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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2021

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

S.A.No.589 of 2010

M.Muthusamy

.. Appellant/Plaintiff

Vs.

1.R.M.Ponnusamy

.. 1st Respondent/1st Defendant

2.R.M.Ponnathal

.. 2nd Respondent/2nd Defendant

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 12.11.2009 in A.S.No.100 of 2007 on the file of the First Additional District Court, Coimbatore partly allowing the judgment and decree dated 27.04.2007 in O.S.No.30 of 2006 on the file of the Sub-Court, Udumalpet.

For Appellant : Ms.Hemasampath
Senior Counsel for Ms.R.Meenal

For Respondents : Mr.R.T.Doraisamy

JUDGMENT

The Second Appeal has been filed against the judgment and decree dated 12.11.2009 passed in A.S.No.100 of 2007 on the file of the First Additional District Court, Coimbatore, partly allowing the judgment and decree dated 27.04.2007 passed in O.S.No.30 of 2006 on the file of the Sub-Court, Udumalpet.

2. The appellant is the plaintiff in the suit. The 1st respondent / 1st defendant is the brother and the 2nd respondent / 2nd defendant is the sister of the appellant/plaintiff.

3. The short facts of the plaintiff case are as follows:-



The plaintiff and the 1st defendant were members of the joint family and the suit properties were the joint family properties. The father of the plaintiff has executed a settlement deed in favour of the 2nd respondent on 27.09.2002 and settled an extent of 3 acres 2 cents out of 11 acres 89 1/4th cents in the A schedule property. The plaintiff has filed the suit to declare the said settlement deed as null and void and to partition the suit properties into nine equal shares and allot 4 shares to the plaintiff.

4. The short facts of the written statement are as follows:

The 1st defendant looked after the family while the plaintiff was going for job in Chennai. The first defendant never assisted in any way for maintaining the joint family at any point of time. The 2nd defendant is the daughter and at the time of her marriage, the father entered into an agreement with the sons to provide her 1/3rd share of his share in the properties after partition. However, due to some compelling situation he had settled an extent of 3 acres 02 cents of A schedule property in favour of the 2nd defendant on 29.09.2002. Since the father being the kartha of the family, the settlement executed by the father is valid and binding. The defendants have no objection to pass a judgment allotting 1/3rd share in A and B schedule properties excluding the property that has been already settled in favour of the 2nd respondent.

5. The short facts of the written statement of the 2nd defendant are as follows:

The 2nd defendant was married to one Ashokan and at the time of marriage itself the father agreed to settle 1/3rd share for her. The date of that agreement was 18.12.1997. Subsequent to her marriage, she was driven out from her husband's family. She has two daughters and the entire burden of maintaining her family fell on her father and so her father executed a settlement deed in her favour in respect of 3 acres and 02 cents by virtue of settlement deed dated 27.09.2002 for the purpose maintaining her and her daughter. The plaintiff did not raise any objection at the time when the settlement deed was executed and when the father was alive. The plaintiff can claim only 1/3rd share in the remaining properties and he cannot claim any right over the properties settled in favour of the 2nd defendant. Excluding the properties settled in the settlement deed, the plaintiff would



get 1/3rd share in the rest of the properties.

6. After trial, the trial Court has decreed the suit as prayed for. Aggrieved over the same, the 2nd defendant filed the first appeal and the First Appellate Court partly allowed the appeal by holding that the plaintiff is not entitled to the relief of declaration with respect to the settlement deed Ex.A4 and he is entitled to 4/9th share in the A and B schedule properties excluding the extent of the properties involved in Ex.A4 settlement deed.

7. This second appeal has been admitted on the following two Substantial Questions of Law:

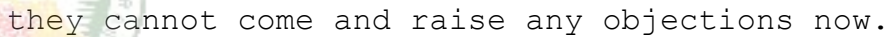
(i) Whether in law the lower appellate Court was right in holding that Ex.A4 settlement was valid, when admittedly the properties were those of a Hindu undivided family and co-parcener had no right to execute a settlement for a specific property?

(ii) Whether in law the lower appellate Court was not wrong in failing to note that the settlement made without the specific, consent of the co-parcener would not convey title?

8. This Court heard elaborate arguments of learned counsel for the appellant and defendants.

9. The learned counsel for the appellant submitted that the father being a member of the joint family cannot alienate any portion of the joint family properties in favour of any of the joint family members or any other third parties. Even if any such settlement is made in favour of any one of the members of the joint family that would enure to the benefit of all the members of the joint family.

