



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.02.2021

PRONOUNCED ON:26.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.NO.1454 OF 2008

1. Sumathi,
W/o, late Kandasamy
2. Minor Deepika
represented by,
Guardian and Mother Sumathi,
D/o, late Kandasamy

both residing at
Pachapalli,
Mettunasavampalayam,
Erode Taluk.

... Appellants

.Vs.

Chinnamal @ Ponnayal,
W/o, Ramasamy,
Mettunasavampalayam,
Erode Taluk.

... Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.04.2008 made in A.S.No.26 of 2008 on the file of the I Additional District Court, Erode, reversing the judgment and decree dated 30.09.2005 made in O.S.No.16 of 2004 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr.T.Murugamanickam, SC
for M/s.V.Rajesh

For Respondent : Mr.S.Thangavel

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 28.04.2008 passed in A.S.No.26 of 2008 on the file



of First Additional District Court, Erode, reversing the judgment and decree dated 30.09.2005 passed in O.S.No.16 of 2004 on the file of the First Additional District Munsif Court, Erode.

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

3. The defendants in O.S.No.16 of 2004 are the appellants in this second appeal.

4. Suit for partition.

5. The case of the plaintiff in brief is that the plaintiff is the mother, the first defendant is the wife and the second defendant is the daughter of Kandasamy who died on 30.01.2002 leaving behind the plaintiff and the defendants as his legal heirs. The suit properties had been allotted to Kandasamy by way of a registered partition deed dated 14.11.2000 entered into between him and his father Ramasamy Gounder and since the date of partition, he is in the possession and enjoyment of the suit properties till his demise and thereafter his legal heirs namely the plaintiff and the defendants had been in the joint possession and enjoyment of the suit properties. Due to a family quarrel, misunderstanding arose between the plaintiff and the defendants. Therefore, it has become impossible to continue the joint possession and enjoyment of the suit properties and therefore the plaintiff demanded the defendants to effect the partition and allot the due share in the suit properties and as the defendants have not responded positively, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that it is true that the plaintiff and the defendants are the legal heirs of the deceased Kandasamy and also true that the suit properties allotted to Kandasamy by way of the partition deed dated 14.11.2000 and according to the defendants, the suit properties are ancestral in character and therefore by birth, the second defendant is entitled to half share in the ancestral properties and in the properties allotted under the partition deed, the deceased Kandasamy would be entitled to only half share and the second defendant is entitled to half share and therefore to say that the plaintiff is entitled to 1/3 share in the suit properties is incorrect and against law and the plaintiff would be entitled to obtain only 1/6 share in the suit properties and further according to the defendants, the plaintiff is not willing to live along with the defendants and in the presence of the well wishers of the family, obtained a sum of Rs.50,000/- in cash and relinquished her share in the suit properties to the second defendant and therefore after the



oral relinquishment, the plaintiff is not entitled to seek and claim any share in the suit properties and the plaintiff is not in the possession and enjoyment of the suit properties and hence according to the defendants, there is no cause of action for the plaintiff to lay the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A4 were marked. On the side of the defendants', D.Ws.1 and 2 were examined. No document has been marked.

8. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial court was pleased to declare that the plaintiff is entitled to 1/6 share in the suit properties and accordingly granted the decree in favour of the plaintiff. Impugning the judgment and decree of the trial court, the first appeal has been preferred by the plaintiff and the first appellate court, on an appreciation of the materials available on record, both oral and documentary and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, declared that the plaintiff is entitled to obtain 1/3 share in the suit properties and accordingly disposed of the appeal preferred by the plaintiff. Challenging the judgment and decree of the first appellate court, the present second appeal has been laid by the defendants.

9. At the time of admission, the following substantial questions of law were formulated for consideration.

(a) Whether the judgment of the Lower Appellate Court is vitiated in that it has misinterpreted the application of the judgment reported in AIR 1979 Madras p.1(FB) to the facts of the present case?

(ii) When the plaintiff has admitted that the second appellant herein was in the womb of the first appellant at the time of the death of the appellant's husband, then whether the Provisions of Section 20 of the Hindu Succession Act will not govern the rights of the second appellant herein?

