

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2019
PRONOUNCED ON : 27.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.230 of 2016

1. Selvamani

2. Rangasamy

3. Baby

4. Krishnan

5. Suseela

6. Palraj

7. Minor Kavitha

... Ranking 7 place Appellants/Respondent

Vs.

1. Ponnusamy @ Ponnukutty (died)

2. Chinnammal

3. Uthamaputhiran

4. S.Ramaprakash

5. Suganya

6. Periyasamy

7. Subramani

8. Nagaraj

9. Mrs.Mani

10.Sivagami

11.Sumathi

...Respondents/Appellants/ Respondents

RR 6 to 11 brought on record as Lrs of the deceased R1 viz., Ponnusamy @ Ponnukutty vide order of court dated 17.06.2019 made in CMP Nos.11599 to 11602/2019 in S.A.No.230/2016 (TRNJ)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.04.2015 in A.S.No.25 of 2014 on the file of First Additional Subordinate Judge's Court, Coimbatore, reversing the judgment and decree dated 28.01.2014 in O.S.No.748 of 2004 on the file of III Additional District Munsif Court, Coimbatore.

For Appellants : Mr.C.R.Prasannan

For Respondent : Mr. C.Veeraraghavan for R2, R6 to R11
Mr.S.Vijayakumar for R4 & R5
R3 - No appearance. Set exparte vide order dated 24.07.2019.

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 15.04.2015 in A.S.No.25 of 2014 on the file of First Additional Subordinate Court, Coimbatore, reversing the judgment and decree dated 28.01.2014 in O.S.No.748 of 2004 on the file of III Additional District Munsif Court, Coimbatore.

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

3. Suit for partition.

4. The case of the plaintiff, in brief, is that the first plaintiff is the sister of the first defendant and the second defendant is the wife of the first defendant. The suit properties are the inheritance of Rama Konar, the father of the first plaintiff and the first defendant. Rama Konar had another son by name Krishnasamy, who died without issues. Rama Konar had died about 57 years back. His widow, namely the mother of the plaintiff and the first defendant died about 40 years back. Rama Konar himself effected a family arrangement under which he had declared and allotted 1/4 share to each of the four family members with a right and enjoyment for life and his wife. Under the arrangement right was vested and possession postponed. All along the parties have been in joint possession and the first defendant claiming exclusive right in the suit properties, purported to create bogus, sham and nominal document in the name of the second defendant and the first plaintiff is not a party to the same and her mother is also not a party to the document. Till the life time of Rama Konar, there is power of alienation. The first plaintiff is still in the joint possession. The plaintiff is entitled to 1/4 share as per the family arrangement. The mother had 1/4 share, in which also, the first plaintiff had derived 1/3 share. The defendants 3 and 4 are the

third parties and had purchased the properties from the defendants 1 and 2 and endeavouring to put up the construction in the properties and the sale in favour of the defendants 3 and 4 is void. Item 2 of the plaint schedule properties is the property of Ramakonar, but purchased benami and nominally in the name of his wife Nanjammal. Nanjammal had no source of income. The said property was accepted, acknowledged and treated and enjoyed as Rama Konar's property by all including Nanjammal. Hence the alleged sale to the defendants is without any consideration and the first plaintiff died leaving behind the plaintiffs 2 to 7 as her legal heirs and hence the suit for partition.

5. The defendants 1 and 2 resisted the plaintiff's suit admitting that the first plaintiff, the first defendant and one Krishnasamy are the children of Rama Konar and also admitted that Rama Konar and his wife died long back, however, denied the case of the first plaintiff that the suit properties are the inheritance of Rama Konar and according to them, the said case of the first plaintiff is misleading. It is true that Krishnasamy died issueless. The defendants disputed the plea of family arrangement said to have been effected by Rama Konar allotting 1/4 share to the four family members as alleged by the plaintiff and contended that the first plaintiff has not whispered as to who are the four family members and when was the family arrangement effected, what was the right granted to each of the four family members and the plaintiff is not clear whether Rama Konar retained any right and according to the defendants, the first plaintiff is unaware of the nature of the suit properties and also the possession and enjoyment of the same and also disputed the case of the plaintiff that under the family arrangement, right was vested and possession postponed. The plaintiff has never been in the possession and enjoyment of the suit properties. The second defendant, on 30.04.1959, for a valid consideration, had purchased the plaint schedule property from the first defendant and Krishnasamy and since then, it is only the second defendant who has been in the possession and enjoyment of the suit property and the revenue records stands in her name. The abovesaid sale deed is true and valid and binding upon the plaintiff. The plaintiff is not entitled to question the same. The plaintiff's claim of share in the suit properties is without any basis. The plaintiff has not valued the suit properties properly and not paid the proper court fees on the market value. There is no cause of action for the suit and in the additional written statement, the defendant would further state that the second defendant had plotted the first item of the suit properties by obtaining the approval of the panchayat and sold the same to the prospective purchasers as detailed in the written statement and contended that the prospective purchasers are in the possession and enjoyment of the suit

