



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2022

Pronounced on : 09.03.2022

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Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.1 of 2011
& M.P.No.1 of 2011

1. Smt. Nagarathinam,
2. Smt.K.R.Santha,
3. Smt.K.R.Saratha, ...Appellants/Defendants

/versus/

1. Mr.K.R.Srinivasan (Died)
2. Priyareha, ... 1st Respondent/Plaintiff
3. Jothi Prasad ... 2 & 3 Respondents/LRs of the Respondents

RR2 & 3 brought on records as LRs of the sole respondent deceased (K.R.Srinivasan) viz., vide Court order dated 15.12.2021 made in C.M.P.Nos.9430 & 9432 of 2020 in A.S.No.1 of 2011.

Prayer: Appeal Suit has been filed under Section 96 of Code of Civil Procedure, 1908, praying against the judgment and decree dated 21.07.2010 made in O.S.No.114 of 2006 on the file of the Additional District Judge/Fast Track Court No.1, Coimbatore and pass such other further orders as may be deem fit and property depending upon the facts and circumstances of the case.

For Appellants : Mr.A.E.Ravichandran
For R2 & R3 : Mr.Lulu Mariam, for
Mr.S.V.Pravin Rathinam

J U D G M E N T

This appeal by the defendants in a suit for partition being aggrieved by the decree of the Trial Court declaring the plaintiff is entitled to 5/8 share in respect of suit item Nos.1 & 3 and portion of the 2nd item which stands in the name of K.R.Ramasamy Naicker.



2. The plaint averments are as below:-

The plaintiff is son of K.R.Ramasamy Naicker, who died on 13.01.1989 leaving behind his wife K.R.Nagarathinam (1st defendant) and daughters K.R.Santha (2nd defendant) and K.R.Saratha (3rd defendant) and his son Srinivasan the plaintiff herein. The schedule mentioned properties in item Nos.1 & 3 are the ancestral property of K.R.Ramasamy Naicker and item No.2 was purchased from out of the surplus income derived from the ancestral property. The properties were held as joint family property with K.R.Ramasamy Naicker as the "Karta". After the demise of K.R.Ramasamy Naicker for the sake of convenience, item No.1 of the suit property is in possession, enjoyment and occupation of his son (the plaintiff) and item No.2 of the suit property is in possession, occupation and enjoyment of his wife/1st defendant. Due to difference of opinion with the plaintiff, the 1st defendant filed suit for partition in respect of present suit property and obtained interim injunction in O.S.No.594 of 1994 on the file of Principal Sub Court, Coimbatore and thereafter, dislodged the plaintiff from the possession of the 1st item of the suit property. The present suit is filed seeking 5/8 share in the property by the plaintiff being the sole male descendant of K.R.Ramasamy Naicker and the share devolves upon him as per survivorship.

3. The suit has been contested by the defendants 1 & 2 by filing written statement wherein they have contended that the suit properties are not ancestral property of K.R.Ramasamy Naicker as alleged by the plaintiff. Item Nos.1 & 3 of the suit properties are the separate property of K.R.Ramasamy Naicker, which he got through a registered partition deed dated 21.04.1982. These two properties were allotted to K.R.Ramasamy Naicker under the said partition deed morefully described under 'B' schedule. The property allotted to him were enjoyed exclusively by K.R.Ramasamy Naicker. The description of Survey number in the plaint in respect of 3rd item property is wrong. The actual property allotted to K.R.Ramasamy Naicker under partition deed and in exclusively enjoyment of K.R.Ramasamy Naicker was in Survey No.492/2, Kuniamathur Village, Coimbatore and not in Survey No.432 as mentioned in the plaint.

