



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.03.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A.(MD)No. 184 of 2021
and C.M.P(MD)No.2745 of 2021

Dhanalakshmi ...Appellant/Appellant/Plaintiff

Vs.

1.Rajaboobathi
2.Selvakumar
3.Jeyakumar
4.Arulandhu
5.Pandiarajan

...Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 13.09.2019 passed in A.S.No.29 of 2017 on the file of the Additional District and Sessions Judge, Sivagangai confirming the Judgment and Decree dated 15.09.2016 made in O.S.No.108 of 2010 on the file of the Subordinate Judge, Sivagangai.

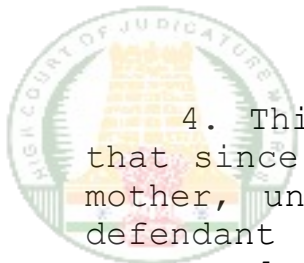
For Appellant : Mr.G.Prabhu Rajadurai

JUDGMENT

The plaintiff in O.S.No.108 of 2010 is the appellant.

2. The suit was laid by the plaintiff for partition and separate possession of her 1/4th share in the suit property. The first defendant is the mother of the plaintiff, while the defendants 2 and 3 are her brothers. The defendants 4 and 5 are the purchasers from the defendants 1 to 3.

3. According to the plaintiff, the suit properties belonged to the first defendant's mother Lakshmi. The first defendant is the only daughter of her parents Lakshmi and Boomi Udayar. The first defendant inherited the property from her mother and has been enjoying jointly with her children. The plaintiff would also contend that she was not given any sridhana during her marriage and therefore, she would be entitled to 1/4th share in the suit properties.



4. This claim was resisted by the first defendant contending that since the first defendant had inherited the property from her mother, under Section 15 of the Hindu Succession Act, the first defendant is an absolute owner of the property and the plaintiff cannot claim any right over the same during her life time. It was also contended that 3rd item of property was inherited from her mother Lakshmi Ammal, while other properties were inherited from her father. It is also contended that 7th item of property was sold to one Harichandra Boopathi on 19.05.2010 by the first defendant for valid consideration. The plaintiff was also blamed for suppressing the facts while filing the suit.

5. At trial, the plaintiff was examined herself as P. W.1 and Exs.A1 to A3 were marked. The first defendant was examined as D.W.1 and one Krishnan was examined as D.W.2 and Exs. B1 to B5 were marked.

6. The trial court, upon consideration of the evidence on record, concluded that since the parents of the 1st defendant had died after 1956 and the property belonged to them absolutely, the 1st defendant had succeeded to the estate under Sections 8 and 15 of the Hindu Succession Act. Therefore, the plaintiff cannot lay a claim as a co-parcener during the lifetime of the 1st defendant. Neither Act 1 of 1990 nor Act 5 of 2009 confer any right by birth on the daughters in the self acquired property of their parents. Since the plaintiff's specific claim was that the property belonged to her grandparents and she did not plead that the 1st defendant got the properties under Section 29(A) of Act 1 of 1990 or amended Section 6 after introduction of Act 5 of 2009, the trial court concluded that the plaintiff cannot seek partition even during the lifetime of the 1st defendant. On the said conclusion, the trial Judge dismissed the suit.

7. The plaintiff filed an appeal in A.S.No.29 of 2017. The appellate Judge, on a re-appreciation of evidence on record, concurred with the findings of the trial court and dismissed the appeal.

8. I have heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant.

9. Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant would raise a contention that since except the third item of property, the other properties were inherited by the 1st defendant from her father, the said inheritance could be one under section 29 (A) introduced by Act 1 of 1990 or amended Section 6 of the Hindu Succession Act as amended by Act 5 of 2009.



10. Unfortunately, there is neither pleading nor evidence in that direction. The pleadings is to the effect that the properties belonged to the parents of the 1st defendant absolutely. There is no whisper in the plaint that the third item of the property was inherited by the father of the 1st defendant from his ancestors so that it could be said to be ancestral property in which the 1st defendant would get a right by birth and the plaintiff in turn would confer right by birth. There is not only lack of pleading but there is total lack of evidence in this regard.

11. Both the courts have adverted to the legal position and concluded that since the inheritance by the first defendant was referable to Sections 8 and 15 of the Hindu Succession Act, the plaintiff will not have any right in present over the property to claim partition. I do not find any illegality on the part of the courts below in considering the evidence that was placed before them. I do not find any question of law much less substantial question of law to enable me to entertain this appeal and the appeal fails and the same is dismissed without being admitted. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

CM

To:

1.The Additional District and Sessions Judge, Sivagangai

2.The Subordinate Judge, Sivagangai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-13072[F] dated 23/03/2021)

Judgment in
SA(MD)No. 184 of 2021
and C.M.P(MD)N.2745 of 2021
22.03.2021

KM(20.05.2021) 3P 4C