10. The relationship between the parties is not in dispute. It is thus found that the plaintiff and the defendants are the legal heirs of the deceased Kandasamy, who died on 30.01.2002. The plaintiff is the mother, the first defendant is the wife and the second defendant is the daughter of the deceased Kandasamy. It is also not in dispute that the suit properties had been allotted to Kandasamy under the registered partition deed dated



14.11.2000 and the same has been marked as Ex.A1. Therefore, according to the plaintiff, as Kandasamy had died intestate, she being one of his legal heirs, entitled to obtain 1/3 share in the suit properties.

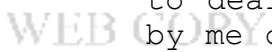
WEB COPY

11. The abovesaid claim of share in the suit properties put forth by the plaintiff is resisted by the defendants contending that the properties derived by Kandasamy by way of Ex.A1 partition deed are ancestral in character and therefore contended that the second defendant being the daughter of the deceased Kandasamy, secured half share in the suit properties by way of birth itself and therefore according to the defendants, the plaintiff would be entitled to secure only 1/6 share in the suit properties and not 1/3 share in the suit properties.

12. The plea has also taken by the defendants that the plaintiff relinquished her share in the suit properties in favour of the second defendant by receiving a sum of Rs.50,000/- in cash in the presence of the well wishers of the family, however, the abovesaid defence version put forth by the defendants has been rightly disbelieved by the Courts below. Therefore, the plea of oral relinquishment put forth by the defendants is totally unacceptable.

13. The only point to be considered in this case is as to the nature of the properties derived by Kandasamy by way of Ex.A1 partition deed. Now according to the plaintiff, the properties derived by Kandasamy under Ex.A1 partition are his self acquired properties. Per contra, according to the defendants, the properties derived by Kandasamy under Ex.A1 partition deed are ancestral in nature and therefore, by birth, the second defendant is entitled to half share in the suit properties and Kandasamy had obtained only half share in the suit properties.

14. Inasmuch as, the parties are not in dispute that Kandasamy had derived the suit properties only by way of Ex.A1 partition effected with his father, as rightly contended by the plaintiff's counsel, in the light of the decision of the Full Bench of our High Court reported in AIR 1979 Madras 1 [The Additional Commissioner of Income tax, Madras-1 Vs. P.L.Karuppan Chettiar] and the decision of our High Court dated 11.08.2010 rendered in A.S.No.609 of 2003 [M.Kumaran and another Vs. J.Rajesh (Minor), (Rep by his mother and natural guardian J.Gomathi and another)], the properties derived by Kandasamy under Ex.A1 partition deed are only his self acquired properties and not the ancestral properties. The decision rendered by the Full Bench of our High Court reported in AIR 1979 Madras 1 was taken into consideration by the first appellate court and on that footing, proceeded to hold that the properties secured by



15. With reference to the abovesaid issue, I had an occasion to deal with the same in various cases and in the case rendered by me dated 25.07.2018 in S.A.No.2096 of 2004 [Padmavathi Ammal Vs. Natarajan and another], following the decision rendered by me with reference to the abovesaid issue reported in 2017 (1) MLJ 759 [Chinna Palanisamy Gounder Vs. Latha and Others] and 2017 (2) LW 343 [M.Palaniappan and another Vs. Nachimuthu] and following the various decisions cited before me including the decision reported in AIR 1979, Madras 1 and also following the latest decision of the Supreme Court on the issue reported in 2016 (4) SCC 68 [Uttam Vs. Saubhag Singh and others], I held that as per section 8 of the Hindu Succession Act 1956, the property derived by the father, by way of a partition could only be treated as the separate properties of the father and not as the joint family properties of the father and his son/daughter and the position of law has been outlined by me in the abovesaid decision as follows:

"Held:

If self acquired property or joint family property, once get devolved in accordance with Section 8, on principles of intestacy, the joint family property ceases in the hands of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint



tenants.”

