



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2021

CORAM:

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

AS.No.1222 of 2015

and

MP.No.1 of 2015 and CMP.Nos.4177 & 4180 of 2021

G.Karunanithi

... Appellant/1st Defendant

Vs.

1.G.Venmadevi

...1st Respondent/Plaintiff

2.G.Manimegalai

...2nd Respondent/2nd Defendant

PRAYER:

Appeal Suit is filed under Section 96 of CPC against the judgment and decree of the learned I Additional District Judge of Salem dated 18.03.2015 in OS.No.76 of 2012.

For Appellant : Mr.J.Hariharan
for Mr.V.Nicholas

For Respondents
For R1 : Mr.M.Devaraj

For R2 : Mr.Vijay
for Mr.G.Purushothaman

JUDGMENT

The first appeal is filed against the judgment and decree of the learned I Additional District Judge of Salem dated 18.03.2015 in OS.No.76 of 2012.

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

3. The suit is filed for partition. The case of the plaintiff is that the plaintiff and the defendants are brother and sisters born to P.A.Govindan and Samundeeswari. The first item of the suit properties are the ancestral joint family properties. As per the koor chit dated 02.07.1989 executed between her father and his family members, in which 'C' schedule property was allotted to her father and he was put up in possession and enjoyment of the same. 'C' schedule property



which was mentioned in the coor chit are the first item of the suit properties. Her father died intestate on 07.03.2007 and his wife predeceased on 02.01.2006 leaving behind the plaintiff and the defendants as their legal heirs. They are in joint possession and enjoyment of the first item of the suit property. The suit second item of the properties was purchased in the name of the first defendant by virtue of sale deed dated 06.06.1985 out of the income derived from the ancestral property, i.e. the first item of the suit properties. Though the property was purchased in the name of the first defendant, he has no independent income and means to purchase the same. Therefore, the plaintiff is entitled to have 1/3 share in the suit properties. Hence, the suit.

4. Resisting the same, the first defendant filed written statement and admitted allotment in favour of their father in respect of the first item of the suit property. Insofar as the second item of the suit property, was not purchased from the income derived from the first item of the suit property. It is the self acquired property of the first defendant and while he was working in the dairy farm, he earned money and from the hard earned money, the second item of the suit property was purchased. Therefore, the plaintiff is not entitled for any share in the second item of the suit schedule property. During the life time of their father, he executed settlement deed dated 28.12.2006 and 25.01.2005 in favour of the first defendant in respect of the first item of the suit property. The plaintiff got married in the year 1985 and the second defendant's marriage was held in the year 1971 and the marriage expenditure and presentations were borne out by their father and as such the father settled the property in favour of the first defendant. The second defendant submitted to the decree.

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

1. Whether the suit properties are ancestral properties of the plaintiff and defendants?
2. Whether 2nd item property purchased from the income of joint family property?
3. Whether the plaintiff's father Govindan has executed a settlement deed dated 28.12.2006?
4. Whether the plaintiff is having 1/3 share in the suit properties?
5. Whether the plaintiff is entitled for permanent injunction as prayed for?
6. Whether the plaintiff is entitled for permanent injunction as prayed for?
7. To what relief the plaintiff is entitled to?

Additional Issues:

1. Whether the plaintiff is entitled for declaration declaring settlement deeds dated 04.05.1994, 25.01.2005 and 28.12.2006 as null



WEB COPY

and void?

2. Whether the declaratory relief to declare the settlement deeds as null and void is barred by limitation?
3. Whether the court fee paid is proper?
4. Whether 2nd defendant is having 1/3 share in the suit properties?
5. Whether the 2nd defendant is entitled for preliminary decree for partition and separate possession?
6. What other relief the plaintiff and 2nd defendant entitled to?

6. In support of the plaintiff's case, P.W.1 was examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, D.W.1 and D.W.2 were examined and no documents were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court partly decreed the suit. Aggrieved by the same, the first defendant has filed the present appeal suit.

7. The learned counsel for the appellant submitted that though the settlement deeds dated 25.01.2005 and 28.12.2006, which were marked as Ex.A6 and Ex.A7, declared as null and void, the father had his share in the suit property, since admittedly it is ancestral property. Therefore, the plaintiff, the defendants and their father are having $\frac{1}{4}$ share in the suit property. Therefore, in respect of father's share, he can very well settle the property in favour of the first defendant. Therefore, the first defendant is entitled to have his share and his father's share i.e. $\frac{1}{2}$ share in the suit properties. As per Hindu Succession (Tamil Nadu) Amendment Act, 1 of 1990 and Hindu Succession Amendment Act, 39 of 2005 clearly envisages the share from the ancestral property. Therefore, the first defendant is entitled to have $\frac{1}{2}$ share in the suit property.

8. Per contra, the learned counsel for the plaintiff submitted that the plaintiff as well as the second defendant got married even prior to 1989 and as such they are not entitled to invoke Hindu Succession Amendment Act, 39 of 2005. Further, when the settlement deeds dated 25.01.2005 and 28.12.2006 which were marked as Ex.A6 and Ex.A7 were declared as null and void, the first defendant is not entitled to have any share through the settlement deeds. Therefore, the court below rightly partly decreed the suit and does not require any interference by this Court.

9. Heard, Mr.J.Hariharan, the learned counsel for the appellant, Mr.M.Devaraj, the learned counsel for the first respondent, and Mr.Vijay, the learned counsel for the second respondent.

10. The only point arises in this appeal suit is whether the first defendant is entitled to have $\frac{1}{2}$ share in respect of



item 1 of the suit property except serial Nos.1 and 2. The plaintiff claimed 1/3 share in the suit property as co-parcener. As per the amended Section 6 of Hindu Succession Act, 1956, amended as per the Central Act, 39 of 2005, the right accrues to daughter in the property of the joint hindu family is absolute except in the circumstances provided in the provision amended to Section 6(1) of Hindu Succession Act. The excepted categories are that where disposition or alienation including any partition has taken place before 20.12.2004; and where testamentary disposition of property has been made before 20.12.2004. Ex.A5, settlement deed executed by her father dated 04.05.1984 in respect of serial No.2 of the first item of the suit property in favour of the first defendant. Therefore, it is valid and binding on the plaintiff and the second defendant and they are not entitled to claim any share in the said property.

11. After 20.12.2004, the plaintiff and the second defendant have become co-parceners for other properties. Accordingly, the other settlement deeds which were marked as Ex.A6 and Ex.A7 dated 25.01.2005 and 28.12.2006 executed by her father in favour of the first defendant are not binding on the plaintiff, since the property is ancestral in nature and the plaintiff along with defendants are co-parceners. When the plaintiff and the defendants are co-parceners after 20.12.2004, their father is also one of the co-parcener. Therefore in respect of the share of their father i.e. $\frac{1}{4}$ in the property is valid under the gift deeds, Ex.A6 and Ex.A7. After execution of the settlement deeds, their father died and as such the first defendant is entitled to have his share along with his father's share.

12. Accordingly, the first appeal is partly allowed and the judgment and decree passed by the learned I Additional District Judge of Salem dated 18.03.2015 in OS.No.76 of 2012 is modified only to the effect that the suit first item of the property except serial No.2, be divided into four equal shares, in which the plaintiff and the second defendant are entitled to have $\frac{1}{4}$ share each and the first defendant is entitled to have $\frac{1}{2}$ share. The remaining portion of the judgment and decree dated 18.03.2015 shall remain intact. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

lok



To

1. The I Additional District Judge
of Salem

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.V.Nicholas, Advocate SR.No.30477

AS.No.1222 of 2015

RR(CO)
GMY(09/09/2021)