10. The learned counsel for the respondents on the other hand submitted that the father being a kartha of the family can settle a reasonable portion and extent of the property in favour of daughters and other members who are not members of the joint family for the purpose of their maintenance and he further submitted that even in the year 1979 itself the brother of the 2nd respondent have consented to the said arrangement. And hence



12. The learned counsel for the appellant drew the attention of this Court to some of the citation in which the Courts have held that a member of the joint family cannot renounce his right in favour of any one of the co-parceners and such renunciation if done it will be for the benefit of all co-parceners only. The Courts have recognized the Rule against alienation of the joint family properties by way of gift with a view to save the integral nature of the joint family properties. The learned counsel for the appellant relied on the decision reported in Thamma Venkata Subbamma Vs. Thamma Rattamma (Dead) by LR and others [(1987) 3 SCC 294] in support his contention that the settlement deed executed by his father in favour of the 2nd respondent is not lawful: In Thamma Venkata Subbamma Vs. Thamma Rattamma (Dead) by LR and others [(1987) 3 SCC 294] the Supreme Court has held as under:

13. In the unreported judgment of this Court in M/s.Deep
Jyothi Projects Pvt.Ltd., represented by its authorized
signatory, K.Sivakumar Vs. 1.S.Rukumani and others it is held as
follows:

89. The Court recognized the object of this strict rule against alienation by way of gift is to maintain jointness of ownership and possession of the co-parcenary property, while observing "it is true that there are no textual authority prohibiting an



alienation by gift and the law in this regard has developed gradually, but it is for the purpose of preventing a Joint Hindu Family from being disintegrated."

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90. The Hon'ble Supreme Court referred to the catena of decisions and passages from Mulla's Hindu Law, 15th edition, 17th edition and Mayne's Hindu Law, 14th edition and the decision of the Supreme Court in Thamma Venkata Subbamma Vs. Thamma Rattamma (1987) 3 SCC 294, wherein it was concluded that Joint family properties cannot be renounced in favour of one of the coparceners as such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. Thus, gift made by Rami Reddy to his brother Veera Reddy was construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and children of Veera Reddy who were the remaining coparceners. The gift was valid construing the same as renunciation or relinquishment by Rami Reddy of his interest in the coparcenary and accordingly, the consent of other coparceners was immaterial."

14. In S.V.Sundaresn Vs. Assistant Controller of Estate Duty [(1983) 144 ITR 916] it is held

"18. According to the original Mitakshara law, no coparcener, not even a father, could dispose of by will his undivided coparcenary interest even if the other coparceners consent to the disposition. This is because the moment the coparcener died his undivided interest devolved by survivorship on the other coparceners. The title by survivorship was considered to take precedence to the exclusion of that by devise."

15. On the side of the respondent, the learned counsel relied on the judgement of the Supreme Court reported in (2004) 1 SCC 295 [R.Kuppayee and another Vs. Raja Gounder], in support of his arguments that the father can make gift of a reasonable extent of the ancestral in favour of his daughter at the time of her marriage or even long thereafter and it is only a pious obligation. In the said judgment it is observed as follows:



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"The position in Hindu Law is that whereas the father has the power to gift ancestral movables within reasonable limits, he has no such power with regard to the ancestral immovable property or coparcenary property. He can, however, make a gift within a reasonable limits of ancestral immovable property for "pious purposes." Though the alienation must be by an act inter vivos and not by Will, but the extended meaning given to the words "pious purposes" enables the father to make a gift of ancestral immovable property within reasonable limits to a daughter at the time of her marriage or even long after her marriage."

16. However, in the judgment of the Hon'ble Supreme Court in AIR 1964 SC 510 (Guramma Bhratar Chanbasappa Deshmukh and Others Vs. Mallappa Chanbasappa and Another (In CA.No.334 of 1960) it is held that the reasonableness of property cannot be conveyed within any hard and fast rule and it will differ from case to case. It is held that:

"It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift anytheless a valid one."