“20. It could be seen that as per the provisions of Hindu Succession Act, 1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956 amongst the Class-I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties and not as the joint family properties of the first defendant and his son viz. the second defendant. To the above position of law, there are ample authorities and a perusal of the decisions reported, which have been cited by the counsel for the defendants, would go to show that the properties derived by the first defendant from his father could only be treated as the separate properties of the first defendant and not as the joint family properties of the first defendant and his son viz., the second defendant. In this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 (The Additional Commissioner of Income-tax, Madras-1 V. P.L.Karuppan Chettiar), 1993 Supp (1) Supreme Court Cases 580 (Commissioner of Income Tax V. P.L.Karuppan Chettiar), (1986) 3 Supreme Court Cases 567 (Commissioner of Wealth Tax, Kanpur and Others V. Chander Sen And Others), (2008) 3 Supreme Court Cases 87 (Bhanwar Singh V. Puran And Others) and the latest decision (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others). A perusal of the above said decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, the position of law being above as adumbrated by our High Court and the Apex Court in the above said decisions, the contention of the defendants' counsel that the suit properties are the joint family properties of the defendants 1 and 2 cannot at all be countenanced in any manner.

21. However, still not losing hope, the defendants' counsel pressed into service, the decision reported in (2013) 9 Supreme Court Cases 419 (Rohit Chuhan Vs. Surinder Singh and Others). Though the above said decision may lend support to his contention, however, the above said decision is also taken note of in the decision reported in (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others) and the apex Court has distinguished the



WEB COPY

above said decision relied on by the defendants' counsel by holding that in the above said decision, there was no consideration of the effect of Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956. Therefore, it could be seen that on a conjoint reading of Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956, it could be seen that if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants."

16. In the light of the abovesaid position of law as adumbrated by the Apex Court and our High Court in the various decisions above referred to, it is evident that the suit properties acquired by Kandasamy under Ex.A1 partition deed effected with his father could only be treated as his separate properties not as the ancestral properties/joint family properties as contended by the defendants and therefore, the first appellate court is found to be justified in holding that the plaintiff is entitled to secure 1/3 share in the suit properties.

17. The nature of the suit properties derived by Kandasamy under Ex.A1 partition deed being his self acquired properties and not ancestral properties, the question whether the second defendant was in the womb of the first defendant at the time of the demise of Kandasamy does not acquire any significance as such and therefore the contention put forth by the defendants that the first appellate court had not taken in to consideration the provisions of section 20 of the Hindu Succession Act 1956, does not merit acceptance and in my considered opinion, the provisions of section 20 of the Hindu Succession Act, 1952 would not apply to the facts and circumstances of the case at hand, when it is noted that the suit properties are only the self acquired properties of the deceased Kandasamy.

18. In view of the abovesaid position, the decision relied upon by the defendants' counsel reported in 2020 (5) CTC 302 [Vineeta Sharma Vs. Rakesh Sharma & Others] which deals only with the succession to be followed in the case of ancestral properties, it is evident that the abovesaid decision would not be applicable to the case at hand.

19. The first appellate court has rightly followed the decision of the Full Bench of our High Court reported in A.I.R



1979 Madras 1, as above pointed out and the abovesaid decision of the Full Bench having been approved by the Apex Court in the latest decision reported in 2016 (4) SCC 68, no interference is warranted in the judgment and decree of the first appellate court, declaring that the plaintiff is entitled to 1/3 share in the suit properties. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

20. For the reasons aforesaid, the judgment and decree dated 28.04.2008 passed in A.S.No.26 of 2008 on the file of First Additional District Court, Erode, reversing the judgment dated 30.09.2005 passed in O.S.No.16 of 2004 on the file of the First Additional District Munsif Court, Erode are confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional District Judge,
I Additional District Court,
Erode.
2. The I Additional District Munsif,
I Additional District Munsif Court,
Erode.

Copy to

The Section Officer,
VR Section,
High Court, Chennai.

+1cc to Mr.V.Rajesh, Advocate, S.R.No.11756
+1cc to Mr.S.Thangavel, Advocate, S.R.No.11812

S.A.No. 1454 of 2008

RGN(CO)
PM/29/10/2021