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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.466 of 2013

1.Saraswathi (Died) ...Appellant / 3rd Defendant

2.Ganesaa Murthi Kri

3.K.Sumathi

4.K.Padmavathy ...Appellants

(Appellants 2 to 4 brought on record
as LRs of the deceased 1st appellant
vide Court order dated 12.03.2020
made in CMP No.4568 & 4570 of
2020 in A.S.No.466 of 2013.)

Vs

1.S.Seerangan ...Respondent / Plaintiff

2.C.Gurusamy ...Respondent / 1st Defendant

3.S.Muthusamy ...Respondent / 2nd Defendant

PRAYER : Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree 24.01.2013 made in O.S.No.233 of 2011 on the file of the Principal District and Sessions Court, Erode.

For Appellants : Mr.V.Raghupathi

For R1 : Mr.M.Arun

For R2 & R3 : Mr.A.Sundaravadhanan

JUDGMENT

This Appeal suit is filed against the Judgment and Decree dated 24.01.2013 made in O.S.No.233 of 2011 on the file of the Principal District and Sessions Court, Erode.

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 plaintiff is that the defendants 1 and 2 are the sons and the 3rd defendant is the daughter of one



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Chennimalai Gounder. The suit properties are ancestral property. Therefore, the plaintiff called upon the defendants for an amicable partition by a legal notice dated 01.10.2001. The third defendant issued a reply notice stating that the suit properties have been already partitioned orally and she is entitled for 1/4th share in the suit property. The plaintiff and the defendants 1 and 2 along with the 3rd defendant received a compensation before the National Highway Authorities equally. Further, the plaintiff is entitled to have 1/16th share in the suit property. No oral partition took place between the parties. The third defendant got married prior to 1989 and only after her marriage their father died on 03.12.2000. Therefore, she is not entitled to claim any share as per the State Amendment Act as well as Central Amendment Act in the Hindu Succession Act. Hence, the suit for partition.

4. The defendants 1 and 2 filed a written statement and accepting the case of the plaintiff and prayed for the allotment as per the plaint.

5. The third defendant filed a separate written statement stating that item Nos.5, 10 and 11 of the suit properties are ancestral properties. Those properties were purchased out of self earnings of their father and grand father. Therefore, the third defendant is equally entitled for 1/4th share in the suit properties. As per the oral partition among them, the plaintiff and the defendants have received 1/4th share of compensation, which was given by the National Highway Authorities. Therefore, she is entitled for 1/4th share in the suit property.

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

1. Whether the plaintiff is entitled for partition and separate possession as prayed for ?
2. Whether the items 5, 10 and 11 are purchased from out of the joint family nucleus ?
3. Whether the 3rd defendant is not entitled to 1/4th share as per the oral partition between them ?
4. To what relief ?

7. On the side of the plaintiff, he examined P.W.1 and marked Exs.A1 to A32. On the side of the defendants, they examined D.Ws.1 to 3 and marked Exs.B1 and B2. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the Court below decreed the suit as prayed for and allotted 5/16th share to the plaintiff and the defendants 1 and 2 are allotted 5/16th share each. The third defendant is entitled to have 1/16th



share in the suit property. Aggrieved by the same, the third defendant preferred the present Appeal Suit.

8. The learned counsel for the appellants would submit that admittedly, some of the suit properties were acquired by the National Highway Authorities and paid compensation equally to all the plaintiff and the defendants nearly 1/4th share each. Therefore, she is entitled to have 1/4th share in the suit property instead of 1/16th share. He further submitted that there was no blending of ancestral properties and also for joint family properties. When it being so, the Court below ought to have concluded that the suit properties are self earning properties and the third defendant is also entitled to equal share. In this regard, the learned counsel for the appellant relied upon the judgment reported in 2020 (6) CTC 822 in the case of K.Subbulakshmi @ Pappayee Vs.C.V.Ramasamy Pillai (Died), in which, this Court held as follows :

"21. The Hon'ble Supreme Court of India held that the law on the aspect of blending is well settled that the property separate or self-acquired of a member of a Joint Hindu Family may be impressed with the character of Joint Family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein ; but to establish that abandonment a clear intention to waive separate right must be established. Therefore, having appreciated evidences on record, this Court concluded the plea that the "A" schedule property is the Joint Family property and as such the plaintiff is entitled for her share."

9. Heard, Mr.V.Raghupathi, the learned counsel appearing for the appellants and Mr.M.Arun, learned counsel appearing for the 1st respondent and Mr.A.Sundaravadhanan, learned counsel appearing for the 2nd respondent.

10. The suit is filed for partition by the plaintiff claiming 1/16th share in the suit property. Admittedly, the suit properties are ancestral properties. The plaintiff and the defendants 1 and 2 are the brothers and the third defendant is the daughter. The third defendant got married prior to 1989. After her marriage, prior to the amendment, her father died on 30.12.2000. The amendment Act 39/2005 in the Hindu Succession Act came into force and even before the amendment, the third defendant marriage was solemnized. Therefore, as per the Amendment Act 1/90 in the Hindu Succession Act cannot be construed as co-parcener. Therefore, she is entitled only from the share of her father. The Trial Court rightly decreed the suit and accordingly allotted 5/16th share in favour of the plaintiff and the defendants 1 and 2. The third defendant was



allotted 1/16th share in the suit property. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below. Since, the property is an ancestral property, the Judgment cited by the learned counsel for the appellants is not helpful to the case on hand.

11. In the result, the Appeal Suit is dismissed. No order as to costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Erode.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.V.Raghupathi, Advocate SR.No.31753

A.S.No.466 of 2013

RLD(CO)
RVM(26/10/2021)