properties. The defendants disputed the case of the plaintiff that the second item of the suit properties has been purchased benami by Rama Konar in the name of his wife Nanjammal and disputed the case of the plaintiff that Nanjammal had no independent source of income to purchase the said properties. According to them, the second item of the suit properties had been included in the plaint at the stage of arguments by the plaintiff and it is further stated that the mother Nanjammal along with her sons, namely, the first defendant and Krishnasamy had sold the southern half share of the second item of the properties to the second defendant on 03.05.1959 by way of a registered sale deed and since then it is only the second defendant who has been in the possession and enjoyment of the suit properties. The northern half share of the said properties was mortgaged by Nanjammal and Krishnasamy in favour of Ramathal on 04.07.1961 and subsequently, the mortgaged debt was cleared only by Krishnasamy after the death of Nanjammal and also sold the same to the second defendant by way the registered sale deed on 20.07.1965 and thereby the second defendant became the owner of the said property also and enjoying the same. The plaintiff without any basis, had included the second item of the suit properties belatedly in the suit and not entitled to claim any share in the same. The plaintiff without any basis or cause of action, had laid the suit and hence the suit is liable to be dismissed.

6. In support of the plaintiffs' case P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On the side of the defendants D.W.1 was examined, Exs.B1 to B21 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. On appeal, the first appellate court, on an appreciation of the materials available on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

“(1) Whether in law the lower appellate court erred in reversing the well considered finding that the family arrangement pleaded by the plaintiff is true while granting a decree in respect of item N.1 of the suit properties, overlooking the evidence of P.W.2?

b) Whether in law any embargo as envisaged under the provisions of Benami transaction (prohibition) Act 1988 would operate against the deceased Ramasamy Konar especially when the item No.2 of the suit properties had been purchased in the name of his wife and in view of the clear finding that Nanjammal had neither source of money nor remained in possession?

c) Whether in law the lower appellate court erred in overlooking that even assuming the said Nanjammal was the owner of the item No.2 of the suit properties, yet when she admittedly died intestate, the plaintiff being one of her heirs was entitled to have a share in half share of the suit item No.2?

9. The suit has been originally laid by the first plaintiff claiming partition only in respect of the first item of the suit properties, thereafter, very belatedly, at the stage of arguments, the second item of the suit properties had been included in the suit. Pending suit, the plaintiff had died and her legal heirs had been added as parties. According to the plaintiffs, the suit properties belonged to Rama Konar, the father of the first plaintiff and the first defendant. It is not in dispute that Rama Konar had two sons, namely, the first defendant and Krishnasamy and one daughter, namely, the first plaintiff. As could be seen from the materials placed on record, it is found that the first item of the suit properties is the ancestral property of Rama Konar and therefore, it has to be seen whether the first plaintiff, as the daughter, would be entitled to claim any share in the first item of the suit properties on the death of Rama Konar. As regards the first item of the suit properties, the plaintiff would put forth the case that Rama Konar, during his life time, had effected family arrangement giving 1/4 share to the four family members and accordingly the plaintiff would put forth the case that she is also entitled to obtain a share in respect of the first item of the suit properties under the abovesaid family arrangement. However, as rightly put forth by the defendants, the plaintiff has not come forward clearly as to when the alleged family arrangement had been effected by Rama Konar, who are the four family members to whom the share had been given in respect of the property, what are the interest given to the sharers and with reference to the same, absolutely, there are no clear pleas put forth by the plaintiffs in the plaint. According to the plaintiffs, Rama Konar died about 57 years ago and the same has also been asserted by the plaintiff during the course of cross examination. The abovesaid factor goes to show that Rama Konar died in the year 1947. Therefore, in the light of the plaintiff

