

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA.NO.543 OF 2020

AND

CMP.NO.11679 OF 2020

1. C.P.Subramaniam @ C.P.Muthusamy Gounder
2. Kannaammal @ S.Kavitha .. Appellants/
Appellants/Plaintiffs 1 & 2

Vs.

1. Deivasigamani Gounder
2. Subbayal ... Respondents/Respondents/
Defendants 1 & 2

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and decree dated 23.11.2017 passed by the Principal District Judge, Erode in A.S.No.29 of 2017, confirming the judgment and the decree dated 01.11.2016 in O.S.No.38 of 2011 before the Subordinate Judge, Perundurai.

For Appellants : Mr.A.Thiyagarajan
For Respondents : Mr.V.Balamurugane,
for Caveator

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiffs in OS No.38 of 2011 have come up with this Second Appeal, aggrieved by the dismissal of their suit for partition and separate possession of their 1/3rd share.

2. According to the plaintiffs, the suit properties belonged to one Rasappa Gounder, who died in the year 1980, leaving behind one son and two daughters. One of the daughters viz., Poornam @ Poornammal is the wife of the first plaintiff and mother of the second plaintiff, she died on 20.04.1987.

Claiming that as the daughter she would become a coparcener upon the enactment of Hindu Succession (Amendment Act 39 of 2005) Act, the plaintiff's would seek a 1/3rd share in the estate of Rasappa Gounder.

3. This claim is resisted by the defendants contending that the predecessor in interest viz., Rasappa Gounder died in the year 1980 and after his death there was an arrangement under which the daughters viz., Poornam @ Poornammal and the second defendant Subbayal relinquished their share in the estate of Rasappa Gounder upon receipt of a sum of Rs.25,000/-. It was also contended that the first defendant has been in possession of the property as absolute owner thereof and has sold a portion of the properties to the knowledge of Poornam @ Poornammal, the plaintiffs and the second defendant. None of them had questioned the power of the first defendant to alienate the properties as absolute owner thereof. Therefore it was contended that the plaintiffs have been effectively ousted from the enjoyment of the property by the first defendant.

4. The second defendant filed a written statement entirely supporting the case of the first defendant. She also claimed that she and her sister had received a sum of Rs.25,000/- in full quit of their share and she has no claim over the properties of the deceased Rasappa Gounder.

5. At trial, the first plaintiff was examined as P.W.1 and one K.N.Chinnasami was examined as P.W.2. Exhibits A1 to A22 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and one Panneerselvam was examined as D.W.2. Exhibits D1 to D9 were marked.

6. The learned Trial Judge found that since Rasappa Gounder had died even in 1981 and Poornam @ Poornammal had died even in 1987 hence there is no question she becoming a coparcener to the estate of Rasappa Gounder in 2005, after the enactment of Act 39 of 2005. Of course the Trial Court had held that since Rasappa Gounder died in 1981, the succession having opened on the death of Rasappa Gounder, Poornam @ Poornammal would not become a coparcener.

7. The change in law brought about by the judgment in Vineeta Sharma v. Rakesh Sharma's case reported in (2020) SCC Online 641, would also not help the plaintiff, since the daughter herself had died in 1987 even prior to the enactment of the Hindu Succession (Amendment Act 39 of 2005) Act. Therefore, the claim that she becomes a coparcener cannot be entertained. The Trial Court further found that the first defendant has in fact been enjoyment of the property as full owner thereof and has ousted the plaintiffs from enjoyment of the property. On

the said findings, the Trial Judge dismissed the suit. Aggrieved the plaintiffs preferred an Appeal in AS No.29 of 2017. The learned Appellate Judge also concurred with the findings of the Trial Court and dismissed the Appeal. Hence the Second Appeal.

8. I have heard Mr.A.Thiyagarajan, learned counsel appearing for the appellants.

9. Mr.A.Thiyagarajan, learned counsel appearing for the appellants would contend that even conceding that the Poornam @ Poornammal, who died in 1987 would not become a coparcener in terms of the Hindu Succession (Amendment) Act 39 of 2005 she would still be entitled to a lesser share viz. 1/6th share as a Clause I heir of Rasappa Gounder under the unamended provisions of the Hindu Succession Act, 1956. He would point out that the defendant in the written statement has stated that at the worst the plaintiff would be entitled to 1/6th share in the suit properties. He would further contend that the claim ouster cannot be considered, since the parties are deemed to be in joint possession.

