



A.S.No.26 of 2011

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
06~04~2022	24~06~2022

CORAM:

THE HONOURABLE MRS. **JUSTICE S. KANNAMMAL**

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1.Palanisamy
2.Soliammal
3.Eswari

... Appellants

Versus

1.Navamani
2.Minor Hemalatha

... Respondents

Appeal Suit is filed under Section 96 of the Civil Procedure Code against the Judgment and Decree dated 30.07.2010 made in O.S.No.196 of 2006 on the file of the I Additional District Court, Erode.

For Appellant : M/s.S.Yogalakshmi
for Mr.M.Guruprasad

For R1 : Mr.A.Sundaravadanan

JUDGMENT

The defendants 1 to 3 in O.S.No.196 of 2006 on the file of the I Additional District Judge, Erode, have come up with this appeal.



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2. The respondents 1 and 2 have filed the suit in O.S.No.196 of 2006 for a direction directing the 1st appellant herein to pay a sum of Rs.6,000/- per month as maintenance to the 1st respondent for the past three years and from the date of suit till her life time and for a relief of partition claiming 4/12 share in the suit schedule properties and directing the 1st appellant to render true and correct accounts of the suit properties at the rate of Rs.1,80,000/- per annum from the date of the suit till the date of delivery of separate possession to the 2nd respondent.

3. For the sake of convenience, the parties to this appeal are referred to as plaintiffs and the defendants as has been arrayed in the suit.

4. The case of the plaintiff is as follows :

The 1st plaintiff is the mother of the 2nd plaintiff and wife of the 1st defendant. The 2nd defendant is the mother of the 1st defendant and 3rd defendant. In other words 2nd and 3rd defendants are the in laws of the 1st plaintiff. The 1st plaintiff got married to the 1st defendant on 13.03.1995 at Sri Venkateswari Thirumanamandapam, Erode. According to the first plaintiff, the marriage was solemnized as per Hindu rites and customs. At the time of



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marriage, a sum of Rs.50,000/- was presented by the parents of the 1st plaintiff towards “Pottipanam” besides 40 sovereigns gold ornaments presented as demanded by the defendants. After the marriage, the 1st plaintiff lived with the defendants in the matrimonial home. However, the 1st plaintiff was subjected to harassment by demanding more amount towards dowry and when the 1st plaintiff pleaded her inability to bring amount from her parents, she was physically thrashed and verbally abused. On 14.11.1995, the 2nd plaintiff was born as a pre-matured female child. It is stated that the defendants did not like the birth of the 2nd plaintiff on the ground that she was born on an inauspicious time. Therefore, the plaintiffs were made to stay in their parent's house of the 1st plaintiff for about 11 months. Thereafter, when the 1st plaintiff, along with 2nd plaintiff returned to the matrimonial home she was subjected to harassment by the defendants. It is stated that the defendants have also snatched all the jewels owned by the first plaintiff. As the harassment continued, the 1st plaintiff accompanied by the 2nd plaintiff had taken shelter in her parent's house. Thereafter, a Panchayat was convened. However, the dispute could not be settled and there was no possibility for a re-union.

5. The plaint further proceeds that the defendants are the owners of the

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suit property and they are raising paddy, ground-nut, cotton etc., The net income derived from the suit property, after deducting all expenses, will not be less than Rs.15,000/- per month. On the other hand, the plaintiffs are made to starve and depend upon the parents of the first plaintiff for their day to day expenses. The 1st defendant has a moral obligation to maintain the plaintiffs. Further, the 2nd plaintiff has got a 4/12 share in the suit property which the defendants are bound to give her. However, the defendants are attempting to alienate the suit property to deprive the 2nd plaintiff of her lawful right and interest over the suit property. In those circumstances, the plaintiff has filed the suit for the relief stated supra.

6. The 1st defendant filed his written statement and took a stand as follows:

According to the 1st defendant, except the factum of marriage, the allegation with respect to matrimonial cruelty or harassment raised in the plaint are false.

