

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 10.01.2020

Delivered on: 22.01.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.818 of 2007

and

M.P.No.1 of 2007

M.P.No.1 of 2008

Muthaiyammal ... Appellant/Appellant/Plaintiff

vs.

1.Govindasamy

2.Kumarasamy

... Respondents/Respondents/Defendants

Second Appeal is filed against the judgement and decree dated 17.10.2006 passed by the Principal District Judge, Erode District, in A.S.No.87 of 2005 confirming the judgement and decree dated 27.10.2003, passed by the I Additional Subordinate Judge, Erode, in O.S.No.438 of 1994.

For appellant :: Mr.N.Manokaran

For Respondents :: M/s.P.T.Ramadevi for R1 and R2

JUDGEMENT

This Second Appeal is filed by the plaintiff in the suit as against the judgement and decree, dated 17.10.2006, passed by the Principal District Judge, Erode District, in A.S.No.87 of 2005, confirming the judgement and decree, dated 27.10.2003, passed by the I Additional Subordinate Judge, Erode, in O.S.No.438 of 1994, which was one for partition and permanent injunction.

2.The appellant herein is the plaintiff and the respondents are the defendants, in the suit. The appellant/plaintiff approached the trial Court seeking for partitioning of the suit property, claiming herself to be one of the legal heirs of Ammaniammal. According to the plaintiff, Ammaniammal had a son Sellappa Gounder and a daughter Nallammal @ Sellayee Ammal. The plaintiff is the wife of Sellappa Gounder.

The daughter Nallaammal @ Sellayee Ammal, from her marriage, had two sons, viz., Govindasamy and Kumarasamy. The said Govindasamy and Kumarasamy are the defendants in the suit. The plaintiff's husband Sellappa Gounder died on 27.1.1992 and Ammaniammal's daughter Nallammal @ Sellayee Ammal died on 10.03.1992. Therefore, the widow of Sellappa Gounder, viz., Muthaiyammal, has insisted for partition of the property left behind by Ammaniammal, who died on 04.10.1993, and allot one such share in her favour, as against the grandsons of Ammaniammal, viz., D1 and D2, born through her daughter Nallammal.

3.The claim for partition was resisted by the defendants stating that as per Section 15 of the Hindu Succession Act, 1956, the plaintiff is not coming under Class-I legal heirs and therefore, she is not entitled to any share in the property, left by Ammaniammal. The entire case of the defendants rested on Section 15 of the Hindu Succession Act, 1956, as according to the said Section, the plaintiff is not entitled to any share in the property.

4.The trial Court, after appreciating the legal position in terms of Section 15 of the Hindu succession Act, 1956, dismissed the suit as not maintainable, as the plaintiff cannot call herself as Class-I heir nor claim any right in the intestate succession, after the death of Ammaniammal on 04.10.1993. As against the said judgement and decree of the trial Court, an appeal was filed before the Principal District Judge, Erode District, in A.S.No.87 of 2005.

5.The lower appellate Court, after recording the facts, viz., the death of Ammaniammal, on 04.10.1993, as borne out by death certificate marked as Ex.B1 and also the death of Sellappa Gounder, the husband of the plaintiff, on 27.01.1992, which was again borne out by death certificate marked as Ex.B2 and also the death of Nallammal @ Sellayee Ammal on 10.03.1992, as evidenced by the death certificate Ex.B3, held that the plaintiff, being the daughter-in-law of the deceased Ammaniammal, was not entitled to any share in the family property belonging to Ammaniammal, as the plaintiff was not a Class-I heir, since as per Section 15(1)(a) of the Act, the property of a female Hindu dying intestate, devolve firstly upon the sons and daughters, including the children of any pre-deceased son or daughter and the husband. Since the said Section excludes daughter-in-law as a Class-I heir and the Class-I heir were available, viz., defendants 1 and 2, the appeal came to be dismissed. Aggrieved by the said judgement and decree of the lower appellate Court, the present Second Appeal has been filed by the plaintiff.

6.The Second Appeal was admitted on 25.09.2007, on the following Substantial Question of Law:

"(1)Whether the plaintiff being the wife of pre-deceased son of Ammaniammal, not entitled to a share in the suit property, especially when the defendants are only grand sons born to the predeceased daughter of Ammaniammal? And

(2)Whether the judgment of the Courts below is contrary to the decision reported in 1998(II) CTC 236 (S.C.) (Seethalakshmi Ammal vs. Muthuvenkatarama Iyengar)?".

7.Mr.N.Manoharan, the learned counsel appearing for the appellant/plaintiff attempted to impress upon this Court about the entitlement of the plaintiff.

8.Section 15 of the Hindu Succession Act, 1956 reads as under:-

Section15. General rules of succession in the case of female Hindu - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

....."

