

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.948 OF 2019

AND

C.M.P.NO.20130 OF 2019

1.S.Palanisamy
2.Sellammal

...Appellants/Appellants/
Defendants 2 & 3

Vs.

1.Pavayee

... 1st Respondent/1st Respondent

2.C.Krishnaveni

...2nd Respondent/2nd Respondent/
4th Defendant

Prayer:

Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 06.02.2019 made in A.S.No. 29 of 2017 on the file of the learned Principal District Court, Namakkal reversal of the judgment and decree dated 20.06.2014 made in O.S.No. 77 of 2009 on the file of the learned Sub-Court, Tiruchengode.

For Appellants : Mr.N.Manokaran

JUDGMENT

The defendants 2 and 3, who suffered a decree for partition in O.S.No.77 of 2009 have come forward with this second appeal.

2. The plaintiff namely, the first respondent filed a suit for partition in O.S.No.77 of 2009 claiming that she is entitled to 1/4th share in the suit property, which according to her ancestrally belonged to her father Late Sengoda Gounder, who died on 18.08.1998. Pending suit, the first defendant/Kandayee, wife of Sengoda Gounder died.

3. The suit was resisted by the defendants contending that

the defendants 1 and 3 have executed a release deed dated 03.04.2008 relinquishing their interest in favour of the 2nd defendant. It was the further case that the plaintiff would not become a Coparcener, since she got married prior to the commencement of Hindu Succession (Tamilnadu) Amendment Act 1 of 1990 and her father, Sengoda Gounder died prior to the amendment of the Hindu Succession Act 39 of 2005. Therefore, the defendants sought for dismissal of the suit. The Trial Court had held that the plaintiff would become a Coparcener and hence, she would be entitled to 1/3rd share in the suit properties, in view of the enactment of Hindu Succession Amendment Act 39 of 2005.

4. Aggrieved, the defendants 2 and 3 preferred an appeal in A.S.No. 29 of 2017. The lower Appellate Court on re-appreciation of the evidence found that the contention of the defendants that the plaintiff would not become a Coparcener has to be accepted, in view of the non-applicability of Hindu Succession (Tamil Nadu) Amendment Act 1 of 2009. Admittedly, the plaintiff has got married prior to the enactment of Act 1 of 1990 i.e., 25.03.1989 therefore, she would not become Coparcener, in view of the Section 29 A (iv) of the said Act. As regards the applicability of amending Act 39 of 2005, the lower Appellate Court rightly found that Sengoda Gounder died on 18.08.1998 and the devolution having been taken place immediately after the death of Sengoda Gounder, the plaintiff would not become Coparcener under Act 39 of 2005. On the above conclusions, the learned Principal District Judge granted 1/6th share to the plaintiff applying the theory of National Partition propounded under Section 6 of the Hindu Succession Act. The lower Appellate Court had worked out the shares as follows:-

Sengoda Gounder (Died) $\frac{1}{2}$			
- सत्यमेव जयते			
Kandayee (wife) (Died) (D1)	Palanisamy (son) (D2) $\frac{1}{2} + \frac{1}{6} = \frac{4}{6}$	Chellammal (Daughter) (D3) $\frac{1}{6}$	Pavayee (Daughter) $\frac{1}{6}$

5. Aggrieved, the defendants 2 and 3 have come forward with this appeal. The only contention of the learned counsel appearing for the appellants is that the lower Appellate Court had not considered the fact of the release deed said to have been executed by the defendants 1 and 3. I do not think the said the contention alone would alter the result of the appeal. The lower Appellate Court has applied the law correctly and

granted a just share that the plaintiff would be entitled to. The release is entirely a matter between the defendants 1 to 3. The lower Appellate Court had held that the release of the shares by Kandayee and Chellammal would be in respect of their shares and not in respect of the share of the plaintiff. Therefore, I do not find any illegality or irregularity in the judgment of the Courts below. I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. Hence, this appeal fails and accordingly dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kkn

To

1. The Principal District Judge,
Namakkal.
2. The Sub Judge,
Tiruchengode.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.79896

S.A.No.948 of 2019
and
C.M.P.No.20130 of 2019

MR(CO)
CS/08/06/2020

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