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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM:

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

AS.No.578 of 2013 and
MP.No.1 of 2013

1.Daname @ Danalatchoumy

2.Ravy

3.Murugan

...Appellants/Defendants 1,4,5

Vs.

1.Andal

Respondent/Plaintiff

2.Patchaiammalle @ Malliga

3.Selvi

...2nd&3rd Respondents/Defendants2,3

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 11.09.2013 passed in OS.No.96 of 2010 on the file of the II Additional District Court, Pondicherry.

For Appellants : Mr.V.Raghavachari

For Respondents

For R1 : Mr.R.Thiagarajan

R2 & 3 : No appearance

JUDGMENT

The Appeal suit is filed against the judgment and decree dated 11.09.2013 passed in OS.No.96 of 2010 on the file of the II Additional District Court, Pondicherry.

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 suit property belonged to one, Thangavel Chettiar. He got married with one, Annapoorani and gave birth to one, Patchayappan @ Perumal and Chinnammal. After death of the said Annapoorani, he got another marriage with one, Kammatchi and gave birth to five issues, namely Saroja @ Panjali, Vasantha @ Kuppu, Kannan @ Kannappan, Sicila and Sekar @ Duraisamy. The



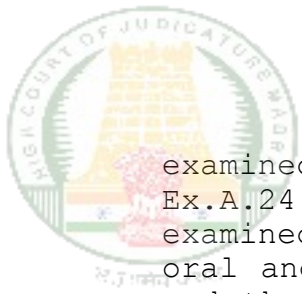
son born through Annapoorani got married the first defendant and begot with five issues, namely defendants 2 to 5 herein and the plaintiff. During the life time of Thangavel Chettiar, he executed registered settlement deed dated 11.09.1980 in favour of his children. As per the settlement deed, 'A' schedule property was allotted in favour of the son born through his first wife. Thereafter, on 01.07.1987, he executed sale deed in favour of one, Balamurugan insofar as the part of the property admeasuring 75 kuzhis in respect of the first item of the suit property out of 85 ares. Thereafter, he died on 18.05.2004 leaving behind the plaintiff and the defendants as his legal heirs. After his demise, they are all in joint possession of the suit property. Therefore, the plaintiff sought for partition.

4. Resisting the same, the fifth defendant filed written statement stating that their father borrowed huge loan amount from various third parties since 1982 and died without discharging any debts. Therefore, most of the debts incurred by their father were only towards marriage of the plaintiff. In fact, all the properties were already handed over to the possession of the creditors by their father and after settling the entire debt, the property was recovered from the creditors by the defendants. The fourth defendant is the Government servant and he had settled the entire loans availed by their father. Therefore, the plaintiff is not entitled to have any share in the suit property and prayed for dismissal of the suit.

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

- (i) Whether the plaintiff is entitled for preliminary decree for partition and separate possession of the suit schedule mentioned properties by metes and bounds into six equal shares as between the plaintiff and the defendants and allot 1/6th share to the plaintiff?
- (ii) Whether plaintiff is entitled for delivery of 1/6th share in the suit schedule mentioned properties?
- (iii) Whether plaintiff is entitled for final decree?
- (iv) Whether plaintiff is entitled for permanent injunction restraining the defendants from alienating or encumbering the suit properties to any third parties?
- (v) To what relief the plaintiff is entitled to?

6. In support of the plaintiff's case, P.W.1 to P.W.3 were



examined and twenty four documents were marked as Ex.A.1 to Ex.A.24. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.10 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 decreed the suit that the plaintiff is entitled to have 1/6 share in the suit properties. Aggrieved by the same, the defendants 1, 4 and 5 have preferred this appeal suit.

7. The learned counsel for the appellants would submit that the deceased Pachiappan died on 18.05.2004 and on which date, the plaintiff and the defendants 2 and 3 cannot be treated as co-parceners. After promulgation of Hindu Succession Act by the parliament, any customary law contrary to the Parliamentary Statute is null and void. Therefore, the customary law would not apply to the State of Pondicherry and Central Act, 39 of 2009 will apply to the State of Pondicherry. As such, the plaintiff never became co-parcener and she is not entitled to have any share over the property. He further submitted that the vested right cannot be divested and consequently, the rights of the appellants to the property cannot be removed abrogated of bestrewed by later events. Therefore, he prayed for dismissal of the suit.

8. Per contra, the learned counsel for the respondents submitted that the plaintiff and the defendants belong to Pondicherry and not to the State of Tamil Nadu. Therefore, applying the law relating to Hindu woman in the state of Pondicherry is set out in the legal position in the case of Ramalingam Vs. Manicka Gounder reported in (1980) 1 MLJ 350. The said judgment has been followed by this Court repeatedly and as such the plaintiff has right over the property and the trial court rightly allowed the suit and allotted 1/6 share in the suit property. As such, he prayed for dismissal of the appeal suit.

9. Heard, Mr.V.Raghavachari, the learned counsel for the appellants, and Mr.R.Thiagarajan, the learned counsel for the first respondent.

10. The only point for consideration in this appeal is the right of a Hindu domiciled in Pondicherry, who claims any right on the basis of devolvment of ancestral property.

11. Admittedly, the plaintiff and the defendants belong to Pondicherry. In the judgment of the Hon'ble Division Bench of this Court in the case of Viswanathan Vs. Savarimouthurayan reported in 2004 (2) LW 259, the legal position has been directly set out in paragraph 10, which reads as under:



10. The learned Judge in the decision in Ramalingam v. Manicka Gounder, 1980(1) M.L.J. 350, has held as follows:-

"10. In the event, I think, it would be proper to hold that under the Hindu law as in vogue in Pondicherry all properties held by a father in a joint family are his absolute properties, whatever might be their origin or their modes of acquisition, and all of them devolve on his death in accordance with the law which governs succession to a male Hindu's absolute estate. This was the law as administered in Pondicherry when the Hindu Succession Act, 1956 came to be extended to that territory in 1963.

Therefore, the legal position is very clear and the plaintiff is entitled to have 1/6 share in the suit properties. The property of a male Hindu when devolve on his sons and daughters in the absence of any other clause 1 heirs as per Section 6, under Section 10, the sons and daughters would share the property equally as between themselves. Therefore, the law of succession is applicable to the parties and Hindu Customary Law prevalent in Pondicherry.

12. Admittedly, the property was allotted in favour of the plaintiff and the defendants' father by the settlement deed dated 11.09.1980. During his life time, he conveyed part of the property in favour of one, Balamurugan and after his demise on 18.05.2004, the remaining properties devolved on his legal heirs. Therefore, the plaintiff is entitled to have her share in the suit properties. As such, the court below rightly allowed the suit.

13. In fine, the first appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Deputy Registrar

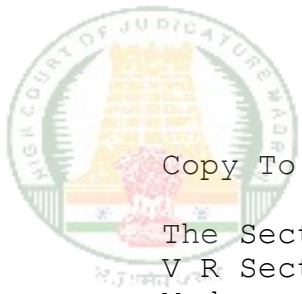
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Sub Assistant Registrar

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To

The II Additional District Judge,
Pondicherry.



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

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+1cc to Mr.V.Raghavachari, Advocate, S.R.No.32257

AS.No.578 of 2013

LN (CO)
RGA (16/11/2021)