

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.09.2020	Delivered on 23.09.2020
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 469 of 2020
and
C.M.P.No. 10037 of 2020

Palaniammal ... Appellant/Plaintiff

-vs-

1.Ramasamy
2.Muniammal
3.Jaganathan
4.Sumathi
5.Gopal
6.Marappa Gounder ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 31.10.2019 made in A.S.No.66 of 2018 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal confirming the judgment and decree dated 17.02.2016 made in O.S.No.44 of 2012 on the file of the Ld.Sub-Court, Tiruchengode.

For Appellant : Mr.N.Manoharan

J U D G M E N T

The plaintiff, whose suit for partition and separate possession of her 1/5th share in O.S.No.44 of 2012 was dismissed by the Trial Court, upon its confirmation by the appellate court in A.S.No: 66 of 2018 has come up with this second appeal.

2. The plaintiff sued for partition claiming that the suit property originally belonged to her father, Rasa Gounder, son of Kalianna Gounder. The said Rasa Gounder had two daughters and two sons namely, Palaniammal (Plaintiff), Karupayee (deceased), Ramasamy (1st defendant) and Kaliannan (deceased). Marayee, wife of Rasa Gounder died on 01.01.2004. The defendants 2 to 4 are the legal heirs of the deceased Kaliannan, one of the sons of Rasa Gounder. The 5th defendant is the only legal heir of Karupayee(deceased daughter). The 6th defendant is the

purchaser of the suit property from the wife and sons of late Rasa Gounder. Claiming that the suit property belonged to an undivided Hindu joint family and the plaintiff-s father Rasa Gounder was in possession and enjoyment of the same till his death. The plaintiff claiming that by virtue of Hindu Succession (Amendment) Act, 39 of 2005, she would become a coparcenar along with her father Rasa Gounder. It is the further claim of the plaintiff that the alienation made by the wife and sons of Rasa Gounder as early as on 07.02.1977 is invalid.

3. The suit was resisted by the 6th defendant while the other defendants remained exparte. The 6th defendant filed a written statement contending that the suit is collusive in nature and he has become absolute owner of the property by virtue of the sale deed dated 07.02.1977 executed by the mother of the plaintiff namely, Marayee wife of Rasa Gounder representing her minor sons Kaliannan and Ramasamy. It was also claimed that the very sale was in discharge of a debt that Rasa Gounder owed to the 6th defendant. It was also pleaded that the amending Act 39 of 2005 would not apply in as much as the property itself has been alienated prior to the coming into force of the amendment Act. The 6th defendant would also contend that the suit is barred by limitation, since the same has been filed after 35 years from the date of the sale deed.

4. At trial, the plaintiff examined herself as P.W.1 and one Sengodan was examined as P.W.2 and Exs.A1 to A8 were marked. On the side of the defendants, 6th defendant was examined as D.W.1 and Exs.B1 to B9 were marked. Both the Courts below, upon consideration of the evidence on record had concluded that since Rasa Gounder died prior to the coming into force of the Hindu Succession (Amendment) Act, 39 of 2005, the plaintiff cannot claim as coparcener. It was also concluded that the property having been sold on 07.02.1977 and the plaintiff not having taken any steps for setting aside the sale, within a time allowed under law, cannot now claim a share by virtue of the amendment Act 39 of 2005. Upon such conclusion, the suit was dismissed. Aggrieved, the plaintiff has come up with this second appeal.

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

6. Mr.N.Manokaran would contend that in view of the latest judgment of the Hon-ble Supreme Court in Vineeta Sharma Vs. Rakesh Sharma dated 12.08.2020, the plaintiff should be treated as coparcener along with her father irrespective of the date of death of the father and therefore, she would be entitled to 1/5th share. I am unable to countenance the submission of the learned counsel for the appellant.