It was vehemently contended by the 1st defendant that the 1st plaintiff was in the habit of confronting him and his mother, the 2nd defendant, frequently which resulted in the matrimonial discord. The 1st plaintiff did not discharge her matrimonial obligations as a lawful Hindu wife. Due to the attitude of the



1st plaintiff, the 1st defendant lost peace in the matrimonial journey. It is also stated that the defendants never demanded any dowry from the parents of the 1st plaintiff, as alleged. On the other hand, they have made several attempts to bring back the first plaintiff whenever she deserted the matrimonial company of the 1st defendant. The 1st plaintiff used to come back to the matrimonial home on and off. However, after raising a quarrel towards a trivial matrimonial dispute, she would return to her parents house. The 1st defendant specifically denied that the defendants disliked the birth of the 2nd plaintiff on the ground that she was born on an inauspicious day.

7. As regards the claim for partition of the suit property, it was specifically contended by the 1st defendant that the suit property belongs to his paternal grand-father Chinnamalai Gounder and after his death, the father of the 1st defendant namely Rangasamy inherited the suit property. Subsequently, his father Rangasamy and his brother Subramani orally partitioned the suit property and enjoyed them till their life time. Out of the earnings, derived from the property allotted to the father of the 1st defendant he had purchased some lands under a sale deed dated 02.11.1978 and 09.07.1980 and they are the self-acquired properties of the father of the 1st defendant. The 1st defendant has



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also given elaborate account of the acquisition of the suit property in paragraph No.11 of the written statement. In effect, it is his contention that by a Will dated 22.01.2000, the suit properties have been bequeathed in favour of the defendants 1 and 2. It is further claimed that the 1st plaintiff deserted the matrimonial company of the 1st defendant during the year 1995 and only in the year 2006, the present suit has been filed with an eye to grab the properties of the defendants.

8. The 1st defendant also stated in the written statement that he and his mother namely defendants 1 and 2 have voluntarily executed a registered Will dated 19.09.2003 bequeathing the suit property in favour of Dilip Kumar, son of the 3rd defendant. The Will dated 19.09.2003 was executed much prior to the institution of the present suit and therefore, the suit property is not available for partition. The 1st defendant therefore prayed for dismissal of the suit.

9. On the above pleadings, the Trial court framed the following issues:

1. Whether the 1st plaintiff voluntarily deserted the matrimonial company of the 1st defendant?



2. Whether the 1st plaintiff has sufficient means to maintain herself from and out of the income from the property of her own?

3. Whether the suit property is the ancestral property of the minor second plaintiff and the defendants?

4. Whether the suit property has been valued properly? and Whether the Court fee paid is proper?

5. Whether the suit is liable for dismissal for non-joinder of necessary parties?

6. Whether the plaintiffs are entitled for a decree as prayed for in the plaint?

7. To what other relief, the plaintiffs are entitled to?

10. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A3 were marked. On the side of the defendants D.W.1 to D.W.4 were examined and Exs.B1 to B48 were marked. Ex. X1 has been marked as Court document.

11. The Trial Court, on considering the oral and documentary evidence on record, came to a conclusion that the suit property has to be divided into 9 equal shares among which 2 shares has to be allotted to the second plaintiff.

Further the trial court held that the 1st defendant has to pay a sum of Rs.3,250/-

for the past three years and the same amount has to be paid as monthly



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maintenance towards the 1st plaintiff for the rest of her life.

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12. Challenging the judgment and decree, dated 30.07.2010, passed by the Trial Court, the defendants 1 and 2 have filed the present appeal.

13. Mrs. S.Yogalakshmi, for Mr.M.Guruprasad, learned counsel for the appellants/ defendants, made the following submissions before this Court:

14. The 1st plaintiff was living away from the marital house on her own accord, while so the trial Court ought to have dismissed the suit on the ground that there is no cause of action for filing the suit. The 2nd plaintiff had no right to seek for partition as the properties are not joint family properties, As the 1st plaintiff herself does not have any co-parcenary interest inasmuch as the properties are the separate properties of Rangaswamy Gounder, the 1st appellant's father, the suit relief for partition is not maintainable. The said Rangaswamy Gounder had obtained the property along with his brother Subramaninan by virtue of Ex.B1-Settlement Deed wherein two persons having interest in the property had settled the same and enjoying it as their separate properties. The mere recital that the properties belong to a joint family



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cannot partake the character of the property as ancestral property. The 1st plaintiff herself had made an admission that she had stayed away from the marital house from 1995, and it is only in 2006 the present suit was filed and this clearly shows that she was able to maintain herself over a decade with her own properties. In any event, the 1st plaintiff has to prove that she was driven out of the marital home and in the absence of the same, the trial court ought not to have decreed the suit.