4. The 2nd item property purchased by the 1st defendant under a registered deed dated 10.02.1988 and it is a self acquired property of the 1st defendant. The 1st defendant has constructed a house from her fund in the said property. It is incorrect to claim that the 2nd item property was purchased by K.R.Ramasamy Naicker from out of income derived from the ancestral property. In fact, the 1st defendant purchased



570sq.ft of land with east facing, along with a building in 420 sq.ft in S.F.No.419/1 Kuniyamathur Village, Coimbatore. The said K.R.Ramasamy Naicker purchased land measuring 617 $\frac{1}{2}$ sq.ft in the said survey number with building constructed in 550 sq.ft on the same day from the same vendor. While so, the plaintiff has described the 2nd item property measuring 2.73 cents of land with 970 sq.ft building as if they entirely owned by K.R.Ramasamy Naicker.

5. Since K.R.Ramasamy Naicker died interstate, as far as the property left by him has to be inherited by all his 1st class heirs equally. It is not an ancestral property to be devolved upon the plaintiff on survivorship, as it is claimed. The relief of partition of the suit property claiming 5 out of 8 shares is ill-conceived. The plaintiff is entitled only for $\frac{1}{4}$ share in item Nos.1 & 3 and in part of the item No.2 which stands in the name of K.R.Ramasamy Naicker.

6. With these pleadings, the parties went for trial.

7. Based on the pleadings, the trial Court framed the following issues:-

(i).Whether the plaintiff is entitled to $\frac{5}{8}$ th share over the suit property?

(ii).Whether the plaintiff is entitled to permanent injunction as prayed for?

(iii).Whether the plaintiff is entitled to the preliminary decree as prayed for?

(iv). To what relief?

8. On the plaintiff side, one Priyarekha wife of the plaintiff was examined as P.W.1. 8 Exhibits (Ex.A.1 to Ex.A.8) were marked. On the side of the defendants, 1st defendant K.R.Nagarathinam was examined as D.W.1.

9. The Trial Court held that item Nos.1 & 3 in the suit schedule are ancestral properties which shall devolve upon the heirs of K.R.Ramasamy Naicker as per Section 6 of Hindu Succession Act, 1956. By applying the Principle of Notional partition, $\frac{1}{2}$ share to K.R.Ramasamy Naicker and $\frac{1}{2}$ share to the plaintiff notionally allotted on the date of K.R.Ramasamy death. The $\frac{1}{2}$ share of K.R.Ramasamy Naicker divided among his wife and three children i.e., $\frac{1}{4}$ th share each = $\frac{1}{8}$ share each. Thus, declared $\frac{5}{8}$ share to the plaintiff in item Nos.1 & 3 which K.R.Ramasamy Naicker got under partition. Regarding item No.2, considering the sale deed (Ex.A.7) dated 10.02.1988 in favour of



1st defendant, held that part of this property was purchased from out of surplus of the ancestral property by K.R.Ramasamy and to this portion, the plaintiff is entitled for 5/8th share and three defendants are entitled for 1/8th share each. In so far as the portion of the land and building which stands in the name of 1st defendant which is including in the item No.2 of the suit property. The Court below declared it as exclusive property of the 1st defendant and excluded by dismissing the suit for partition in respect of that portion.

Point for consideration:-

Whether the suit properties to be divided among the legal heirs of K.R.Ramasamy Naicker who died interstate under Section 6 of Hindu Succession Act or under Section 8 of Hindu Succession Act, 1956 and what is the impact of amendment to Section 6 of Hindu Succession Act to the facts of the case?

10. The subject matter of the appeal is in respect of three items of property, which are morefully described in the plaint schedule as below:-

(i). Item No.1

Door No.821, 822, Edayar Street, Coimbatore
(Commercial Property)

(ii). Item No.2

Door No.13/12, T.S.No.419/1, Muthusamy Chervai Street, Kuniamuthur Village measuring an extent of 2.73 cents and building measuring an extent of 970 sq.ft
(Residential property).

