



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD) No.11 of 2009

and

C.M.P. (MD) Nos.3214 and 3266 of 2019

Jeyalakshmi

... Appellant / Plaintiff

Vs.

1.Murugeswaran

2.Vallamuthu Nadar (Died)

... Respondents / Defendants

(Memo USR.1192/12, recorded as R2 died. Appellant and R-1, who were already on record, are the LRS., of the deceased R-2, as per order dated 14.03.2019 in A.S.(MD)No.11 of 2009)

PRAYER: This Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.17 of 2006, on the file of the learned Additional District Judge (Fast Track Court-II), Thoothukudi, dated 24.04.2008.

For Appellant : Mr.M.P.Senthil

For R1 : Mr.V.Balaji

For R2 : Died

JUDGMENT

This Appeal Suit is filed, challenging the judgment and decree of the trial Court, dismissing the suit filed for partition.

2.The brief fact, leading to file this Appeal Suit, reads as follows:-

The plaintiff is the daughter of the second defendant and sister of the first defendant. It is the case that the property is their ancestral property. The second defendant, pursuant to the partition deed dated 04.05.1972, was in possession of the property. The property is in joint possession of the family members. Despite several requests made for amicable partition, the defendants did not agree for that. Hence, the suit was filed.

3.Admitting that the property is their ancestral property, it is the contention of the defendants that since the plaintiff had married in the year 1971, she is not a coparcener and the second defendant has executed a will in favour of his grandson on 02.02.2004, bequeathing the suit property, hence, prayed for dismissal of the suit.



4.The trial Court has framed the following three issues:-

- (i)Whether the plaintiff is entitled to 1/3 share?;
- (ii)Whether the plaintiff is entitled to share under Section 1 of Hindu Succession (Tamil Nadu Amendment) Act, 1990 (hereinafter referred to as 'the Act')?;
- (iii)Whether the will dated 02.02.2004 is valid and binding on the share of the plaintiff?;
- (iv)Whatever relief the plaintiff is entitled?.

5.On the side of the plaintiff, three witnesses were examined and Exs.A.1 to A.7 were marked. On the side of the defendants, one witness was examined and Exs.B.1 to B.11 were marked.

6.After careful perusal of the oral and documentary evidence, the trial Court has dismissed the suit, merely on the ground that the daughter is married in the year 1971. Therefore, under Section 29(A) of the Act 39 of 2005, she is not entitled to share. Against which, the present Appeal Suit is filed.

7.In the appeal, an application is also taken out by the defendants for reception of additional document, namely, settlement deed said to have been executed by the father / the second defendant, after disposal of the suit in favour of the first defendant. Similarly, the son of the first defendant has filed an application to impleade himself as party, contending that his grandfather / second defendant has executed a will in respect of the property in his favour.

8.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

9.The learned counsel appearing for the appellant would submit that the dismissal of the suit by the trial Court is against the law. On the date of filing of the suit, the father of the plaintiff / second defendant is very much alive. Therefore, the Act 39 of 2005 alone is applicable, whereas the trial Court has erroneously applied Section 1 of the Act, 1990 and dismissed the suit.

10.The learned counsel appearing for the respondents submitted that the trial Court has rightly applied the Act. Hence, the judgment of the trial Court does not require any interference.

11.Now, the points for consideration are (i)whether the plaintiff being the daughter of the coparcener, is not entitled to share in the ancestral property, particularly, when the coparcener, namely, the father / second defendant was very much alive on the date of suit; (ii)whether Act 1 of 1990 (Tamil Nadu Act) applied by the trial Court is correct or not; (iii)whether the application for reception of additional document is maintainable at this stage and whether the impleading application filed by the third



party is maintainable in this appeal.

12.I have perused the entire pleadings. There is no dispute with regard to the relationship and the plaintiff is none other than the daughter of the second defendant and sister of the first defendant. It is the specific case that the suit property is their ancestral property and inherited by the father. The character of the property is not in dispute. In the statement, it is specifically stated that the suit property is ancestral property and though it is pleaded by the defendants that the second defendant has executed a will dated 02.02.2004, the will has not seen light of the day. When admittedly, the property is ancestral property, bequeathing the entire property by the second defendant is not valid in law. At the most, if the will is proved, it will be valid only in respect of the 1/3 share of the second defendant. But, it is curious to note that the will has not been proved before the trial Court, whereas, the application has been filed by the beneficiary of the will in this appeal for impleading himself as a party. Therefore, this Court is of the view that impleading the third party is noway relevant to this proceedings. If at all the will is proved, binding it will be valid only in respect of the share of the second defendant, not entire property. Such being the position, this Court is of the view that the impleading application is liable to be rejected, accordingly, C.M.P. (MD) No.3214 of 2019 is rejected.

13.As far as the application of reception of additional document is concerned, the document sought to be filed is only settlement deed, which is executed by the father, after the dismissal of the suit. Such being the position, such settlement deed is also not relevant for the just decision of the lis. Accordingly, the application filed for additional document in C.M.P. (MD) No.3266 of 2019, is also rejected.

14.Now, in the merits of the case, the property is ancestral property as admitted by the defendants. The daughter had filed the suit, claiming her 1/3 share and his father was very much alive on the date of the Act 39 of 2005 came into force. Section 6 of the Act 39 of 2005 reads 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 manner as the son"

15.The suit has been filed in the year 2006 much after the Act 39 of 2005 came into force. The said Act came into force on 09.09.2005. On the date of the Act came into force, when the father / coparcener was very much alive, the daughter also acquires right



by birth. In such view of the matter, the judgment of the trial Court applying the Act 1 of 1990, is erroneous. As per the Central Act, when the property is remained undivided and the coparcener was very much alive on the date of commencement of Act, Act 39 of 2005 has to be necessarily applied.

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16. In such view of the matter, the finding of the trial Court that since the daughter was married in the year 1971, she is not entitled to share, is nothing but erroneous and the same is interfered. Accordingly, the points are answered and the judgment of the trial Court is set aside and the preliminary decree is passed for dividing the suit property into three share. The plaintiff is entitled for 1/3 share in the property and the defendants 1 and 2 each entitled for 1/3 share. If the defendants are advised, they can also seek for division of the share and get it allotted in the final decree procedure by paying proper court fee.

17. With the above observations, this Appeal Suit is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional District Judge, (Fast Track Court-II),
Thoothukudi.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M/S.M.P.SENTHIL, Advocate (SR-105516[F] dated
18/12/2019)

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-105731[F] dated
18/12/2019)

17.12.2019

NS (CO)

TR(07.01.2020) 4P 6C