



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1011 of 2008

A.K.Gomathi ...Appellant/Respondent/Plaintiff

Vs.

1.R.Kuppannagounder (died)

2.Jayamani

3.Saraswathi ...Respondents/Appellant/Defendant

(Respondent 2 and 3 are brought on record as Lrs of the deceased Respondent vide order of the Court dated 06.08.2010 made in M.P.No.1/2009 in S.A.No.1011 of 2008)

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 19.12.2006 passed in A.S.No.91 of 2006 on the file of the Additional District Court, Fast Track Court No.IV, Bhavani, reversing the judgment and decree dated 01.07.2005 passed in O.S.No.933 of 2004 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

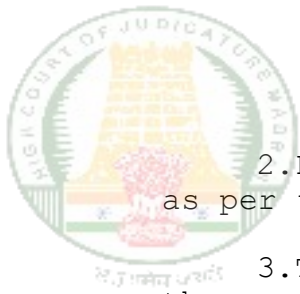
For Respondent No.1 : Died

For Respondent No.2 : Mr.K.Ponmani
for M/s.Zeenath Begam

For Respondent No.3 : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 19.12.2006 passed in A.S.No.91 of 2006 on the file of the Additional District Court, Fast Track Court No.IV, Bhavani, reversing the judgment and decree dated 01.07.2005 passed in O.S.No.933 of 2004 on the file of the Principal District Munsif Court, Bhavani.



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

3. The plaintiff in O.S.No.933 of 2004 is the appellant in the second appeal.

4. Suit for partition and permanent injunction.

5. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the First Appellate Court is correct in law in dismissing the suit in its entirety holding that D.W.3 is also entitled to get share in the suit property as per the Tamilnadu Act 1 of 1990 even though there is no legal evidence on record to show that her marriage took place on or after the amended Act came into force on 25.03.1989?

2. Whether the first appellate Court is correct in law in dismissing the suit for non-joinder of D.W.3 as party defendant in the suit even though under Order 1 Rule 9 and Order 1 rule 10 CPC no suit fail because of non-joinder of parties, particularly when the Court below has the power under Order 1 Rule 10(4) CPC to give direction to implead a person who is a necessary party?"

6. Claiming that the suit properties are the ancestral properties and the plaintiff being the daughter of the defendant and by invoking the Hindu Succession (Tamil Nadu Amendment) Act, 1/1990, the plaintiff has laid the suit against the defendant claiming half share in the suit properties.

7. The defendant resisted the plaintiff's suit on various grounds, inter alia, that assuming the suit properties are the ancestral properties, the plaintiff would be entitled to obtain only 1/6 share and her sister Jayamani would be entitled to get 1/6 share and the defendant would be entitled to 4/6 share and the plaintiff's suit is liable to be dismissed for non-impleading her sister viz., Jayamani in the partition suit and accordingly, prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A4 were marked. On the side of the defendant, DWS1 to 3 were examined and no documentary evidence has been marked.



9. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the trial Court declared that the plaintiff is entitled to obtain half share in the suit properties and accordingly, granted the preliminary decree in favour of the plaintiff as prayed for in the plaint. Impugning the judgement and decree of the trial Court, the defendant preferred the first appeal. The first appellate Court, on a consideration of the materials available on record, both oral and documentary and the submissions put forth, dismissed the plaintiff's suit by holding that the plaintiff's sister Jayamani is also entitled to secure a share in the suit properties and the plaintiff's failure to implead her sister viz., Jayamani as a party to the proceedings is fatal to the case of the plaintiff and resultantly, by way of allowing the appeal preferred by the defendant, set aside the judgment and decree of the trial Court and consequently, dismissed the plaintiff's suit. Impugning the same, the second appeal has been preferred.

10. The character of the suit properties is not in dispute. It is thus noted that the suit properties are the ancestral properties belonging to the plaintiff and the defendant. The defendant having died during the pendency of the second appeal, it is seen that his LRs viz. the plaintiff's sister Jayamani and wife of the deceased defendant R. Kuppanna Gounder viz., Saraswathi had been arrayed as R2 and R3 in the second appeal. Taking into consideration the Hindu Succession (Tamil Nadu Amendment) Act, 1/1990, the parties went for trial claiming share in the ancestral properties, mainly, focusing on the date of marriage of the plaintiff and her sister Jayamani.

11. However, during the course of arguments, it has been fairly admitted by the plaintiff's counsel as well as the defendant's counsel i.e. R2's counsel, the parties are as at present would be governed by Hindu Succession (Amendment) Act, 2005, which came into force from 09.09.2005. In such view of the matter, following the principles of law outlined by the apex Court in the decision reported in 2020 9 SCC 1 (Vineeta Sharma Vs. Rakesh Sharma and others) irrespective of the date of marriage of the daughters as contemplated under Hindu Succession (Tamil Nadu Amendment) Act 1/1990, it is seen that the daughter born before the date of enforcement of 2005 Amendment Act has the same rights as the daughter born on or after the amendment and there is also no requirement of the coparcener father to be alive on the date of coming into force of the abovesaid amendment and in view of the abovesaid position of law, when it is seen that the daughter becomes a coparcener with effect from 09.09.2005 irrespective of whether she was born before the Hindu Succession (Amendment) Act, 2005 or on or after the abovesaid amendment Act, it is evident that the daughters of the first



defendant as well as the deceased defendant would be entitled to equal share in the suit properties. When admittedly, the suit properties are the ancestral properties belonging to the parties, it is thus noted that the plaintiff, the deceased defendant and Jayamani R2 impleaded in the second appeal would be each entitled to obtain 1/3 share in the suit properties. Inasmuch as the defendant had died during the pendency of the second appeal, his 1/3 share in the suit properties would devolve upon the plaintiff, R2 Jayamani and R3 Saraswathi, the wife of the defendant and thus, it is noted that the plaintiff and R2 Jayamani would be each entitled to obtain 4/9 share in the suit properties and R3 Saraswathi, wife of the deceased defendant would be entitled to obtain 1/9 share in the suit properties, in view of the principles of law outlined in the apex Court in the decision referred to supra.

12. In the light of the abovesaid determination qua the quantum of shares to which each of the parties would be entitled to in respect of the suit properties, the substantial questions of law formulated in the second appeal are not required to be answered as such, particularly, when as at present the parties are only governed by Hindu Succession Amendment Act 2005 and the sister Jayamani having been impleaded in the second appeal proceedings as the LR of the deceased defendant also, the question whether the plaintiff's suit is bad for non-joinder of Jayamani or not pales into insignificance.

For the reasons aforesaid, the judgment and decree dated 19.12.2006 passed in A.S.No.91 of 2006 on the file of the Additional District Court, Fast Track Court No.IV, Bhavani, as well as the judgment and decree dated 01.07.2005 passed in O.S.No.933 of 2004 on the file of the Principal District Munsif Court, Bhavani, are set aside and the plaintiff is held to be entitled to obtain 4/9 share in the suit properties and accordingly, there shall be a preliminary decree in favour of the plaintiff as prayed for in the plaint inclusive of the relief of permanent injunction till the share of the plaintiff is divided by metes and bounds and accordingly, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(JJ Act)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Judge,
The Additional District Court,
Fast Track Court No.IV, Bhavani.
2. The Judge,
The Principal District Munsif Court,
Bhavani.
3. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.14677

S.A.No.1011 of 2008

VG-II(CO)
RGA(19/11/2021)