9.A mere reading of the above Section makes it clear that since the plaintiff, being a daughter-in-law of Ammaniammal, is not coming under Class-I heir and therefore, she is not entitled to any share in the property of Ammaniammal. In fact, the decision of the Hon'ble Supreme Court of India, in the case of Seethalakshmi Ammal vs. Muthuvenkatarama Iyengar and another [1998(II) CTC 2360], would elucidate the legal principle in terms of Section 15 of the Hindu Succession Act, 1956, which is binding in all fours. Paragraph Nos.3 and 4 of the judgement read as under:

"3.This finding proceeds on a misconception of the provisions of the Hindu Succession act. Section 15 of the Hindu Succession act provides general rules of succession in the case of female Hindus. Under sub-section (1), the property of a Hindu female dying intestate shall devolve (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the

husband. Gomathi Ammal does not have any heirs falling under (a). Therefore, we have to examine who are the heirs of her husband. The heirs of a male Hindu are set out in the Schedule to the Hindu Succession Act. Heirs in class I include a widow of a pre-deceased son. The appellant fits this description. But the High Court has held that when Sesha Iyengar, the husband of Gomathi Ammal died, their son Venkatarama Iyengar was alive. So the appellant cannot be called the widow of a pre-deceased son.

4. In order to decide who are the heirs of a female Hindu under category (b) of Section 15(1), one does not have to go back to the date of the death of the husband to ascertain who were his heirs at that time. The heirs have to be ascertained not at the time of the husband's death but at the time of the wife's death because the succession opens only at the time of her death. Her heirs under Section 15(1)(b) will have to be ascertained as if the succession to her husband had opened at the time of her death. Thus, if at the time of Gomathi Ammal's death, there is any heir of her husband who fits the description in the schedule of being the widow of his pre-deceased son, she will be one of the heirs entitled to succeed. The status of the heir must be determined at the time of the death of the female whose heirs are being ascertained. The appellant was the widow of a pre-deceased son on the date when Gomathi Ammal died. Therefore, the learned single Judge was not right in coming to the conclusion that the appellant is not an heir of Gomathi Ammal."

10. Therefore, the arguments advanced by the learned counsel for the appellant/plaintiff need not be dealt with elaborately since Section 15 of the Hindu Succession Act, 1956 is very clear on this aspect and therefore, this Court cannot take any other view than the view adopted by both the Courts below. In any case, the Hon'ble Supreme Court of India, in the above case, has held the above legal position in clear terms in regard to such claims. Therefore, in all fours, this Court does not find any infirmity at all in the approach of both the Courts below and therefore, the judgements and decrees of both the Courts below have to be upheld.

11.In the light of the discussion supra, the substantial questions of law framed in the Second Appeal have to be answered against the appellant/plaintiff and accordingly, the substantial questions of law are answered against the appellant/plaintiff. The Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Msk

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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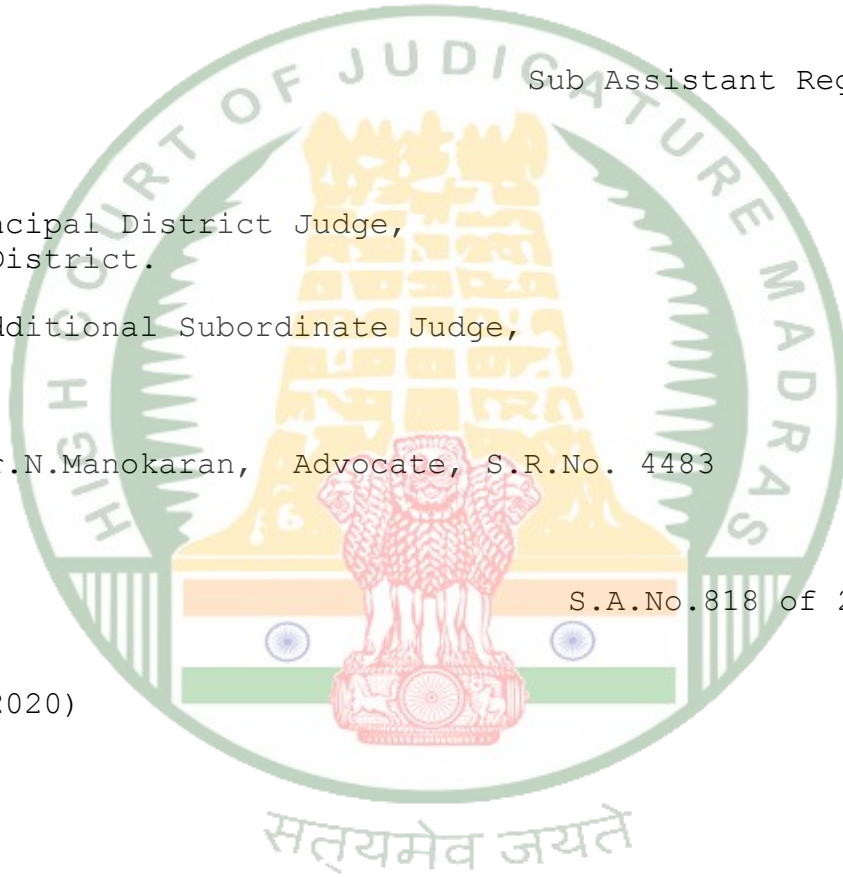
1.The Principal District Judge,
Erode District.

2.The I Additional Subordinate Judge,
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 4483

S.A.No.818 of 2007

SSD(CO)
GN(16/09/2020)



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