failing to establish the family arrangement as put forth in the plaint, it is found that on the demise of Rama Konar in 1947, the first item of the suit properties would have devolved on his legal heirs as per the law then existing. Though the plaintiff had examined one Jagannatha Konar as P.W.2 to sustain her claim of alleged family arrangement said to have been effected by Rama Konar, however, as rightly determined by the first appellate court, when P.W.2 has clearly admitted during the course of cross examination that he is not aware of the arrangement effected by Rama Konar qua his properties and also pleaded ignorance as to whether Rama Konar had partitioned his properties or bequeathed the properties by way of the will, in such view of the matter, the evidence of P.W.2 would be of no use to sustain the claim of family arrangement said to have been effected by Rama Konar qua his properties during his life time as put forth by the plaintiff. The trial court has failed to consider the evidence of P.W.2 in toto and erred in upholding his testimony on the footing that he being an aged person, would have been in the knowledge of the family arrangement said to have been effected by Rama Konar. When, as abovenoted, P.W.2 has completely pleaded ignorance about the arrangement made by Rama Konar qua his properties, in such view of the matter, as rightly determined by the first appellate court, the trial court had erred in accepting the case of the family arrangement projected by the plaintiff based on the unreliable evidence of P.W.2.

10. Rama Konar is found to have died in the year 1947. It is found that the first item of the suit properties being the ancestral property, as per the law then existing, would devolve only upon his male heirs and accordingly, it is found that the first item of the suit properties would have only devolved upon the sons of Rama Konar and not in favour of his daughter, namely, the first plaintiff. It is not in dispute that Krishnasamy, the brother of the first defendant died issueless. As held by the first appellate court, the plaintiff, being the daughter, her entitlement to claim right in the coparcenary properties would commence only after the advent of Hindu Succession Act 1956.

11. However, the plaintiff's counsel would contend that Rama Konar having died leaving behind his wife Nanjammal, hence according to him, as per Sections 3(2) and (3) of Hindu Women's Rights to Property Act, 1937, his wife Nanjammal would have derived the same interest in the property as that of her husband and accordingly it is put forth that Nanjammal had limited interest in the first item of the suit properties known as Hindu Woman's estate and further according to the plaintiff's counsel, Nanjammal admittedly having died after the advent of Hindu Succession Act 1956, her limited estate in the first item of the suit properties would blossom into the absolute right by virtue of Section 14(1) of the Hindu Succession Act 1956 and

accordingly contended that in respect of the abovesaid right, which Nanjammal had in the first item of the suit properties, the plaintiff is entitled to claim share in the same and therefore, according to him, the abovesaid aspects of the matter had not been considered by the first appellate court properly and also the principles of law governing the succession and therefore, it is put forth that the judgment and decree of the first appellate court requires reversal.

12. Per contra, according to the defendants' counsel, whatever right Nanjammal had in respect of the first item of the suit properties by virtue of Section 3(2) and (3) of Hindu Women's Rights to Property Act, 1937, according to him, Nanjammal, who had survived her husband, would be entitled to only obtain the coparcenary interest in the ancestral property and however, Nanjammal without asserting her share in the coparcenary properties and having not exercised her claim of partition during her life time and therefore, according to him, there is no severance of Hindu Coparcenary and it is stated that on the death of Nanjammal, her interest in the coparcenary property merges in the coparcenary property or lapses to the other coparceners and therefore, according to him, the plaintiffs are not entitled to put forth that they are entitled to claim share in the alleged coparcenary interest which Nanjammal had in the first item of the suit properties.

13. In support of his contentions, the defendants' counsel placed reliance upon the decision reported in 2014 (142) AIC 497 (MAD., H.C) Madras High Court (Padmavathy Vs. Thamaravardhini and others). In the abovesaid decision, the principles of law as regards the right of a widow under Hindu Women's Rights to Property Act 1937 who had not demanded the partition during her life time as regards her coparcenary interest had been outlined in the following manner.

Hindu Succession Act, 1956 - Sections 8, 14 and 15 - Partition suit - Claim for partition of their father's property - Daughters filed a suit for partition against their brothers and other sisters - No dispute with regard to relationship - Male Hindu (father) dying intestate in 1946 before coming into operation of Act - Act is only prospective and not retrospective in operation - Held, daughters cannot seek partition - After death of father in 1946, property will devolve only on surviving male heirs on date of demise of such male Hindu - No interference warranted with judgment and decree of Lower Appellate Court - Appeal dismissed.

