

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.288 of 2014 &
M.P.No.1 of 2014

1.Amsa @ Amsaveni
2.Latha
3.Sathyanarayanan
4.Sailaja

... Appellants/Defendants

Versus

Mrs.Kannammal (died)
Mrs.Gowrammal (died)
Mrs.Suseelammal (died)

1.Mrs.Jamuna
2.S.Rajeswari
3.S.Banumathi
C.Jayakrishna (Died)
4.S.Kaveri
5.K.Chitra
6.K.Somasundaram
7.K.Padma

... Respondents/Plaintiffs 4 to 6 and 8 to 11

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.31 of 2010 on the file of Sub Court, Gudiyattam, Vellore District, dated 28.11.2013, confirming the judgment and decree made in O.S.No.789 of 1999, on the file of the District Munsif Court, Gudiyattam, dated 20.07.2010.

For Appellants : Mr.K.A.Ravindran

For Respondents : Mr.R.Bharanidharan

JUDGMENT

The defendants in O.S.No.789 of 1999 on the file of District Munsif Court, Gudiyatham are the appellants. The suit was filed originally claiming 6/35 share to the first plaintiff and 1/7 share each to the plaintiffs 2 to 6. After the death of the plaintiffs 1, 2, 3 and 7, the prayer was amended seeking 4/5 share in favour of the plaintiffs.

2. According to the plaintiffs, Late Chengaiya Naidu, acquired the suit properties and he died intestate about 50 years back, leaving behind him his wife, 6 daughters and a son, as legal heirs. The only son Mohan died and the defendants are the wife and children of the deceased Mohan. The plaintiffs have further stated that the defendants 1 to 4 have indulged in adversely acting to the interest of the plaintiffs and hence, the suit.

3. It is the case of the defendants that the suit properties are joint family properties and hence, the defendants are entitled for half share in the suit property. It is further stated that the first defendant's husband Mohan occupied the third item of the property, which has been classified as Gramanatham and constructed house by spending his money. The suit was filed after lapse of 44 years and hence, the suit is liable to be dismissed on the ground of ouster.

4. On the basis of the pleadings, necessary issues were framed by the trial Court. The plaintiffs examined P.W.1 to P.W.3 and marked Exs.A1 to A10. The first defendant examined herself as D.W.1 and produced Exs.B1 to B3.

5. The trial Court, upon consideration of evidence adduced by the parties, passed a preliminary decree granting 4/5 share to the plaintiffs in respect of items 1 to 3 of the suit schedule properties and rejected insofar as item No.4 of suit schedule property. Aggrieved over the same, the defendants preferred an appeal before the Sub Court, Gudiyatham. The learned appellate Judge, confirmed the judgment and hence, the present appeal.

6. Mr.K.A.Ravindran, learned counsel for the appellants would submit that the Courts below have failed to appreciate both oral and documentary evidence in proper perspective. It is the contention of the learned counsel that the plaintiffs are not entitled for share in items 1 to 3 of the suit properties and the suit is liable to be dismissed on the ground of ouster.

7. Per contra Mr.R.Bharanidharan, learned counsel appearing on behalf of the respondents submitted that Exs.A1 and A2 would show that the property was purchased by Chengaiya Naidu and he died intestate. Further, no evidence was adduced to show that the suit properties are joint family properties of Chengaiya Naidu and the first defendant's husband-Mohan and hence, the concurrent finding need not be interfered.

8. Heard the rival submissions and perused the materials available on record.

9. In the case on hand, the suit has been filed for partition. According to the plaintiffs, under Exs.A1 and A2, the suit schedule properties were purchased by the father of the plaintiffs 2 to 6 and it was his self acquired properties. The defendants contended that the first defendant's husband-Mohan and the father of the plaintiffs 2 to 6, viz., Chengaiya Naidu, were jointly doing cloth business in a weekly market and hence, the character of the suit properties are joint family properties.

10. Perusal of the records reveal that no evidence was produced to establish that the suit properties are joint family properties. It is evident from Ex.A1 and A2 that item Nos.1 to 3 were purchased by Chengaiya Naidu. Though it was contended that the sixth defendant was adopted daughter of the plaintiffs 2 and 7, it was not proved. Both the Courts, on appreciation of evidence, came to the conclusion that the fourth item belongs to the husband of the first defendant, viz., Mohan on the basis of Ex.B1, and item Nos.1 to 3 are self-acquired properties Chengaiya Naidu, and granted preliminary decree in favour of the plaintiffs. Taking note of the facts, referred supra, I find no ground to interfere with the concurrent finding of the Courts below.

11. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

r n s

To

1. The Subordinate Judge,
Gudiyattam.

2. The District Munsif Court,
Gudiyattam.

Copy To

The Section Officer,

VR Section, High Court, Madras.

+lcc to Mr.K.A.Ravindran, Advocate SR.No.105388

+lcc to Mr.R.Karthikeyan, Advocate SR.No.105098

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MP (CO)

<https://hcservices.courts.gov.in/hcservices/>

GMI (03/10/2020)