10. I have considered the submissions of the learned counsel for the appellant. No doubt, the first defendant in his written statement has pleaded that "at the worst, the plaintiffs would be entitled to 1/6th share in the properties," that by itself cannot mean that the plaintiffs should be granted a decree. The first defendant has also pleaded that there was a oral family arrangement by which the daughters viz. Poornam @ Poornammal the predecessor in interest of the plaintiffs and Subbayal the second defendant had relinquished their share after receiving a sum of Rs.25,000/-. The second defendant Subbayal had in fact filed a written statement affirming the said arrangement and the relinquishment of the properties by the daughters of Rasappa Gounder in favour of the first defendant. It is also seen from the documents filed that the first defendant had dealt with the properties as his own. Some of the properties have been sold and none of the purchasers are made parties to the suit.

11. The Courts below have analysed the evidence and have come to the conclusion that the first defendant had in fact ousted the plaintiffs from the enjoyment of the property. If the claim of the plaintiffs is to be restricted to Section 8 of the Hindu Succession Act, then the devolution of the estate happened on the death of Rasappa Gounder in the year 1981. The suit is filed 30 years thereafter in the year 2011. It is a stale claim which is sought to be resurrected for some other reason.

12. I therefore do not find any question of law much less substantial question of law in order to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv

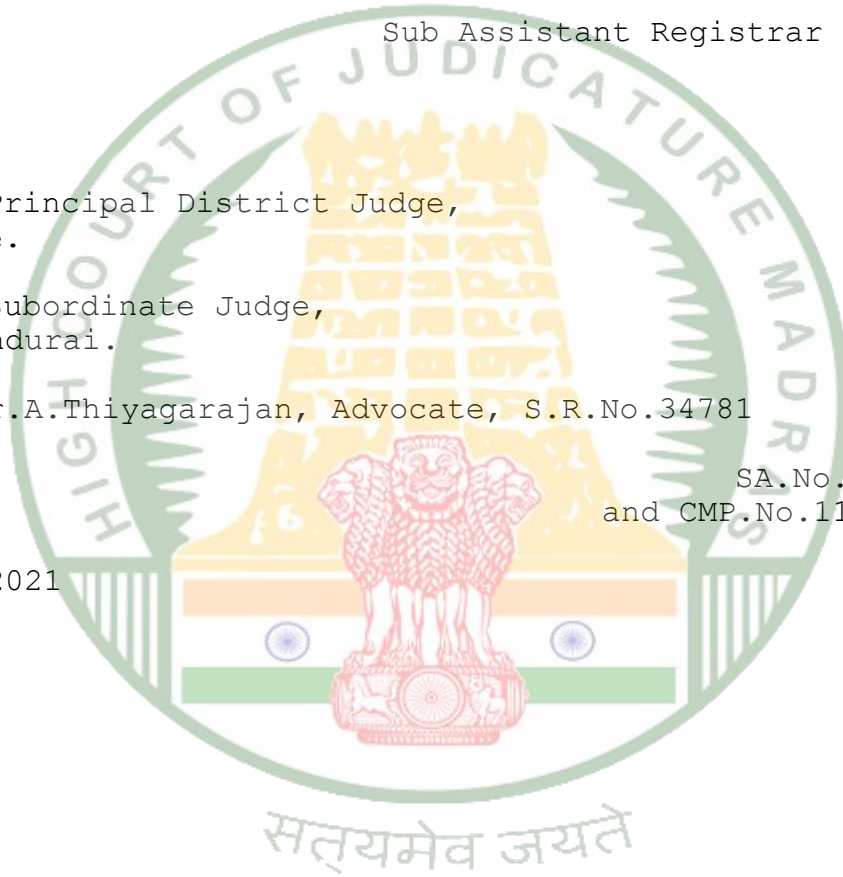
To

1. The Principal District Judge,
Erode.
2. The Subordinate Judge,
Perundurai.

+lcc to Mr.A.Thiyagarajan, Advocate, S.R.No.34781

SA.No.543 of 2020
and CMP.No.11679 of 2020

AD(CO)
CS/17/06/2021



WEB COPY