

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.95 of 2014

and

MP.No.1 of 2014

1.Bakkiyam
2.Navinkumar

..Appellants/Plaintiff

Vs.

1.Angayammal
2.Soundaram @ Pappathi
3.Annapoorani
4.Minor Kalaiyarasi
5.S.R.Saminathan

..Respondents 1 & 2/Defendants 2 & 6

..Respondents 3 to 5/Defendants 3,4 & 7

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 06.07.2013 made in A.S.No.10 of 2013 on the file of the Principal District Judge, Erode against the judgment and decree dated 07.11.2012 made in O.S.No.152 of 2005 on the file of the First Additional Sub-Court, Erode by allowing this Second Appeal.

For Appellants : Mr.N.Manokaran

For Respondents : Mrs.Zeenath Begum

J U D G M E N T

It is stated that the 1st respondent Angayammal wife of Muthusamy Gounder had died pending appeal. The appellants 1 and 2 and the 4th respondent are the grandchildren of the 1st respondent through her son S.M.Kumarasamy. The 2nd respondent is the daughter. The appellants and the respondents 2 and 4 are the legal representatives of the deceased 1st respondent. Hence, they are recorded as legal representatives.

2. The plaintiffs in O.S.No.152 of 2005 are the appellants. The suit was one for partition. The trial Court granted a preliminary decree declaring that the plaintiffs would be entitled to 6/24th share in the suit properties.

3. Aggrieved by the said decree, the defendants 2 and 6 who also set up a Will said to have been executed by the deceased 1st defendant preferred an appeal in A.S.No.10 of 2013. The lower appellate court taking note of the introduction of the Hindu Succession (Amendment) Act, 39 of 2005 found that the 6th defendant would be entitled to a larger share since she should be treated as a coparcener as her father Muthusamy died on 09.03.2010, after the amendment of the Hindu Succession Act by Act 39 of 2005. As regards the Will which was marked as Ex.B1, both the courts disbelieved the same.

4. The plaintiffs have come forward with this Second Appeal only claiming that the lower appellate court was not right in granting enhanced share to the 6th defendant. The following questions of law were framed for consideration at the time of admission of the appeal:

"1. Whether the first appellate court is correct in law in treating the 2nd respondent/ 6th defendant as a coparcener under Section 8 of the Hindu Succession Act, 1956 (Act 39 of 2005) especially when the partition had taken place in the family as early as on 13.07.1990 (Ex.A4)?

2. Whether the claim of the 2nd respondent/ 6th defendant is barred by limitation under Article 110 of the Limitation Act?"

5. I have heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mrs.Zeenath Begum, learned counsel appearing for the respondents.

6. Mr.N.Manokaran, learned counsel appearing for the appellants would vehemently contend that in view of the fact that the partition was entered into in the year 1990 between Kumarasamy and Muthusamy under Ex.A4 as early as on 13.07.1990, the lower appellate court was not right in treating the 6th defendant as coparcener and granting her a larger share.

7. Contending contra, Mrs.Zeenath Begum, learned counsel appearing for the respondents would submit that the partition of the year 1990 was among Muthusamy and his brothers. Kumarasamy and Muthusamy were allotted one schedule of property. There was no partition between Muthusamy and Kumarasamy as such. Therefore, the lower appellate court was right in construing that the partition in the year 1990 did not disturb the joint family status of Muthusamy and Kumarasamy.

8. I have considered the rival submissions. The Hindu Succession (Amendment) Act, 39 of 2005 enacts a presumption that a daughter of a male Hindu who dies after the enactment of the said Act would become a coparcener. She should be allotted property as if she is a coparcener. Of course, the amending Act will not invalidate a partition which had taken place prior to the Act by way of a registered instrument.

9. In the case on hand though there was a partition in the year 1990 that was for a larger joint family between Muthusamy and his brothers, wherein Kumarasamy son of Muthusamy was also added as a party. There was no division by metes and bounds between the father and the son viz., Muthusamy and Kumarasamy in the said partition. Therefore, the joint family of Muthusamy and Kumarasamy essentially continued. Moreover, the properties purchased by Muthusamy under Ex.A1 to Ex.A3 though were purchased out of joint family nucleus were not made a subject matter of partition. Ex.A4 cannot be taken as a partition of the properties between Muthusamy and Kumarasamy which would put an end to the coparcenery that was existing between the father and son. In the absence of registered instrument of partition or a decree by the court effecting partition the exception under the Act 39 of 2005 cannot be invoked.

10. I am therefore of the considered opinion that the lower appellate court was definitely justified in concluding that the daughter, 6th defendant would also become coparcener and she will be entitled to a larger share left behind by Muthusamy. The questions of law raised are answered accordingly.

11. Therefore, the appeal fails and is dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

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To

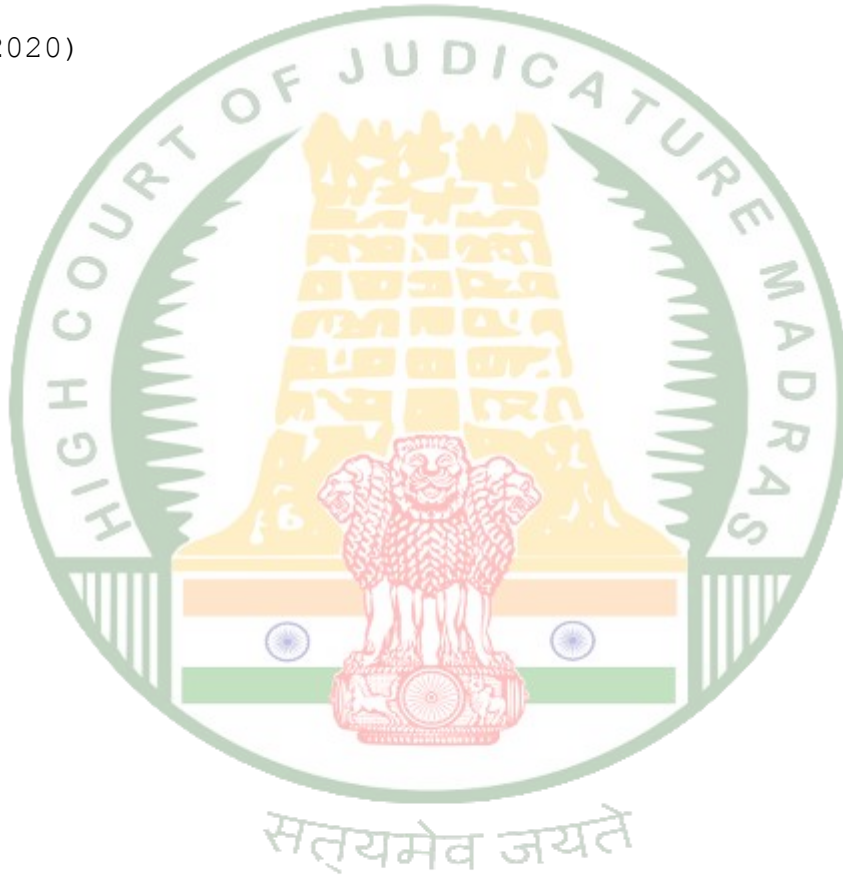
1. The Principal District Judge, Erode.
2. The First Additional Sub-Judge, Erode.

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 80855.

S.A.No.95 of 2014

MP (CO)
SP(18/09/2020)



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