Hindu Women's Right to Property Act, 1937 - Section 3 - Right of widow in her husband's property - Held widow, who survives a male Hindu dying intestate

before coming into operation of Hindu Succession Act,, 1956 - Entitled to a right in her husband's property - She should make her share definite by demanding partition - If there is no such demand made by her - Then her undefined interest lapses and would merge into coparcenary property - Her daughter cannot claim partition claiming through or under her.

....

18. Now, the plaintiffs have filed the suit for partition claiming right in their father's share, who died prior to Hindu Succession Act, 1956. Since the provisions of the Hindu Succession Act, 1956 was not given retrospective effect, it has only prospective application. If at all, the daughters could have their share in the property of her mother provided later got any independent share on partition during her life time. In the absence of partition, the claim of the daughter is not tenable. Since under the provisions of the Hindu Succession Act, 1956, the plaintiffs are not entitled to claim for partition of their father's property who died in the year 1946 i.e., before coming into force of the Hindu Succession Act, 1956, the lower appellate court rightly dismissed the suit in toto.

For coming to the abovesaid conclusion the learned judge had relied upon the decision of the Supreme Court reported in (1977) 3 Supreme Court Cases 383 (Controller of Estate Duty, Madras vs. Alladi Kuppaswamy) rendered by a bench of three Hon'ble Judges and in the abovesaid decision, it has been held that if a widow, who had a coparcenary interest, had not exercised her right of partition, there is no severance of the Hindu Coparcenary and on her death, the interest of the widow merges or lapses to the other coparceners and the position of law has been out lined in the abovesaid decision as follows:

Estate Duty Act, 1953 - Sections 7(1) and (2) and 39 - Hindu widow dying after the Hindu Women's Rights to Property Act, 1937 had come into force and before the Hindu Succession Act, 1956 had come into force - Her share in coparcenary is liable to estate duty

Hindu Women's Rights to Property Act, 1937 - Sections 3(2) and (3) and 39 (as amended by Act 11 of 1938) - Husband, a member of coparcenary, dying after Act had come into force - His widow whether a coparcener - Nature of her interest under the 1937 Act - Hindu Law - Coparcenary - Hindu widow.

....

The father, who was a member of the Hindu coparcenary consisting of himself, and his three sons, settled certain properties absolutely on his wife and also declared certain other properties to form part of the joint family properties. The wife died before the Hindu Succession Act, 1956 was passed and the Assistant Controller of Estate Duty valued her estate including therein the value of her 1/4 share in the joint family properties. On the question whether such inclusion was valid:
Held:

A Hindu coparcenary has six essential characteristics, namely:

(1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors;

(2) that the members of the coparcenary have the right to work out their rights by demanding partition;

(3) that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive;

(4) that as a result of such co-ownership the possession and enjoyment of property is common;

(5) that there can be no alienation of the property without the concurrence of the other coparceners unless it is for legal necessity; and

(6) that the interest of the deceased member lapses on his death and merges in the coparcenary property.

State Bank of India vs. Ghanshyam Ram, (1969) 2 SCC 33, 36, followed.

(Section 7(2) of the Estate Duty Act, 1953, provides that if a member of a Hindu coparcenary governed by the mitakshara school of law dies, then the property in which the deceased had an interest, ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property. Section 3(2) and (3) of the Hindu Women's Rights to Property Act, 1937, provide that when a Hindu governed by any school of Hindu law other than the Dayabhaga or by customary law dies

having at the time of his death an interest in a Hindu Joint family property his widow shall have in the property the same interest as he himself had and such interest shall be the limited interest known as a "Hindu Woman's Estate". By virtue of Act of 1937, excepting condition No.(1) of the essential characteristics of coparcenary, all other conditions are fully satisfied in the case of a Hindu widow succeeding to the interests of her husband in a Hindu coparcenary. After her husband's death, she has got the right to demand partition, she cannot predicate the exact share she might receive until partition is made, her dominion extends to the entire property conjointly with the other members of the coparcenary, her possession and enjoyment is common, the property cannot be alienated without the concurrence of all the members of the family except for legal necessity, and like other coparceners she has a fluctuating interest in the property which may be increased or decreased by deaths or additions in the family. The fact that before the Hindu Succession Act, 1956, she had only a widow's estate in her interest in the property does not detract any the less from his position. Therefore, it follows that though a Hindu widow cannot be a coparcener she has a coparcenary interest, and she is also a member of the coparcenary by virtue of rights conferred on her under the 1937 Act.

