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A.S.No.254 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2022

PRONOUNCED ON : 18.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.254 of 2013
and M.P.Nos.1,2 and 3 of 2013

1.T.A.Mahadevan (Deceased)

2.S.Kanchanamala
Appellants

...

(2nd Appellant brought on record as legal heir of the deceased sole appellant vide order of this Court dated 27.04.2016 made in C.M.P.No.3462 of 2016)

Vs

1.G.Savithiri Ammal (deceased)

2.K.Geetha

3.H.Deenaranjani

4.V.N.Malliga

5.N.Rani

6.Vedavalli



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7.Jagadeesan

8.Sankari

9.Venkataramanan

10.Ravichandran

... Respondents/Defendants

(R6 to R10 are brought on record as legal heirs of deceased R1 vide order of this Court dated 23.06.2015 made in M.P.No.1 of 2015)

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgement and decree in O.S.No.150 of 2008 dated 19.11.2012 on the file of the Principal District Judge, Vellore, Vellore District.

For Appellant : M/s.K.Mani

R1 : Died

For R2 to R4
and R6 to R10 : Mr.V.Anandhamurthy
for M/s.C.Prabakaran

For R5 : M/s.R.Vasudevan

J U D G M E N T

(Judgment of the Court was delivered by **S.SOUNTHAR, J.**)

The 1st defendant is the appellant. Respondents 1 to 4 filed a suit for partition against the appellant and 5th respondent claiming 1/6th share each in O.S.No.150 of 2008 on the file of the Principal District Court, Vellore.



2. The suit was decreed by granting a preliminary decree for partition as prayed for. Aggrieved by that the 1st defendant has filed this appeal. Pending appeal the sole appellant namely Mahadevan was died and his wife was brought on record as second appellant. The 1st respondent also died pending appeal and her legal representatives were brought on record as respondents 6 to 10.

The averments found in the plaint:

3. The respondents 1 to 4/ plaintiffs claimed that the deceased 1st appellant Mahadevan/D1 was their brother and 5th respondent was wife of another brother late Nagendhiran who died even before filing of suit. According to the plaint averments, the suit property was self acquired property of father of the parties namely Arumugam Pillai. He died intestate on 25.09.1990 and his wife Saraswathi Ammal also died on 01.04.2001. Yet another son of Arumugam pillai namely Govindarajan died issue less. Thus the respondents 1 to 4/plaintiffs, 1st appellant/D1 and 5th respondent / D2 were only surviving legal heirs of late Arumugam pillai. It was also claimed that it was no longer possible for the parties to enjoy the suit properties jointly



and hence they were constrained to file a suit for partition.

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The averments found in the written statement filed by the 1st appellant /

1st defendant:

4. The deceased 1st appellant in his written statement claimed that the suit property was purchased with the aid of joint family nucleus. He also raised plea that father of the parties namely late Arumugam Pillai, during his life time executed a Will in favour of appellant. It was also claimed that the respondents assured that they would not claim title over the suit property and believing their words, appellant incurred an expenditure of Rs.50,000/- in renovation of the house situated in the suit property. The appellant also disputed the Court fee paid in the plaint by claiming that respondents 1 to 4 / plaintiffs were not in joint possession of the suit property and hence they were not entitled to value the suit under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act.

5. The parties went to trial on these pleadings. The 2nd respondent /second plaintiff was examined as P.W.1 and Exs.A.1 to A.8 were marked on the side of respondents 1 to 4. On behalf of the appellant/D1, he was



examined as D.W.1 and Exs.B.1 to B.12 were marked on the side of the appellant/D1. The Trial Court on consideration of evidence available on record came to the conclusion that suit property was self acquired property of Arumugam Pillai and he died intestate. Consequently, the Trial Court held that the respondents 1 to 4 /Plaintiffs are entitled to 1/6th share each in the suit property. Aggrieved by the same, the 1st defendant has come up with this appeal.

