IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.708 OF 2014
&
M.P.NO.1 OF 2014

1.Karuppayammal
2.Pavathal .. Appellants

Versus

1.Karuppayammal
2.Samboornam .. Respondents

Prayer:-
Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree made in A.S.No.80 of 2013, dated 20.01.2014, on the file of Principal District Judge, Erode, confirming the Judgment and Decree made in O.S.No.184 of 2011, dated 30.04.2013, on the file of II Additional Subordinate Judge, Erode.

For Appellants : Mr.M.Guruprasad

For Respondents : Ms.Zeenath Begum

JUDGMENT

This appeal is directed against the Judgment and Decree of the Principal District Judge, Erode passed in A.S.No.80 of 2013, confirming the Judgment and Decree passed by the II Additional Subordinate Judge, Erode, in O.S.No.184 of 2011. The defendants in O.S.No.184 of 2011 are the appellants herein.

2. The case of the plaintiffs is that the suit properties were the ancestral properties of Chenniappa Gounder, who is none other than the husband of the first plaintiff and the father of the second plaintiff. The said Chenniappa Gounder died intestate on 18.05.1983. While he was alive, he kept the first defendant as his concubine and the second defendant was born to him. Therefore, the second defendant is entitled to 1/6 share in the suit properties and the plaintiffs are entitled to the remaining share in the suit properties. When the plaintiffs demanded for

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partition, there was no response from the defendants. Hence, a legal notice dated 02.02.2011 was issued, for which, the defendants sent a reply dated 07.02.2011, stating that the first defendant is the legally wedded wife of Chenniappa Gounder. Hence, the suit.

3. In the written statement filed by the first defendant, which was adopted by the second defendant, they have denied the allegations of the plaintiffs. It is stated that Chenniappa Gounder originally married the first plaintiff, since there was no issues for several years, he married the first defendant with the consent of the first plaintiff and out of marriage, the second defendant was born to them. It is further stated that the first defendant is none other than the first plaintiff's brother's daughter. The said Chenniappa Gounder divorced the first plaintiff in the presence of panchayatadars before the second marriage. After the death of Chenniappa Gounder, the second plaintiff and the defendants orally partitioned the suit properties and as per the oral partition, the defendants are in possession and enjoyment over the same and mutation in the revenue records had also taken place.

4. Based on the pleadings, the trial Court framed necessary issues. On behalf of the plaintiffs, two witnesses were examined as P.Ws' 1 and 2 and Exs.A1 to A11 were marked. On behalf of the defendants, three witnesses were examined as D.Ws' 1 to 3 and produced Exs.B1 to B6.

5. Upon consideration of the oral and documentary evidence, the trial Court granted a preliminary decree and the appeal preferred by the defendants was dismissed. Challenging the same, the present appeal has been filed.

6. Mr.M.Guruprasad, learned counsel for the appellants would submit that the Judgment and Decree rendered by the Courts below is manifestly erroneous, illegal, incompetent and unjust. He further added that the Courts below failed to appreciate that there was a oral partition between the appellants and the second respondent and when it is acted upon, there is no question of further partition that too with the first respondent. It is the contention of the learned counsel that the Courts below failed to take note of a vital aspect in the case that the age of the second appellant and the age of the second respondent and the first appellant's daughter is elder than the first respondent's daughter.

7. Per contra Ms.Zeenath Begum, learned counsel for the respondents would contend that the customary divorce alleged by the appellants was neither valid nor proved. The second marriage took place when the first marriage was subsisting. Both the

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Courts on appreciation of evidence, held on facts that the plaintiff is entitled to succeed in the suit and hence, no interference is required.

8. The learned counsel for the appellants has filed a Memo dated 19.02.2020, stating that pending appeal, the first respondent died on 28.10.2019, leaving behind her only daughter, viz., Saboornam as her legal representative who is already on record in the present appeal as second respondent. The said memo is taken on file.

9. Heard the rival submissions on either side and perused the materials available on record.

10. It is not in dispute that the suit properties were the ancestral properties of Chenniappa Gounder, who died intestate on 18.05.1983. According to the plaintiffs, the first defendant is the concubine of Chenniappa Gounder and the second defendant was born to them. Therefore, the plaintiffs are entitled to 5/6 share in the suit properties. It is the case of the defendants that as there was no issues in the first marriage, Chenniappa Gounder, with the consent of his wife contracted the second marriage. It is contended by the defendants that the said Chenniappa Gounder divorced the first wife in the presence of panchayatadars. It is the further case of the defendants that the second plaintiff and the defendants orally partitioned the suit properties after the death of Chenniappa Gounder. So, the suit is not maintainable.

11. To substantiate the above contentions, the brother and sister of the first defendant gave evidence as D.W.2 and D.W.3. D.W.2 deposed that the oral partition was effected in the presence of Panchayatadars for more than 31 years back, but during cross-examination, he categorically admitted that in their community, divorce cannot be effected by the Panchayatadars and he does not know when such panchayat was convened. D.W.3. during cross examination admitted that she does not know when such oral partition took place between the plaintiffs and the defendants. Hence, the trial Court, disbelieved the evidence of D.W.2 and D.W.3. No other evidence was produced to substantiate the case of the appellants / defendants. The Courts below have rightly held that mere payment of tax to the Revenue Authorities cannot confer right over the suit properties. Therefore, I find no merit in the submissions of the learned counsel for the appellants.

12. After analyzing both the oral and documentary evidence, the Courts below have granted relief in favour of the plaintiffs. In my considered opinion, the factual findings reached on proper appreciation of evidence, do not warrant

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interference in this Appeal. In that view, this Appeal is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Principal District Judge,
   Erode.

2. The II Additional Subordinate Judge,
   Erode.

3. The Section Officer,
   VR Section, High Court,
   Madras-104.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.14571
+1cc to Ms.Zeenath Begum, Advocate, S.R.No.14062

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