So that if a widow does not exercise her right of partition, there is no severance of the Hindu coparcenary and on her death the interest of the widow merges in the coparcenary property or lapses to the other coparceners.

Satrughan Isser vs. Sabujpari, (1967) 1 SCR 7 : AIR 1967 SC 272, followed:

Sabujpari vs. Satrughan Isser, AIR 1958 Pat 405, 410 and Khatrani Kuer vs. Tapeshwari Kuer, AIR 1964 Pat 261, approved.

14. In the light of the abovesaid decision of the Apex Court rendered by the Bench consisting of three Hon'ble Judges, it is found that though a widow cannot be a coparcener, however, by virtue of Sections 3(2) and (3) of the Hindu Women's Rights to Property Act, 1937, she has coparcenary interest and she is also a member of the coparcenary by virtue of the right conferred by the abovesaid Act. However, it is found that if the widow does not exercise her right of partition, there is no severance of the Hindu coparcenary and on her death, the interest of the widow merges in the coparcenary property or

lapses to the other coparceners.

15. The position of law being above as rendered by the Apex Court consisting of three Hon'ble Judges, in such view of the matter, the plaintiff's counsel for the proposition that the absence of any claim of partition by the widow qua her widow's interest after her husband's death would not be a bar for entitling the daughter to lay her claim for share therein upon the death of the widow and in that connection, the decisions reported in 91 L.W. 598 (R.Narasimhachari vs. Andalammal (died) and others), 94 L.W. 328 (M.V.Chockalingam Pillai and others vs. Alamelu Ammal and another) and 2019 SCC online Bom 566 (Jagannath Waman Undre vs. Uamunabai Sitaram Kadam) are relied upon.

16. However, as above pointed out, the Full Bench consisting of three Hon'ble Judges of the Apex Court had expatiated the position of law as regards the rights of a widow in the coparcenary property acquired under Hindu Women's Rights to Property Act, 1937. In such view of the matter, I am bound to follow the abovesaid position of law outlined in the abovesaid decision.

17. The plaintiffs' counsel would also rely upon the decision of the Apex Court reported in (2017) 13 Supreme Court Cases 149 (Ram Nath Sao Alias Ram Nath Sahu (deceased) and others vs. Goberdhan SAO (deceased and others)). However, on a reading of the abovesaid case, it is found that the original ancestor had died prior to coming into force of the Hindu Succession Act 1956 leaving behind his only son and his widow. In the abovesaid decision, it has been held that the share of the widow would remain un-determined till such time when there is a partition in the family. Further it is found that the son did not have any male issue and on the date of father's death, accordingly it has been noted that the joint family in question continued with the Son as the kartha and the property continued to be belonging to the joint family. Accordingly, it has been noted in the abovesaid case that the joint family continued on the death of the father with the son as the sole coparcener and accordingly the joint family properties continued to be belonging to the family and thereby furthermore it has been held that the widow continued to have share in the property in the abovesaid case. It is also further held that on the death of son in the year 1961, following the invocation of Explanation I to Section 6 of the Hindu Succession Act 1956, the notional partition was presumed before the death of the son and accordingly it has been held in the abovesaid decision that there are eight sharers to the joint family properties and one such sharer would be the widow and the other sharers are the widow of the son and children of two widows of the son. In the

light of the abovesaid factual matrix, it is found that the abovesaid decision of the Apex Court would not have any applicability to the present case as in the abovesaid decision, the widow was alive at the time of the notional partition which was presumed or deemed to have been effected during the year 1961 on the death of the son. Insofar as the present case is concerned, the widow Nanjammal had died without exercising her right of partition in the coparcenary property and in such view of the matter, as held in the decision reported in (1977) 3 Supreme Court Cases 383 (Controller of Estate Duty, Madras vs. Alladi Kuppuswamy), her interest merges in the coparcenary property or lapses to the other coparceners.

