of the Apex Court reported in (1986) 3 SCC 567 (Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others) wherein the position of law with reference to the abovesaid aspects has been outlined as follows:-

Hindu Succession Act, 1956 - Sections 8 and 4 - Applicability - Son, who separated by partition from his father, would on father's death inherit father's asset in his individual capacity and not as karta of his HUF by virtue of Section 8 - Therefore, income or assets so inherited would be assessed as income or assets of the son individually and not as income or assets of the son's HUF - Wealth Tax - Income Tax.

"R" and his son "C" constituted an HUF. As a result of partial partition the HUF business was divided between the two and thereafter, it was carried on by a partnership consisting of the two. The house property of the family continued to remain joint. The mother and wife of "R" having predeceased him, when he died he left behind him his only son "C" and grandsons. "C" who constituted a joint family with his own sons, filed a return of his net wealth by including the property of the family which on the death of "R" passed on to "C" by survivorship and also the assets of the business which devolved upon "C" on father's death. But "C" did not include a sum of Rs.1,85,043, standing to the credit balance of "R" in his account in the books of the firm on the ground that the amount devolved on him in his individual capacity and was not the property

of the assessee-family. The Wealth Tax Officer did not accept this contention and held that the sum of Rs.1,85,043/- also belonged to the assessee -family. The High Court decided in favour of "C", the respondent- assessee. Dismissing the Revenue's appeal and affirming the High Court's judgment and order Supreme Court.

Held: Under the Hindu Law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. But this position has since been affected by Section 8 of the Hindu Succession Act. Since the Preamble to the Act reiterates that the Act is to 'amend' and codify the law and Section 4 thereof makes it clear that one should look to the Act in case of doubt and not to pre-existing Hindu law, the express words of Section 8 of the Act would prevail over the aforesaid general law. When therefore, son inherits the property in the situation contemplated by Section 8 he does not take it as Karta of his own undivided family but takes it in his individual capacity. The Schedule to the Act referred to in Section 8 (a) indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son.

CIY V. RamRakshpal, Ashok Kumar, (1968) 67 ITR 164 (All); Addl. CIT V. P.L.Karuppan Chettiar, (1978) 114 ITR 523 (Mad); Shrivallabhdas Modani V. CIT, (1982) 138 ITR 673 (MP) and CWT V. Mukundgiriji (1983) 144 ITR 18 (AP) approved.

and the interpretation of Section 8 of the Hindu Succession Act came up for consideration in the abovesaid decision and the position of law has been outlined with reference to the same as follows:

22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

23. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-919.

24. The express words of section 8 of The Hindu Succession Act, 1956 cannot be ingored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which

excludes son's son but included son of a predeceased son cannot be ignored.

Even in the decision relied upon by the plaintiffs' counsel reported in (2008) 3 SCC 87 (Bhanwar singh Vs. Puran and others), the abovesaid position of law has been reiterated in the following manner:

A. Hindu Succession Act, 1956 - S.6- Provision in, regarding devolution of property in coparcenary property - Applicability - Held, not applicable when the surviving members of the coparcenary had already partitioned their properties and become owners to the extent of their share.

B. Hindu Succession Act, 1956 - Ss.8, 19 and 4 - Discontinuance of coparcenary - Nature of interest of succeeding heirs - In such circumstances, held the property ceases to be joint family property- All the succeeding heirs succeed to their respective shares not as joint tenants but as tenants-in-common - The property devolves upon them not per stripes but per capita with the right to alienate the share, particularly when the property has been partitioned and entries made in the revenue record of rights

One B was the owner of the property. He died leaving behind his son S and three daughters. The properties in suit were then partitioned between S and his sisters. Their names were mutated in the revenue record of rights and their shares were shown to be 1/4th each. Thereafter, the appellant, who was the son of S was born. Subsequently, S transferred a part of the properties firstly by way of mortgage and thereafter by sale in favour of the respondents. On the premise that the properties of B were joint family properties, the appellant filed a suit for setting aside the said alienations on the ground, inter alia, that the said transaction was done without any legal necessity therefore, the trial Court decreed the suit but the appellate Court set aside the decree and held that upon the death of B, S became a co-sharer in the property and the property lost the character of ancestral property in terms of Section 8 of the Hindu

Succession Act. A second appeal filed by the appellant was dismissed by the High Court. The appellant then filed the present appeal by special leave.

Dismissing the appeal, the Supreme Court

Held:

B left behind S and three daughters. In terms of Section 8 of the Hindu Succession Act, 1956 ("the Act"), therefore, the properties of B devolved upon S and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of B.

The first appellate Court rightly held that Section 6 of the Hindu Succession Act was not attracted to the facts of the case as S and his sisters having partitioned their properties became owners to the extent of 1/4th share each, he had the requisite right to transfer the lands falling within his share.

