



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

S.A.(MD)No.954 of 2009

1.L.Nagammai

2.M.N.Alagappan

3.Narayanan @ Kittu

... Appellants/Appellants/Defendants

-Vs-

1.Gandhimathi

2.Alagammai

3.Nachammai

4.Muthukala

5.Arunachalam @ Sekar

6.Umayal

7.Annapoorani

8.Dhanalakshmi

... Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree in A.S.No.20 of 2004, dated 10.12.2004 on the file of the District Court, Sivagangai as reversed in O.S.No.61 of 2000 on the file of the Sub Court, Devakottai, dated 21.10.2003.

For Appellants : Mr.Srinivasan

for Mr.R.Nandhakumar

For R1 to R8 : Mr.S.Madhavan

JUDGMENT

This second appeal arises out of a partition suit. The genealogy is as follows:-

M.Narayanan

N.Muthiah

Narayanan

1st Wife

Alagammai

(died)

2nd Wife

Gandhimathi

(1st Plaintiff)

Daughter

Son

Son

Nagammai Alagappan Kittu @

(D1)

(D2)

Narayanan

(D3)

1) Alagammai-2nd Plaintiff

2) Nachammai-3rd Plaintiff

3) Muthukala -4th Plaintiff

4) Arunachalam @ Sekar

- 5th Plaintiff

5) Umayal - 6th Plaintiff

6) Annapoorani- 7th Plaintiff

7) Dhanalakshmi-8th Plaintiff



2. The plaintiffs in O.S.No.61 of 2000 on the file of the Sub Court, Devakottai, are the second wife of Narayanan and the children born through the said wedlock. The defendants are the children born to Narayanan through the first wife Alagammai. It is not in dispute that the first plaintiff Gandhimathi got married to Narayanan after the demise of the first wife Alagammai. There is no dispute that Narayanan died intestate. Since the eight plaintiffs and the three defendants are the surviving legal heirs of Narayanan, each of them would be entitled to 1/11th share in the suit properties. Claiming the same, the partition suit came to be instituted.

3. The defendants filed written statement controverting the plaintiff averments. They set up a plea that even during his life time, Narayanan made a family arrangement. They also contended that Arunachalam @ Sekar born to Gandhimathi was given adoption and that therefore, he can no longer claim the status as the son of Narayanan. Based on the divergent pleadings, issues were framed. The first plaintiff as well as the 5th plaintiff examined himself as P.W.1 and P.W.2. Ex.A1 to Ex.A9 were marked. The second defendant examined himself as D.W.1. Three other witnesses were examined on the side of the defendants. Ex.B1 to Ex.B24 were marked. After a consideration of the evidence on record, the trial Court by judgment and decree dated 21.10.2003 granted preliminary decree allotting 1/11th share for each of the plaintiffs. Aggrieved by the same, the defendants filed A.S.No.20 of 2004 on the file of the District Judge, Sivagangai. During the relevant time, Tamil Nadu Amendment Act 1 of 1990 alone was in force and the Central Act 39 of 2005 amending Section 6 of the Hindu Succession Act, 1956 had not yet been enacted. Since some of the plaintiffs had already got married by the time Tamil Nadu Act 1 of 1990 was brought into force, their share in the suit schedule was reduced. Not satisfied with the said modification, the defendants have filed this second appeal. The second appeal was admitted on the following substantial questions of law:-

“(I) Whether the defendants have not discharged the burden cast on them and proved the plea of adoption by producing documents kept in temple in regular course of business and signed by the kartha of joint Hindu Family and also on admission by the prosecution witness?

(II) Whether the letters written by the kartha of joint Hindu Family are not sufficient to prove the plea of prior partition?”

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants. Per contra, the learned counsel for the respondents submitted that the impugned judgment and decree do not



5. I carefully considered the rival contentions and went through the evidence on record.

6. Matters argued in this second appeal are essentially factual in nature. The Courts below have concurrently found that the plea of prior partition is liable to be rejected. The said finding has not been shown to be perverse. In exercise of jurisdiction under Section 100 of C.P.C., I decline to interfere with the same. The fact remains that the suit properties stood in the name of Narayanan and he passed away intestate. The parties herein namely 8 plaintiffs and 3 defendants are the surviving legal heirs. Obviously, each of them are entitled to 1/11th share.

7. In view of the amendment made to Section 6 of the Hindu Succession Act by Central Act 39 of 2005 in the light of the interpretation given in *Vineeta Sharma Case*, the decision of the trial Court will have to be necessarily restored. Therefore, even while dismissing the second appeal, the decision of the appellate Court is modified and the decision of the trial Court stands restored. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The District Judge, Sivagangai

2.The Sub Judge, Devakottai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-24856[F] dated 02/08/2021)

S.A. (MD) No.954 of 2009

30.07.2021

RK (07.09.2021) 3P 6C