7. No doubt, the Hon-ble Supreme Court has held that a daughter of coparcener would become a coparcener along with her father irrespective of the date of death of her father as per amended Section 6. The argument of the learned counsel overlooks the proviso to Sub-section 1 of Section 6, which very clearly states that nothing contained in Sub-section 1, as amended 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. Admittedly, on the date of the sale, namely 07.02.1977, the plaintiff could have claim as a coparcener. It is only by virtue of the fiction created by the amending act 39 of 2005, the plaintiff is deemed to become a coparcener, therefore, the sale by the mother for herself and as a guardian of the two sons is perfectly valid, in so far as the claim of the plaintiff as a coparcener is concerned. Therefore, I do not think, the plaintiff can impugn the said alienation after 35 years on the ground that she had become a coparcener by virtue of Act 39 of 2005. The very object of the proviso is to weed out such stale claims.

8. Yet another contention of the learned counsel is that as per the old section 6 of the Hindu Succession Act, the interest of Rasa Gounder in the joint family property would devolve under Section 8 and she would get a 1/15th share in her capacity as a clause- 1 heir of Rasa Gounder. Therefore, according to Mr.N.Manoharan, the sale in respect of that 1/15th share is invalid. As already pointed out, the sale happened in 1977. The plaintiff, on the date of the suit is aged about 57 years. So, the year of her birth is 1955, she would have attained majority in 1973. She was a major on the date of the alienation but she has not chosen to question the alienation for nearly 35 years. The cause of action for her to question the alienation arose on the date of the sale deed i.e. 07.02.1977. The plaintiff having failed to initiate the action for over 35 years, cannot now claim a share under the guise of having become a coparcener by virtue of the amending Act.

9. I therefore, see no merits in the second appeal. This second appeal fails and it is accordingly dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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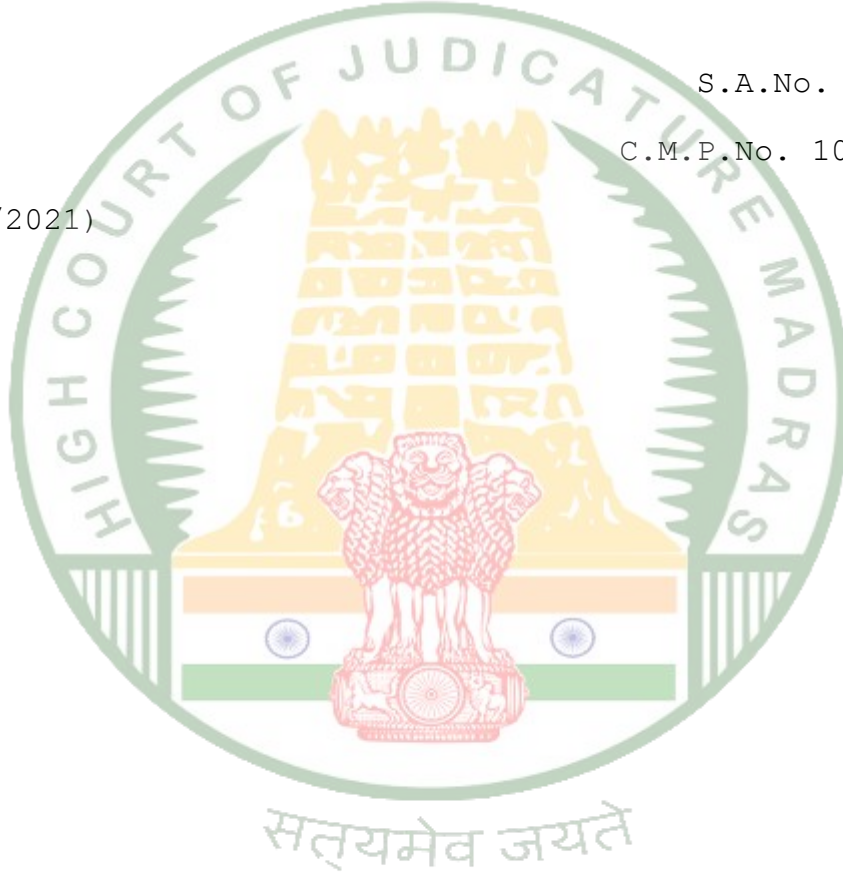
To:-

1. The Sessions Judge, Fast Track Mahila Court,
Namakkal.
2. The Sub Judge,
Tiruchengode.

+1 cc to M/s.N.Manokaran, Advocate Sr.No. 31221

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PA (CO)
RMP (21/04/2021)



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