

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.304 of 2020 and
CMP No.6219 of 2020

Sarasu

..Appellant

Vs.

1. Vasantha
2. Jeyammal
3. Subramani

.. Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub Court, Rasipuram, dated 19.11.2019 in A.S.No.4 of 2014, confirming the judgment and decree of the District Munsif, Rasipuram dated 19.11.2013 in O.S.No.126 of 2012.

For Appellant : Mr.N.Manoharan

JUDGMENT

The plaintiff in O.S.No.126 of 2012 whose suit was dismissed by the trial Court, upon its affirmation by the lower appellate Court in A.S.No.4 of 2014 has come up with this Second Appeal.

2. According to the plaintiff, Item no.3 of the suit properties were

allotted to her father Lakshmana Gounder at a partition that took place between the family members on 29.11.1962. The other properties were purchased by the said Lakshmana Gounder from and out of the income from item 3. Lakshmana Gounder died on 18.11.2006. Contending that she would become coparcener along with Lakshmana Gounder under the the Hindu Succession (Amendment) Act, 39 of 2005, the plaintiff sought for partition and separate possession of her 1/3rd share in the suit property.

3. The suit was resisted by the defendants contending that the suit properties were not ancestral properties of Lakshmana Gounder. Even assuming that the suit properties were allotted in the partition that took place on 29.11.1962, Lakshmana Gounder being the sole surviving male member and sole surviving coparcener would have absolute power of disposition. It was also contended that Lakshmana Gounder had executed a settlement Deed on 15.12.2004 under Ex.B1 settling the properties in favour of the 3rd defendant, his grandson through one of his daughters.

4. The Courts below upon appreciation of the evidence on record,

accepted the defence and dismissed the suit for partition. Aggrieved the plaintiff has come up with this second appeal.

5. I have heard Mr.N.Manoharan, learned counsel for the appellant.

6. Mr.N.Manoharan, learned counsel for the appellant would vehemently contend that once it is admitted that Item No.3 of the suit properties were allotted to Lakshmana Gounder at a partition dated 29.11.1962, he held it as a coparcener and he had no right to settle the properties in favour of 3rd defendant. This argument of Mr.N.Manoharan over looks an important fiction of Hindu law that once properties are allotted at a partition to a sole male member of the family, he holds it as his self acquired / absolute properties till a son or daughter, who could claim as a coparcener is born to him.

7. In the case on hand, Lakshmana Gounder had three daughters. All the three daughters were married prior to 1989. Therefore, none of them could claim to be a coparcener under the Hindu Succession (Tamil Nadu

Amendment) Act, 1989 (Act 1 of 1990). Therefore, the character of the property in the hands of Lakshmana Gounder remained as his absolute property as he was the sole surviving male member of the family. Even assuming that item no.3 is an ancestral property, since he was in possession as a sole surviving coparcener, Lakshmana Gounder had absolute rights over the property and he can deal with the same in any manner he desires. Therefore, Ex.B1 settlement deed dated 15.12.2004 is a valid document. Admittedly, the Hindu Succession Amendment Act 39 of 2005 was enacted later and it has only limited retrospective effect. It nullified any alienation that took place after 20.12.2004. Therefore, the alienation by Lakshmana Gounder under Ex.B1 on 15.12.2004 is absolutely valid and the same cannot be questioned on the ground that Lakshmana Gounder had no power to settle the properties, which are ancestral in character. Under Hindu Succession (Amendment) Act 39 of 2005, only the alienation made on or after 20.12.2004 is nullified. The plaintiff who acquires a character of coparcener in view of the Act 39 of 2005 cannot question the alienation made by Lakshmana Gounder on 15.12.2004. The execution of the settlement deed Ex.B1 by Lakshmana Gounder has been proved in

accordance with law and the same has been upheld by the Courts below. I do not see any reason to conclude that the said finding of the Courts below, on the execution of Ex.B1 Settlement Deed, could be termed as perverse. Once the execution of the Settlement Deed was upheld and the property vested with the 3rd defendant, even on the date of the execution of the Settlement Deed dated 15.12.2004, I do not think the plaintiff has any right over the suit properties as coparcener because there was nothing left for the plaintiff to acquire any right even after the death of Lakshmana Gounder.

8. In view of the above, the second appeal fails and it is dismissed without being admitted as it is devoid of any substantial question of law. Consequently, connected miscellaneous petition is closed. No costs.

17.03.2020

vum
Index : Yes/No
Speaking order/Non speaking order

R.SUBRAMANIAN, J.

vum

To

1. The Sub Court,
Rasipuram.
2. The District Munsif,
Rasipuram.

S.A.No.304 of 2020 and
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