15. It is further submitted that the learned judge erred in holding that there was no mutation of Revenue records for execution of Ex.B1, Settlement Deed, as Rangaswamy Gounder and his brother Subramanian were minors at the time of execution of Ex.B1. Subsequently, mutation of revenue records was made under Exhibit B4, Partition Deed, but it was not taken note of by the trial court. Rangaswamy Gounder had executed a Will in favour of his wife, the 2nd defendant as the said properties are his separate properties and it is natural that he asked his son-in-law D.W.2 and the neighboring land owner D.W.3 to attest the document. Therefore, there can be no suspicion regarding the execution of such Will. In such circumstances, the trial Court had erred in merely presuming the annual income of the suit properties at Rs.1,20,000/- without any document to prove the same. There was no reasonings as to the order of



Rs.3,250/- as monthly maintenance payable to the 1st plaintiff. Further the appellant states that the very suit for partition itself is not maintainable and consequently, the question of awarding mense profit is not sustainable and it has to be relegated in a separate proceedings. Therefore, the learned counsel for the appellants would contend that the judgment and decree of the trial court is liable to be set aside.

16. Per contra, Mr.A.Sundaravadanan, learned counsel for the 1st respondent/plaintiff made the following submissions before this Court:

17. There is no evidence to prove that the property sought to be partitioned is not a joint family property. According to the learned counsel the respondents/plaintiffs, under the presumption that the second plaintiff born with special character and at an inauspicious time she was neglected. On the other hand, the 1st and 2nd defendants have settled the property to the son of the third defendant only to deprive the second plaintiff of her lawful and legitimate share. This attitude of the 1st and 2nd defendant clearly shows that they wantonly neglected the right of the 2nd plaintiff. The trial court, taking note of the above, rightly held that the second plaintiff is also having a share in the suit property. Further, the obligation on the part of the first defendant to



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maintain the first plaintiff/wife and second plaintiff/daughter is not only legal but also moral and therefore, a meager amount of Rs.3,250/- was directed to be paid every month to the first plaintiff/wife. It is to be noted that the matrimonial tie between the first plaintiff and first defendant still subsists and the first defendant is the lawful husband of the first plaintiff. While so, the first defendant cannot disown his responsibility to maintain the plaintiffs. In such view of the matter, the trial court is wholly justified in awarding a meager sum of Rs.3,250/- as maintenance per month and it cannot be said to be onerous.

18. Heard the learned counsel for the appellants as well as the respondents and perused the materials available on record.

19. In the backdrop of the above facts, it is necessary to decide as to

- 1) Whether the amount of maintenance awarded by the trial Court in favour of the 1st plaintiff/wife is excessive?
- 2) Whether the preliminary decree passed by the trial Court to the effect that the suit property has to be divided into nine equal shares and two such shares to be allotted to the 2nd plaintiff is legally sustainable or not?



20. Given the nature of the relief sought for in the suit, this Court feels that it is unnecessary to go into the matrimonial dispute that had cropped up between the 1st plaintiff and the 1st defendant. This Court feels that the averments and counter-averments made by the parties with respect to matrimonial cruelty is unnecessary for a decision in this appeal.

21. The 1st plaintiff is the legally wedded wife of the 1st defendant. The 2nd plaintiff is the female child born out of such wedlock between the 1st plaintiff and the 1st defendant. The 2nd defendant is the mother-in-law of the 1st plaintiff. The 3rd defendant is the sister-in-law of the 1st plaintiff. To put it in other words, the 2nd plaintiff is the grand-daughter of the 2nd defendant. This relationship between the parties is not in dispute.