It was rightly held that having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of B would succeed to his interest as tenants-in-common and not as joint tenants. Therefore, the properties devolved upon them per capita and not per stripes, each one of them was entitled to alienate their share, particularly when different properties were allotted in their favour. In a case of this nature, the joint coparcenary did not continue.

CWT V. Chander Sen (1986) 3 SCC 567; 1986 SCC (Tax) 641; Yudhishter V. Ashok kumar, (1987) 1 SCC 204; CIT V. P.L.Karuppan Chettiar, 1993 Supp(1) SCC 580; CIT V. M.Karthikeyan, 1994 SUPP (2) SCC 112, followed

Sunderdas Thackersay & Bros V. CIT, (1982) 137 ITR 646 (Cal), approved CIT V. Dr. Babubhai Mansukhbhai, (1977) 108 ITR 117 (Guj), held, overruled Sheela Devi V. Lal Chand, (2006) 8 SCC 581, distinguished

C.Krishna prasad V. CIT, (1975) 1 SCC 160; 1975 SCC (Tax) 16, referred to F.D.Mulla: Commentary on Hindu Law, 15th Edn., pp.924-26; Mayne: Hindu Law, 12th Edn., pp.918-19, referred to

12. The abovesaid position of law has also been outlined in the decision reported in 1993 Supp (1) SCC 580 (Commissioner of Income Tax Vs. P.L.Karuppan Chettiar) as follows:

Income Tax - HUF - Income from property inherited by Karta - Partition - Father's share separated from his wife and son - Son, his wife and their children forming HUF - After death of the father intestate, his separate property inherited by and divided between his widow and son - Held, properties so inherited by the son has to be treated as his individual and separate properties and income arising therefrom not assessable in the hands of the HUF - Hindu Succession Act, 1956, Ss.8 and 4. CWT V. Chander Sen, (1986) 3 SCC 567: 1986 SCC (Tax) 641: (1986)161 ITR 370, followed.

The same has also been followed by the Delhi High Court in the decision reported in 2008 AIR (Delhi) 40 (Master Gaurav Sikri and Anr. Vs. Kaushalya Sikri and Ors.) and our High Court in the decision reported in (2007) 4 MLJ 993 (N.Ramachandran Vs. E.Varadarajan and Another). I also had an occasion to consider the above position of law in the decision reported in (2017) 1 MLJ 759 (Chinna Palanisamy Gounder Vs. Latha and Others) and the position of law has been culled out in the abovesaid decision as follows:

Succession Laws - Kartha - Separate properties - Hindu Succession Act, 1956 (Act 1956), Section 4,8,19 and 30 - Suit laid by plaintiffs claiming partition of 2/3 shares of Plaintiffs2 and 3 in suit properties and claiming maintenance for First Plaintiff form First Defendant - Trial Court found that First Plaintiff is entitled to seek maintenance as claimed and held that it is only Second Plaintiff entitled to claim share in suit properties - Second Defendant has preferred present appeal, challenging judgment and decree of First Appellate Court in so far as it went against him - Whether Courts below are correct in holding that Sale Deed executed by First Defendant in favour of Second Defendant is not binding on Second Plaintiff in respect of ½ share

ignoring fact that sale was made by Kartha of joint family for welfare of family and for discharging loan borrowed for expenses of joint family - Whether Courts below are correct in allowing suit partly and holding that Sale Deed is not binding on Second Plaintiff as far as his 1/2th share is concerned, in absence of any document or proof that First Defendant acted against interest of family and children and used sale proceeds for illegal purpose - Held, suit properties derived by First Defendant under Partition Deed could only be treated as separate properties of First Defendant and not joint family properties of First Defendant and Plaintiffs 2 and 3 - If self acquired property or joint family property, once they get devolved in accordance with Section 8 of Act 1956 on principles of intestacy, joint family property ceases to be joint family property in hands of various persons who have succeeded to it as they hold property as tenants in common and not as joint tenants - First Defendant is not shown to have been indulging in illegal/immoral activities or excluded Plaintiffs and discarded their interest and welfare - First Defendant not required to seek sanction from court to convey his separate properties in favour of Second defendant - Suit properties are separate properties of First Defendant, claim of 2/3 share by Plaintiffs 2 and 3 on footing that suit properties are joint family properties of First Defendant and Plaintiffs 2 and 3 is completely ruled out - Plaintiffs 2 and 3 not entitled to claim any share in properties as suit properties are separate properties of First Defendant - Judgment and decree of courts below set aside - Suit filed by Plaintiff dismissed - Appeal allowed.