(iii). Item No.3

S.F.No.492, Ammankovil Thittu Thottam, Kuniamuthur Village measuring 2.00 acres
(Agricultural Property)

11. The parties to the suit rely upon 8 documents. Ex.A.6 is the partition deed between K.R.Nallasamy, K.R.Ramasamy and K.R.Munusamy. This partition deed is dated 21.04.1982. The recital of the partition deed reveals that they are all son of K.R.Rangasamy Naicker and suit property is their ancestral property enjoyed by them jointly till the date of partition. Under schedule 'B' of this partition deed, which is marked as Ex.A.6, item Nos.1 & 3 of the suit properties were



allotted to K.R.Ramasamy Naciker. The said K.R.Ramasamy died interstate on 13.01.1989. The present suit came to be filed on 14th May 1994.

12. In the partition deed (Ex.A.6) while describing the properties subjected to partition, the parties have specifically stated that these properties are ancestral properties, the properties accrued out of the surplus and properties purchased by them in their individual capacity and in the name of their mother but enjoyed as joint family property. Therefore, when the division took place on 21.04.1982 and allotted to K.R.Ramasamy Naicker, the division was effected in respect of properties which were ancestral property and partially acquired by family members and blend into the hotchpotch of the nucleus.

13. On the date of filing the suit in the year 1994, the plaintiff was 32 years. The property, thus, when divided between brothers in the year 1982 under Ex.A.6, the parties have taken the property to be enjoyed as their exclusive and absolute property. The division has effected prior to the amendment of Section 6 of Hindu Succession Act, 1956. Thus, the property had lost the character of coparcenary property. Therefore, for the case in hand Section 6 of Hindu Succession Act, 1956 has no application at all. Since K.R.Ramasamy Naicker has died interstate, the property which stood in his name ought to be divided as per Section 8 of Hindu Succession Act, 1956.

14. The plaintiff and the defendants being the 1st class heirs of deceased K.R.Ramasamy Naicker, who died interstate leaving behind item Nos.1 & 3 and part of item No.2, they all will be entitled to share the property equally among themselves and no advantage or additional share can be claimed by the plaintiff herein merely because he is the male heir of K.R.Ramasamy Naicker. On the partition of the property under Ex.A.6 on 21.04.1982 whatever limited leverage found in favour of the plaintiff had lost. The plea of notional partition on the death of K.R.Ramasamy Naicker is only a statutory fiction of partition created by proviso of Section 6 of Hindu Succession Act 1956 as originally enacted. By advent of the new enactment, the provisions of the substituted Section 6 of Hindu Succession Act, confers equal right to the daughter's along with the son even in case of coparcenary ancestral property which has not been subjected to any disposition, division and alienation or partition effected by a decree of the Court.

Section 6 prior to its amendment in 2005 reads as below:-

"6. Devolution of interest in
coparcenary property- When a male Hindu dies



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after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act : Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his hers to claim on intestacy a share in the interest referred to therein."

Section 8 of the Hindu Succession Act reads as below:-

"8. General rules of succession in the case of males.— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- (a) firstly, upon the neirs, being the relatives specified in Class I of the Schedule;
- (b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;



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(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

15. The Hon'ble Supreme Court in Commissioner of Wealth Tax, Kanpur and others -vs- Chander Sen and others reported in (1986) 3 SCC 567, has held that,

"21. It is necessary to bear in mind the preamble to the Hindu Succession Act, 1956. The preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-à-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-à-vis son and female heirs



18. Accordingly, the Trial Court judgment and decree is modified determining the entitlement of the plaintiff as $\frac{1}{4}$ th share instead of $\frac{5}{8}$ share in respect of item Nos.1 & 3 and part of item No.2.

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19. In the result, the Appeal Suit is Partly allowed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The Additional District Judge/
Fast Track Court No.1, Coimbatore.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.S.V.Pravin Rathnam, Advocate SR.No.16358

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.15821

Appeal Suit No.1 of 2011
& M.P.No.1 of 2011

SSD(CO)
GN(14/06/2022)