18. The Counsel for the plaintiff also placed reliance upon the decision reported in (1967) 1 SCR 1 (Basant Singh and others Vs. Janki Singh and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. In the light of the abovesaid factors, as determined by the first appellate court, the plaintiffs cannot claim any right of share in the first item of the suit properties by contending that the first plaintiff is entitled to succeed to her mother's estate in the same. In such view of the matter, the first defendant having acquired absolute right in the first item of the suit properties on the death of the father in the year 1947, accordingly as put forth by the defendants, the first defendant had validly transferred the said right in favour of the second defendant by way of the registered sale deed dated 30.04.1959 and in such view of the matter, it is found that it is only the second defendant who has absolute right in respect of the first item of the suit property and as held by the first appellate court, the materials also point out that it is only the second defendant and her predecessors who are in the possession of the first item of the suit properties and therefore, the plaintiffs are found to be not entitled to challenge the abovesaid sale transaction and thereby seek the claim of share in the property. Furthermore, when the plaintiff is found to have knowledge about the sale transaction dated 30.04.1959, it is thus evident that, as determined by the first appellate court, despite having knowledge about the same, the plaintiffs having not evinced interest to challenge the same within the time allotted by law, the suit laid by the plaintiff 55 years after the sale transaction is found to be without any basis or foundation and accordingly, the first appellate court is justified in non suiting the plaintiff as regards the first item of the suit properties.

20. As abovenoted, only at the stage of arguments, the plaintiff had included the second item of the suit properties

by claiming share in the same. The case of the plaintiff that though the second item of the suit properties stands in the name of Nanjammal, the mother, the same had been purchased only by Rama Konar, benami in the name of Nanjammal. However, with reference to the said case of the plaintiff, absolutely there is no proof whatsoever and there is no material to show that the second item of the suit properties had been treated and enjoyed as the joint family property and not the separate property of Nanjammal. Furthermore, it is found that as put forth by the defendants, the southern half of the second item of the suit properties having been alienated by Nanjammal along with her sons for valid consideration in favour of the second defendant by way of the sale deed dated 30.04.1959 and thereby it is seen that it is only the second defendant who would be entitled to the said southern half share of the property.

21. According to the defendants, the northern half of the suit properties had been mortgaged by Nanjammal and her son Krishnasamy in favour of Ramathal on 04.07.1961 and further it is also pleaded that the abovesaid mortgage was discharged by the second defendant and accordingly she had acquired the right in the same by way of the sale deed executed by Krishnasamy in her favour on 20.07.1965 and the abovesaid document has been exhibited in the matter. It is found that following the discharge of the mortgage by the second defendant, she had been enjoying the northern half in her own right from 20.07.1965 onwards and therefore, the plaintiff being aware of the same and despite the abovesaid position, not throwing any challenge to the abovesaid transaction effected and also having endeavoured to include the second item of the suit properties very belatedly and the abovesaid discharge of the mortgage and the acquisition of the property mortgaged as put forth by the second defendant, having not been challenged by the plaintiff over a long period of time and also the plaintiff having not challenged the sale transaction effected in favour of the second defendant dated 20.07.1965 in the manner known to law despite knowledge of the same, in such view of the matter, as contended by the defendants' counsel, the plaintiffs having failed to establish their claim of share in the suit properties as put forth in the plaint and the plaintiffs having failed to establish their alleged claim of possession and enjoyment of the said property, in all, it is found that the plaintiffs would not be entitled to claim any share in the second item of the suit properties also as projected by them.

22. Furthermore, considering the materials available on record, when it is found that the first item of the suit properties had been divided into house plots and the major portion of the house plots had already been sold in favour of third parties and the same is in the possession of the third

parties and when it is admitted by the plaintiffs themselves that they are not in the possession and enjoyment of the suit properties for several years, as rightly determined by the first appellate court, in such view of the matter, even assuming for the sake of arguments that the plaintiffs are entitled to claim any partition, it is found that the plaintiffs should have properly valued the subject matter and paid the court fee on the market value of the suit properties as per Section 37(1) of The Tamilnadu Court Fees Act. The plaintiffs having failed to adhere to the abovesaid procedure, as held by the first appellate court, the suit laid by the plaintiffs itself is found to be misconceived and liable to be rejected. On that score also, the plaintiff is found to be not entitled to claim any share in the suit properties.

23. In the light of the abovesaid discussions, the substantial questions of law are accordingly answered against the plaintiffs and in favour of the defendants.

24. In conclusion, the second appeal fails and is accordingly dismissed with costs. Connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

bga

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S.A.No.230 of 2016

RR(CO)
GN(22/06/2020)