Held: As per the provisions of Hindu Succession Act, 1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956, amongst the Class - I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties

and not as the joint family properties of the first defendant and his children viz., the plaintiff 2 and 3. A perusal of the decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, it could be seen that as per the authoritative pronouncements of the Apex Court and our High Court, the suit properties derived by the first defendant under Ex.A6 could only be treated as the separate properties of the first defendant and not the joint family properties of the first defendant and the plaintiffs 2 and 3 as claimed by the plaintiffs. It could be seen that in toto, on a conjoint reading of Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956, if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants. When it is found that as per law, the properties derived by the first defendant under Ex.A6 are his separate properties, the Courts below have erred in findings fault on the part of the defendant in describing the suit properties as his own properties in the sale transaction Ex.B1. Therefore, it could be seen that the first defendant has rightly described the suit properties as his own properties in Ex.B1 sale deed. So, when it could be seen that the suit properties are the separate properties of the first defendant and when there is no impediment on his part to alienate the same and when as found earlier, the first defendant is not shown to have been indulging in illegal/immoral activities or excluded the plaintiffs and discarded their interest and welfare, it could be seen that the first defendant is not required to seek sanction from the court to convey his separate properties in favour of the second

defendant. Further, it could be seen that when it is found that the suit properties are the separate properties of the first defendant, the claim of 2/3 share by the plaintiffs 2 & 3 on the footing that the suit properties are the joint family properties of the first defendant and the plaintiffs 2 & 3 and in particular, the second plaintiff is not entitled to claim any share in the properties as the suit properties are the separate properties of the first defendant.

Cases Cited/Referred to:

Additional Commissioner of Income tax, Madras -1 Vs. P.L.Karuppan Chettiar LNIND 1978 MAD 34 (Cited)

Bhanwar Singh v. Puran (2008) 2 MLJ 1158 (SC) (Cited)

Commissioner of Wealth Tax, Kanpur V. Chander Sen LNIND 1986 SC 214 (Cited)

Manibhai V. Hemraj LNIND 1990 SC 172 (Considered)

Pandiarajan V. Korangi Thyagarajan LNIND 2004 MAD 1521

Pralhad V. State of Maharashtra LNIND 2010 SC 876 (Distinguished)

Sri Narayan Bal V. Sridhar Sutar LNIND 1996 SC 2 (Considered)

Uttam V. Saubhag Singh (2016) 2 MLJ 536 (SC) (Cited)

13. In the light of the abovesaid authorities, Kaveri having been succeeded by his wife and three sons and the suit property being the separate property of Kaveri, in such view of the matter, as per the devolution of interest under Section 8 of the Hindu Succession Act, 1956, during the life time of the father, the grand son or grand daughter cannot lay a claim of partition in the property derived by his father from his father and in such view of the matter, the plaintiffs being only the children and wife of the first defendant, the first defendant having derived the suit property, as put forth by him, as the separate property during his life time, the plaintiffs cannot lay any claim of share in the suit property and in such view of the matter, the Courts below are found to be justified in declining the reliefs prayed for by the plaintiffs.

14. In the light of the abovesaid discussions, the contention of the plaintiffs' counsel that the Courts below had misread Section 8 of the Hindu Succession Act, 1956 and erred in holding that the suit property is the separate property of Sadayan and erred in holding that the plaintiffs are not entitled to claim share in the suit property cannot at all be countenanced and in such view of the matter, the reasonings and conclusions of the Courts below for declining the reliefs prayed for by the plaintiffs being founded on the proper appreciation of the materials available on record and the principles of law governing the issues involved between the parties in the matter, as above pointed out and not suffering from any infirmity or perversity in any manner, in such view of the matter, the same do not warrant any interference. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.
C.M.P. No.16392 of 2019:

15. The petition in C.M.P. No.16392 of 2019 has been laid by the plaintiffs to receive the sale deed dated 19.03.2009 executed by the first defendant in favour of the second defendant as additional evidence. The defendants has averred about the abovesaid sale transaction in the written statement. Considering the abovesaid discussions, when it is found that the property derived by the first defendant through his father and by way of the release deed executed by his brother Palani and as put forth in the written statement being only his separate and independent property, in such view of the matter, the first defendant being entitled to alienate the same in favour of the second defendant and when the same is not entitled to be questioned, in such view of the matter, the abovesaid sale transaction would not in any manner tilt the case in favour of the plaintiffs and in such view of the matter, the projection of the abovesaid sale deed as additional evidence on the part of the plaintiffs is found to be not necessary and also not germane for adjudicating the issues involved between the parties. Furthermore, the plaintiff has not placed any acceptable reason for not projecting the abovesaid sale deed during the course of the trial and on that score alone, the petition for the reception of additional evidence not satisfying the ingredients of Order 41 Rule 27 of C.P.C., in all, the petition deserves rejection.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. C.M.P. No.16392 of 2019 is also dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sli
To:

1. The Principal District Judge,
Salem.
2. The II Additional Subordinate Judge,
Salem.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.Subramanian, Advocate Sr.78696
+1cc to M/s.T.S.Vijaya Raghavan, Advocate Sr.78338

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S.A.No.224 of 2016
and
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