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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.1045 of 2012
and M.P.No. 1 of 2012

1. Lakshamma
2. Savithramma
3. Jayamma
4. Baby
5. N.Narayanan
6. N.Ramamurthy ... Appellants/Plaintiffs

Vs

1.N.Krishnan
2.The Special Officer,
K.K.127, Hosur Primary Agricultural
Co-operative Credit Bank,
Hosur Taluk,
Krishnagiri.
3.The Sale Officer,
K.K.127, Hosur Primary Agricultural
Co-operative Credit Bank,
Hosur Taluk,
Krishnagiri.
4.The Deputy Registrar of Co-operative Societies,
Krishnagiri. ... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 09.04.2012 made in O.S.No.67 of 2010 on the file of the Principal District Judge, Krishnagiri.

For Appellants : Mr.V.Nicholas
For R1, R3 & R4 : No appearance
For R2 : Mr.M.S.Palaniswamy



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JUDGMENT

The Appeal suit is filed against the Judgment and Decree dated 09.04.2012 made in O.S.No.67 of 2010 on the file of the Principal District Judge, Krishnagiri.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The brief case of the plaintiffs is that the plaintiffs and the first defendant are siblings. Their father possessed the suit properties and after his demise, the suit property was in possession and enjoyment of all the siblings along with their mother. No partition was happened between them and as such, the plaintiffs and the first defendant are entitled to 1/7th share in the suit property. Hence, the suit.

4. The defendants 2 to 4 filed their written statement stating that the plaintiffs 1 to 4 were married prior to 1980 and settled at their respective matrimonial home and they were not co-parceners as per the Amendment Act 1/90 and 39/2005 of the Hindu Succession Act. During the life time of their father, the first defendant and the plaintiffs 5 and 6 alone are the co-parceners and they constituted a Hindu Joint Family. Therefore, the plaintiffs 5 and 6 and 1st defendant were having 1/3rd share in the suit property. While being so, the first defendant borrowed a loan from the defendants 2 to 4 and as such, they have initiated the sale proceedings in execution proceedings in E.P.No.2 of 2001-2002 in ARC No.14 of 2000 against the first defendant herein to realise the award amount, which was passed for the misappropriation act done by the first defendant in the Co-operative Bank. In the execution proceedings, the defendants 2 to 4 had brought 1/3rd share of the first defendant in the suit schedule property. The total extent of the suit property is ad-measuring 10.26 acres, in which the defendants 2 to 4 had brought for sale is 3.42 acres for auction. Therefore, the 2/3 share in the suit property belongs to the defendants 5 and 6, which were not disturbed in the execution proceedings.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination in the suit :-

1. Whether the plaintiffs and the 1st defendant each have 1/7th share in the suit properties ?
2. Whether the suit properties were partitioned 5 years prior to the death of Nanja Reddy ?
3. Whether 5 and 6 plaintiffs and 1st defendant alone are owners of the suit properties ?
4. Whether 1 to 4 plaintiffs are not the co-



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- parceners as per Act 1/1990 and 30/2005 ?
5. Whether the defendants 2 and 3 have not right to have initiated auction proceedings against share of plaintiffs ?
 6. Whether the plaintiffs are entitled partition as prayed for ?
 7. To what relief the plaintiffs are entitled ?

6. On the side of the plaintiffs, they examined P.Ws.1 and 2 and marked Ex.A1. On the side of the defendants, they examined D.W.1 and no exhibits were marked. On considering the oral and documentary evidences adduced by the respective parties and on hearing the submissions made by the learned counsel, the Court below dismissed the suit. Aggrieved by the same, the present Appeal Suit is filed by the plaintiffs.

7. The learned counsel for the appellants would submit that admittedly, the plaintiffs 1 to 4 were married even before 1980 and as such they were not co-parceners as per Amendment Act 1/90 and Act 39/2005 of the Hindu Succession Act. Insofar as the plaintiffs 5 and 6 are the brothers of the first defendant herein and while their father was alive, they were born and as such became as co-parceners and constituted a Hindu Joint Family. Therefore, they were having $1/3^{\text{rd}}$ share in the suit property each. The Court below while dismissing the suit had not considered the share of the 5th and 6th plaintiffs and no share was allotted to them.

8. Per contra, the learned counsel for the second respondent would submit that the first defendant borrowed and misappropriated the funds in the Co-operative bank and the enquiry was conducted under Section 81. Thereafter, surcharge proceeding was passed and as per award passed in ARC No.14/2000, they filed an Execution Petition in E.P.No.2/2001-2002. Only $1/3^{\text{rd}}$ share of the suit property was brought for auction to realise the decree amount. The remaining $2/3^{\text{rd}}$ share of the suit property is very much available which belong to the plaintiffs 5 and 6 herein. In fact, they already partitioned the property between them during the life time of their father and after partition, the plaintiffs 5 and 6 were allotted their respective shares and they were in possession and enjoyment of the respective shares. The plaintiffs 1 to 4, only to maintain the suit, they simply added the plaintiffs 5 and 6 as the plaintiffs in the suit.

9. Heard, Mr.V.Nicholas, the learned counsel appearing for the appellants and Mr.M.S.Palaniswamy, learned counsel appearing for the 2nd respondent and none appeared on behalf of respondents 1, 3 and 4.



10. The appellants are the plaintiffs and filed a suit for partition seeking 6/7th share in the suit property. Admittedly, the property is an ancestral property. The plaintiffs 1 to 4 are daughters and the plaintiffs 5 and 6 and 1st defendant are sons born to one Nanja Reddy. The plaintiffs 1 to 4 were already married even before 1980. Therefore, even as per the Amendment Act 1/90 and 39/2005 of the Hindu Succession Act, the plaintiffs 1 to 4 are not co-parceners. As such, they are not entitled for any share in the suit property and the Court below rightly dismissed the suit. As far as the plaintiffs 5 and 6 are concerned, the Ex.A1 proved that the partition was effected even prior to 1984 and UDR patta issued in the year 1985. Accordingly, the plaintiffs 5 and 6 and the 1st defendant were allotted equal share in the suit property. In fact, the first defendant committed an offence of misappropriation of funds in the Co-operative bank and the surcharge proceedings award was passed in ARC No.14 of 2000. On the strength of the award, the defendants 2 to 4 filed an execution petition in E.P.No.2 of 2001-2002 and 1/3rd share in the suit property, which was already allotted to the first defendant alone was brought for sale. The total extent of suit property ad-measuring 10.26 acres in which, the only 3.42 acres was brought for sale to realise the decree amount. Insofar as, the 2/3rd share of the suit property ad-measuring 6.83 acres which were already allotted to the plaintiffs 5 and 6 is concerned and they were in possession and enjoyment of the respective shares. Therefore, the Court below rightly dismissed the suit. This Court finds no illegality or infirmity in the order passed by the Court below.

11. In the result, the Appeal Suit is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge, Krishnagiri.

+1cc to Mr.M.S.Palaniswamy, Advocate Sr No.31671

+1cc to Mr.V.Nicholas, Advocate Sr No.31802

A.S.No.1045 of 2012

GPL (CO)

PR (08/10/2021)