6. The learned counsel for the appellant submitted that the respondents 1 to 4/ plaintiffs who are all daughters of Arumugam Pillai got married long back prior to coming into force of Section 29 A of the Hindu Succession Act incorporated by Tamil Nadu Act 1 of 1990 (i.e 25.03.1989) and hence they are not entitled to claim equal share along with son namely appellant. He also submitted that Arumugam Pillai died on 25.09.1990 and the suit for partition was laid after 22 years after death of father. He submitted that the respondents 1 to 4 were not in joint possession and enjoyment of the suit property along with appellant and they left the family of Arumugam Pillai after the marriage and consequently, they are not entitled to file the suit for partition. The learned counsel further submitted that the building situated in



suit property was constructed out of funds of appellant and medical and funeral expenses of father and mother of the parties were met by the appellant and all these factors establish that respondents 1 to 4 abandoned their right over the suit property. The learned counsel also relied on the following decision in support of his submissions:

- 1) ***R.Mahalakshmi versus A.V.Anantharaman and others, reported in (2009) 9 SCC 52;***
- 2) ***Maniammai versus Kantharoobi Ammal and others reported in (2012) 4 MLJ 856;***
- 3) ***Rangammal versus Sundarambal & another reported in 2021 (2) LW 373;***

7. Per contra, the learned counsel for the respondents 1 to 4 and 6 to 10 submitted that the Trial Court has given categorical finding that suit property is a self acquired property of Arumugam Pillai and hence after death of Arumugam Pillai, in the absence of any testamentary document all his class one heirs namely the appellant and respondents 1 to 5 are entitled to equal share in the suit property. He further submitted even assuming the suit property is the ancestral property, even then, by virtue of 2005 amendment to



the Hindu Succession Act, the daughters are entitled to equal share along with the son. He relied on the judgment reported in *Vineeta Sharma versus Rakesh Sharma and others reported in (2020) 9 SCC 1*, in support of his contention that daughters are entitled to equal share in the mithakshara coparcenary property.

8. On consideration of rival contentions, the following points are arising for consideration in this case:

1. Whether the suit property is self acquired property of Arumugam Pillai?
2. Whether the respondents 1 to 4 /plaintiffs are entitled to 1/6th share each in the suit property?

Point No.1:-

It is the specific case of the respondents 2 to 4 and 6 to 10/plaintiffs that the suit property is self acquired property of their father Arumugam Pillai. In support of their contentions, they relied on Ex.A1 dated 12.05.1987 sale deed in favour of Arumugam Pillai. Ex.A.1 is a sale deed executed by the



Katpadi Co-operative Township Limited in favour of Arumugam Pillai whereunder he purchased suit property with a house standing thereon.

Therefore, the Ex.A1 prima facie proves the suit property is self acquired property of Arumugam Pillai. Though appellant in his written statement pleaded that suit property was purchased with the aid of joint family nucleus, he has not let in any evidence to show existence of joint family nucleus. Therefore, the contention of the appellant that the suit property was purchased out of joint family nucleus and hence it shall be treated as joint family property cannot be accepted. Ex.B.1 is a release deed executed by one of the son of Arumugam Pillai namely Nagendiran, husband of 5th respondent herein. The recitals in Ex.B.1 makes it clear that there was no ancestral property in the family. Hence, the recitals found in exhibit of the appellant himself goes against his own case, therefore, we hold that suit property is the self acquired property of Arumugam Pillai.

