

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A.S.No.666 of 2018
and
C.M.P.No.18202 of 2018

Jayaraman Kounder,
S/o.Late Ranganatha Kounder,
No.71, Villupuram Road,
Murugapakkam,
Mudaliyarpettai Commune,
Puducherry. ... Appellant

Vs

1.Malathi

2.Sumathi

3.Chandramoorthy
S/o.Veerappan,

4.Dharshini,
D/o.Chandramoorthy,

5.Minor Sanjay
S/o.Chandramoorthy,
Rep. by his father and natural guardian
3rd defendant Chandramoorthy

6.Lakshmi Ammal,
W/o.Late Purushothaman,

7.Mathiazhagan,
S/o.Late Purushothaman,

8.Krishnaraj Purushothaman

9.Babu,

... Respondents

PRAYER : Appeal against the Judgment and Decree in O.S.217 of 2012 dated 27.08.2018 on the file of the learned 1st Additional District & Sessions Judge, Cuddalore.

For Appellant :Mr.N.Suresh

For Respondents :Mr.K.Kumaresh Babu
for Mr.V.Balamurugane (for R1 to R5)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal suit has been filed against the Preliminary Decree and Judgment passed in the partition suit filed by respondents 1 to 5 against the mother of the plaintiffs and 5th defendant, who is a subsequent purchaser.

2.The case of the respondents/plaintiffs before the trial Court is that the properties belong to Mr.Govindasamy Kounder and Ms.Thayakannammal and Mr.Purushothama Kounder, who is the son of the aforesaid two persons. Mr.Govindasamy Kounder purchased the residential house in his name. Ms.Thayakannammal purchased the residential properties in her name, which is shown as item No.1 in the suit schedule. Item No.2 in the suit schedule property was purchased in the name of Mr.Govindasamy Kounder and item Nos.3 and 4 of the suit schedule property were purchased in the name of Purushothama Kounder. After the death of Mr.Govindasamy Kounder, Mr.Purushothaman Kounder along with his sons, who are D2, D3 and D4 executed the sale deeds in respect of item Nos.2 to 4 in favour of the appellant/5th defendant. Thereafter, the amendment to the Hindu Succession Act came into force. Relying that the right accrue to the plaintiffs, the daughter of Mr.Purushothama Kounder and children of pre-deceased daughter filed Suit for partition against Ms.Lakshmi Ammal/mother and their brothers/defendants 2 to 4 and subsequent purchasers/5th defendant/appellant and Joint Registrar-1, Cuddalore. In the said Suit preliminary decree was passed. That has been challenged by the subsequent purchaser/5th defendant, before this Court.

3.Heard Mr.N.Suresh, learned counsel appearing for the appellant and Mr.K.Kumaresh Babu, learned counsel, for Mr.V.Balamurugane, learned counsel for R1 to R5.

4.The relationship is admitted. The only question to be seen is whether the sale deed dated 02.06.1994 executed in favour of the appellant by the father and brothers of 1st and 2nd respondents/ sisters is valid or whether by virtue of becoming coparcenar, they are entitled to set aside the same even after getting a decree of partition. The trial Court, considering the fact, disbelieved the version put forth by the subsequent purchaser, stating that the will was executed in favour of the sons viz., respondents 7 to 9 by the grandfather viz.,

Mr.Govindasamy Kounder. However, it is a fact that the property was sold by Mr.Purushothama Kounder and three sons viz., respondents 7 to 9 on 02.06.1994 itself, whereas the partition suit was filed after 18 years, only after the amendment of Section 6 of the Hindu Succession Act, by which the daughters are also brought on par with the sons as a coparcenar. No doubt, the daughters have been made coparcenars by virtue of the amendment. However, there is an exception in proviso to Section 6(1) of the Hindu Succession Act. Section 6 of the Hindu Succession Act is usefully extracted as follows:

'6. Devolution of interest in coparcenary property.-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section - (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted. Explanation.-For the purposes of clause (a), the expression son, "grandson" or great-grandson shall

be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'

5.The proviso makes it very clear that the properties which have been alienated including through partition will be affected by virtue of amendment, which came into force on 20.12.2004, as admittedly, the properties were sold by the father and brothers as early as on 02.06.1994. De-hors the theory of the will, the property was already alienated on 02.06.1994. Therefore, the properties, which have been sold to the appellant is exempted from the amendment. Further the Honourable Supreme Court in Prakash and others Vs. Phulavati and others reported in (2016) 2 Supreme Court Cases 36 held as follows:

'22. In this background, we find that the proviso to Section 6(1) and sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the Amendment in Section 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th December, 2004 could be covered by the Explanation or the proviso in question.'

6.However it is made clear that item No.1 stands in the name

of Thayakannammal, which is the property in which all the parties have got interest and share and therefore the decree passed by the trial Court in respect of item No.1 is confirmed.

7. In view of the proviso to Section 6(1) of Hindu Succession Act, the Decree and Judgment passed in respect of item Nos.2 to 4 are liable to be set aside and accordingly set aside and this Court confirms the preliminary decree in respect of item No.1 alone.

Accordingly, the Appeal Suit is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

1. The I Additional District and Sessions Judge
Cuddalore.

+1 CC to Mr.N.Suresh, Advocate sr 580.

+1 CC to Mr.P.Muthu Kumaraswamy, Advocate sr 829.

A.S.No.666 of 2018

KS (CO)
SP(21/03/2019)

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