22. Even though in the plaint, the plaintiff has raised several allegations to drive home the point that she was subjected to matrimonial cruelty, the fact remains that there was no matrimonial proceedings initiated either by the 1st plaintiff or by the 1st defendant to annul the marriage solemnized between them. The suit was filed only for award of maintenance to the plaintiffs by the 1st defendant and for a share in the property of the defendants.



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23. Admittedly, the plaintiffs and the 1st defendant are residing separately much prior to the filing of the suit. According to the 1st plaintiff, she was subjected to matrimonial cruelty by the defendants and was driven out of matrimonial home unceremoniously. It is also the plea of the 1st plaintiff that she is taking shelter with her parents. She also stated that she has no wherewithal to maintain herself and the 2nd plaintiff and therefore she is entitled for maintenance from the 1st defendant. It is also her claim that the property owned by the defendants is the ancestral property over which, the 2nd plaintiff is also having a right. Therefore, the suit was laid by the plaintiffs before the trial court.

24. The suit was defended by the 1st defendant by mainly contending that it was the 1st plaintiff who, due to her adamant attitude, is squatting in her parents house for a long time without returning to the matrimonial home. In spite of many demands made by the defendants, the 1st plaintiff did not return to the matrimonial home. When the 1st plaintiff left the matrimonial company of the 1st defendant voluntarily and without any just and sufficient cause, she is not entitled for maintenance at all. Further, it was contended by the defendants that the property sought for by the plaintiffs is not the self-acquired property of



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Court feels that the sum of Rs.3,250/- awarded by the trial Court is a reasonable amount payable by the 1st defendant towards maintenance for the plaintiffs. Accordingly, this Court answer this issue in favour of the plaintiffs and against the defendants.

26. As regards the preliminary decree passed by the trial Court, it is to be mentioned that on the one hand the 1st defendant claimed that he has no right, much less conveyable right over the properties in which a share was sought for by the plaintiffs. In the written statement filed before the trial Court, the 1st defendant in paragraph No.7, 8 and 11 had extensively dealt with the ownership of the land and stated that the properties have been acquired by the defendants 1 and 2 through a Will dated 22.01.2000 executed in their favour. Thus, it is clear that the property, over which a share was sought for by the second plaintiff, is not the self-acquired property of the first defendant and it was the ancestral property obtained by him through a Will dated 22.01.2000. At the same time, it was also admitted by the 1st defendant that he along with his mother, the 2nd defendant had executed a Will dated 19.09.2003 in favour of the son of the 3rd defendant. Admittedly, three years prior to the institution of the suit, the Will dated 19.09.2003 came to be executed. At the same time it can be taken note of that even by that time the matrimonial relationship



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between the 1st defendant and the 1st plaintiff strained. Therefore, in order to deprive the plaintiffs from claiming any share in the properties conveniently the Will dated 19.09.2003 was executed by the 1st defendant in favour of the son of the 3rd defendant. When the 2nd plaintiff is the legitimate child born out of the wedlock between the 1st defendant and 1st plaintiff, the execution of the Will dated 19.09.2003, while the 2nd plaintiff was alive, cannot be countenanced under law. In other words, only to deprive the 2nd plaintiff from getting any share in the property the Will dated 19.09.2003 came to be executed. This was also rightly appreciated by the Court below. This is more so that the properties owned by the 1st defendant are not his self-acquired property. The 1st defendant himself has got this property through a Will executed in his favour by his father. While so, it is clear that the Will executed by the 1st defendant in favour of the son of the 3rd defendant is only to deprive the lawful share in the property to be given to the 2nd plaintiff. The trial Court taking note of the above aspects has rightly decreed the suit over which this Court finds no reason to interfere.

27. Accordingly, judgment and decree passed by the trial Court is confirmed. The Appeal Suit stands dismissed. No costs. As the said suit was filed in the year 2006, in which the impugned judgment and decree were



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passed on 2010 and the appeal was pending before this Court for more than a decade, this Court feels it just and proper to direct the Court below to complete the final decree proceedings within a period of one year from the date of receipt of copy of this judgment.

24.06.2022

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Index :Yes/No

Internet :Yes/No

To

The I Additional District Judge,
Erode.



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S.KANNAMMAL. J,

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Pre delivery judgment made in
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