

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.637 of 2005
& CMP.No.9046 of 2015

1.M.Natesan

2.S.Duraiswamy ...Appellants/ Defendants 5 & 6

Vs.

1.S.Pachiammal ...1st Respondent/ Plaintiff

2.M.Ramaswamy

3.R.Manickammal

4.P.Bagyalakshmi

5.S.Rukmani

6.P.Sellammal

7.S.Baby ...Respondents 2 to 7/ Defenants 3 & 4,
7 to 10

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the Principal District Judge's Court at Coimbatore, dated 20.10.2004 in A.S.No.104 of 2002, reversing the judgment and decree of the II Additional Subordinate Judge's Court at Coimbatore, dated 31.07.2001 in O.S.No.492 of 1991.

For Appellants : Mr.S.Mukunth for
Sarvabhauman Associates

For Respondents : Mr.M.Praveen Kumar for
Mr.N.R.Ramsh Kanna for R1
R2, RR4 to 7 - No Appearance
R3-Died

JUDGMENT

Defendants 5 and 6 in O.S.492/1 991, which was laid for partition of plaintiff's 5/24 share in A and B schedules of suit-properties, having successfully non-suited the plaintiff before the trial court, but suffered a partial reversal in fortune before the first appellate court when it granted the plaintiff a preliminary decree for 1/30 shares in A-schedule

property, are the appellants herein. Parties would be referred to by their rank before the trial court.

2.1 The scope of the appeal lies within a very narrow lane and hence, the pleadings are stated only to the extent required. The present appeal is concerned only with A- schedule property. It deals with five items of agricultural properties with a combined total extent of about 19 acres. They were purchased by a certain Ramakkal, who is also known by the name Marudakkal, under Ext.A-1 sale deed dated 10.06.1928. Ramakkal's only son was Maruthachala Gounder, and on her death, these properties devolved on her son. Marudachal Gounder was married to a certain Deivanaiammal, and the couple had four sons and two daughter. The plaintiff is one of their daughters and so was the 4th defendant. Defendants 1 to 3 and 5 are Marudachalam's sons. During the pendency of the suit, the 1st defendant died, and his heirs are defendant 6 to 10. Of these defendants, 5th and 6th defedants have come forward with this appeal.

2.2. In his plaint the plaintiff has contended that Maruthachala Gounder had died some time between December and January 1958, whereas the defendant contend that Maruthachala Gounder had died even prior to 1956, more particularly, he died prior to the commencement of Hindu Succession Act, 1956 (in short Act). According to the plaintiff, on the demise of Marudachala Gounder, the properties devolved on his widow Deivanaiammal and her six children, each taking 1/7 share in the suit-properties. When her mother died, this share enlarged into 1/6 share in the property. Later, during the pendency of the suit, the 2nd defendant died issueless and intestate, and his share devolved equally on the plaintiff and the defendants 3 to 5 alone, thus further enlarging her shares to 5/24. She also alleges that she learnt that her brothers are making some preparations to sell some of the properties, and on enquiries she came to know that her brothers among themselves had executed a partition deed in 1967(which during trial came to be marked as Ext.A-3).

3.1 In their written statement, defendants 1,2, and 5 contended that the suit properties are purchased by the mother of these defendants out of the income from family properties, that their father Maruthachala Gounder died not in 1958, but on 10.01.1956, a few months before the Hindu Succession Act came into force, that both the plaintiff and the 4th defendant have been well provided during their marriages, that the brothers have partitioned the property under Ext.A-3 partition deed dated 10-09-1967, that the second defendant had died intestate bequeathing his properties under Ext.B-36 Will dated 15-07-1991, to the 6th defendant. The sixth defendant

contended substantially identically along the lines of the pleadings of the other defendants.

3.2 Only the 4th defendant stood separate to support the plaintiff. She pleaded, that even if Marudhachala Gounder had died prior to the coming into force of Hindu Succession Act, his widow and mother of plaintiff and defendants 1 to 5 had 1/7 share in the suit properties and that this defendant would be entitled to a share in it.