17. Leaving apart the rival submissions of the parties, if the circumstances prevailed at the time of settlement is considered, the following facts would come to light. The settlement have been executed at a time when the daughters were not recognized as co-parceners and their right in the co-parcenary property would be limited only to a share in their father's share in those properties. But the facts of this case



would show that the 2nd respondent daughter could not live a happy married life after her marriage and she got separated from her husband. She had two daughters and came to her father's house with them. The father needed to maintain herself and her two daughters. Considering the situations that prevailed at that point of time, the father thought it fit to make some arrangement for the future maintenance of his daughter and thus executed Ex.A4 settlement deed in her favour. The brothers of the 2nd respondent did not raise any objection at the time of the settlement or during the life time of their father. In fact they had entered into an agreement with their father on 18.11.1977. In the said agreement it was agreed between the father and the sons that after the partition had taken place, the father would settle his entire 1/3rd share in favour of the 2nd respondent. But, Ex.B1 seems to have been executed at the time of the marriage of the 2nd respondent and at that time the father could not have foreseen that her marriage would fail. When the 2nd respondent marriage did not go well, the father got the compulsion to make some arrangement for the life of the 2nd respondent and the future of her children.

18. As rightly pointed out by the learned counsel for the appellant the extent of the property settled in the settlement deed Ex.A4 is might be a bigger extent than what is in the idea of the Appellants towards pious obligation. Since the father has executed the settlement deed prior to the partition and in contravention of the terms of Ex.B1, it is difficult to hold that the settlement deed is only a pious obligation and that it is valid. The position of law with regard to the settlement of joint family properties as seen from the citation of the appellant, it is clear that no member of the joint family could alienate or disintegrate the nature of the joint family by way of gifting a portion of the joint family property to some other member. Even if such gifts are made that would fall for the benefit of all the members together. Hence, it is inevitable to hold that Ex.A4 settlement is not valid and thus the substantial question of law No.1 is answered in favour of the appellant. Since the answer to this question covers the answer for the other substantial question of law, it need not be dealt individually.

19. Whatever may be the submissions of the learned counsels on both sides, the position of law has changed to the benefit of daughters after the Hindu Law Amendment Act, 2005, came into effect. Admittedly, during the life time of the father no partition had taken place and in the recent judgment of the



Supreme Court in Vineeta Sahrma Vs. Rakesh Sharma and others [(2020) 9 SCC 1] it is held that as per the Hindu Law Amendment, 2005, the interpretation for amendment of Section 6 has to be understood in a manner that the daughters are also co-parceners by their very birth. And the life or death of the father is not a pre-condition to give effect to the amendment brought in the year 2005. So, the daughters have also become equal co-parceners now.

20. After making exhaustive discussion on the right of a daughter as co-parcener by birth, the Full Bench of the Supreme Court has consolidated and crystalised their findings in the following clear terms:

“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 09-09-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09-09-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has



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been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effect by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

138. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in *Prakash v. Phulavati* and *Mangammal v. T.B. Raju*. The opinion expressed in *Danamma v. Amar* is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits."

21. So, even without holding the settlement deed as valid, the 2nd respondent would get a better benefit now in view of the amendment. As per the amended Hindu Succession Act, she should be recognized as an equal co-parcener of her family which comprises of herself and her two brothers. Both parties need not be anxious of their reasonable share in the suit properties because of the clear findings rendered in the judgment of the Supreme Court, in *Vineetha Sharma Vs. Rakesh Sharma and others* [(2020) 9 SCC 1], in connection with the interpretation of Amended Section



6 of the (Hindu Law Amendment, 2005) and the right of daughter.

22. As already pointed out the 2nd respondent being a daughter has become an equal co-parcener by her birth. So she is also entitled to 1/3rd share in both A and B Schedule properties. Even if the Appellant wins the Appeal that will not affect the interests of the 2nd respondent in getting her due share in the suit properties. And she will also get an equal share in the suit schedule properties. In fact her entitlement in this partition would be more than what she could have got through Ex.A4 settlement deed, had it been held as valid.

In the result, the Second Appeal is partly allowed and the judgment and decree of the Courts below are modified to the effect that both the Appellant/plaintiff and Respondents/defendants are entitled to get 1/3rd share each in both A and B schedule properties and the preliminary decree is passed to that effect. No costs. The connected miscellaneous petitions if any all are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Court,
Coimbatore.

2. The Sub-Court, Udumalpet.

+1cc to Ms.R.Meenal, Advocate, S.R.No.14371

+1cc to Mr.R.T.Doraisamy, Advocate, S.R.No.14447

S.A.No.589 of 2010

KJ(CO)
CS/29/11/2021