Point No.2:-

We have already come to a conclusion that the suit property is self acquired property of Arumugam Pillai. In that case, on his death, in the absence of any testamentary document, by virtue of operation of Section 8 of



the Hindu Succession Act, all the sons and daughters and entitled to equal share in the suit property. Though, the appellant in his written statement raised a plea that during the life time of Arumugam Pillai, he executed a Will bequeathing suit property in his favour, he has not chosen to produce the alleged Will before the Court. Therefore, there may not be any difficulty in coming to the conclusion that Arumugam Pillai died intestate. Therefore, by operation of Section 8 of the Hindu Succession Act, respondents 1 to 4, being daughters of Arumugam Pillai, are entitled to equal share along with appellant. The arguments made by the learned counsel for the appellant that the respondents 1 to 4, daughters of Arumugam Pillai got married prior to coming into force of the Tamil Nadu Amendment Act 1 of 1990 and hence they are not entitled to claim equal share in the suit property is not applicable to the facts of the case. From the evidence available on record, it is clear that the suit property is not ancestral property and it is only self acquired property. Therefore, the citations relied on the by the learned counsel for the appellant may not be useful to support his contentions. Alternatively, we would like to observe that even assuming suit property is the ancestral property of the family, after the amendment to the Hindu Succession Act in the year 2005 daughters have become coparceners with equal rights along with son. Their



equal right is by virtue of their birth and said right cannot be curtailed by date of their marriage or by date of death of their father. The above said proposition was categorically laid down by the Hon'ble Apex Court in ***Vineeta Sharma versus Rakesh Sharma and others reported in (2020) 9 SCC 1***, . The relevant observation of the Hon'ble Apex Court in this regard is as follows:

"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.



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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."

9. The learned counsel for the respondents 2 to 4 and 6 to 10 had taken us to the evidence of appellant as D.W.1 wherein he admitted that their father Arumugam Pillai worked as Post Master and when he was in Government service, he became a member of the housing society and paid sale consideration for purchasing the suit property from his monthly salary. He also pointed out that D.W.1 during his cross examination admitted that he was unemployed till 2004 and he got temporary appointment only in the year 2004. In the light of the admissions made by the appellant as D.W.1, it may not be possible for him to contribute for purchase of suit property in the year 1987. We have already a given factual finding that the suit property is self acquired property. The admissions of appellants as D.W.1 adds strength to that finding.

10. The learned counsel for the appellants at the conclusion of the arguments submitted that 5th respondent is not entitled to equal share in the



suit property because under Ex.B1, her husband executed a release deed and divided from family. As we discussed earlier, the suit was purchased by Arumugam Pillai in the year 1987, subsequent to the alleged release deed. It is clear that property is the self acquired property of Arumugam Pillai and hence by operation of Section 8 of the Hindu Succession Act, the 5th respondent as widow of deceased son of Arumugam Pillai is entitled to equal share. In view of our discussions made above, the findings of the Trial Court that the respondents 1 to 4 are entitled to 1/6th share each in the suit property is correct and the appeal fails. In the facts and circumstances of the case, there shall be no order as to costs.

11. The appellant filed C.M.P.No.15617 of 2017 for raising additional grounds. The Additional grounds sought to be raised by the appellants relates effect of Section 29 A of the Hindu Succession Act, introduced by the Tamil Nadu Act 1 of 1990 with effect from 25.03.1989. As we discussed earlier, we found that the suit property is self acquired property, therefore, Section 29 A has no relevance to the facts of the case. Even assuming suit property is coparcenary property, in view of 2005 amendment of the Hindu Succession Act by the Parliament, as per law laid down by *Vineeta Sharma versus*



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Rakesh Sharma case (cited supra), the daughters are entitled to equal share along with the son and irrespective of date of marriage or death of father. The contentions made by the learned counsel for the appellant was already considered by us. Therefore, there is no necessity to allow this application for the raising additional grounds. Hence, C.M.P.No.15617 of 2017 is dismissed.

12. In Nutshell:

- i) The appeal is dismissed by confirming the judgment and decree passed in O.S.150 of 2008 on the file of the Principal District Court, Vellore.
- ii) There shall be no order as to costs.
- iii) Connected Civil Miscellaneous Petitions are closed.

(V.M.V.J) (S.S.J)

18.10.2022

Internet : Yes / No

Index : Yes / No

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To

1. The Principal District Court,



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V.M.VELUMANI, J.
and
S.SOUNTHAR, J.
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