4.1 The matter went to trial, during which the plaintiff failed to prove the date of death of Maruthachala Gounder, and the trial Court dismissed the suit holding that since Maruthachala Gounder had died prior to the commencement of Hindu Succession Act, daughters, including the plaintiff would be excluded from inheritance. This apart, it held that since under Ext.A-3 the sons of Marudhachala Gounder had partitioned the properties even in 1967, the plaintiff is excluded of her share.

4.2 When dispute reached the first appellate court at the instance of the plaintiff, it held that even if Marudhachala Gounder had died prior to the advent of Hindu Succession Act, and even if the two daughters were excluded, still his widow Deivanaiammal would have had the right of maintenance, which right had matured into a substantiated right under sec.14(1) of the Hindu succession Act, and accordingly, she would be entitled to 1/5 share in the property along with her four sons, and when Deivanaiaammal had died in 1966, the plaintiff would succeed to her share and that she would be now entitled to 1/30 share. Accordingly, it granted a preliminary decree for 1/30 share in favour of the plaintiff in the A- schedule properties.

5. The appeal is admitted on the following substantial questions of law:

"(i) When the appellants had clearly pleaded and proved ouster as required under law, by producing material documents Exs.B1 to B39 apart from examining six witnesses, whether the lower appellate Court is correct in law in rejecting the plea of ouster on trivial grounds?

(ii) When Deivanaiaammal did not have any right over the suit properties, whether the lower appellate Court is justified in law in invoking the provisions of Section 14(1)(i) of Hindu Succession Act, 1956?

(iii) Whether the provisions of Section 15 of the Hindu Succession Act, 1956, are attracted, especially when the female Hindu dying interstate does not have any right over the suit properties?"

6.The learned counsel for the appellant only argued that the plaintiff has been ousted of her sharer in the house property, and this would be borne out by her testimony during her cross-examination, and took this Court to the cross-examination of the plaintiff (PW1), during which she had stated that she came to know of Ext.A3 partition only at the time of her examination before Court. The other portion of her deposition which the learned counsel for the appellant relied on was that PW1 would state that her sister, the 4th defendant in the suit, had earlier issued a suit notice to her brothers seeking partition of her share, but her brothers declined it. The learned counsel now sates that from these two statements of PW1, it is evident that she knew about the fact that she had been excluded from taking a share in the property. He also added that in her testimony the plaintiff speaks about certain sale made by the defendant to strangers who are not parties to the suit.

7.Per contra, the learned counsel for the plaintiff/first respondent argued that, to sustain a plea of ouster, a co-sharer pleading it must establish their animus to exclude the other co-sharer was made known to the latter. The animus to exclude cannot be wrapped in secrecy but ought to be communicated in a manner that the party sought to be excluded gets notice of his exclusion. It is only then, does the clock start ticking on the party, who is sought to be excluded of his right for seeking remedy within the period of limitation prescribed. So far as the appellants' contention goes reliance was essentially placed on two situations, both of which are not conclusive enough to conclude that the plaintiff has been ousted of her share in the suit properties to her knowledge.

8.On the point argued, this court does not find that there is even a pleading on ouster in any of the written statements of any of the contesting parties. And, mere execution of Ext.A-3 partition deed by defendants 1 to 3 and 5, without anything to disclose that the plaintiff was specifically put on notice of the intention of her brothers to exclude her from obtaining a share, would not be sufficient for this court to hold that the plaintiff has been ousted of her share in the suit properties. Necessarily, all the substantial questions of law fails.

9.This appeal is dismissed and the Judgment and decree of the Principal District Judge's Court at Coimbatore, dated 20.10.2004 in A.S.No.104 of 2002, reversing the judgment and decree of the II Additional Subordinate Judge's Court at Coimbatore, dated 31.07.2001 in O.S.No.492 of 1991 is upheld. Connected, miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal District Judge
Coimbatore

2. The II Additional Subordinate Judge
Coimbaroe

3.The Section Officer
VR Section, High Court, Madras.

1 cc tp Mr.N.R. Ramesh Kanna, Advocate, Sr. 23847

1 cc to M/s. Sarvabhuman Associates, Sr. 23064

S.A.No.637 of 2005
& C.M.P.No.4123 of 2005

SR (CO)
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