



A.S.No.332 of 2016
and C.M.P.No.7264 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

A.S.No.332 of 2016
and
C.M.P.No.7264 of 2016

T.S.Narendra

... Appellant

..Vs..

1.Suseela
2. P.J. Ravikumar (deceased)
3. Padmini
4. Meera
5. Harikumar
6. Rukmani
7. R. Thara
8. R. Santhosh

... Respondents

PRAYER : First Appeal filed under Section 96 C.P.C. praying to set aside the decree and judgment dated 26.11.2015 made in O.S.No.9129 of 2010 on the file of the II Additional City Civil Court, Chennai.

For Appellant : Mr.N. Kumar Rajan
for M/s. Kumar and Baskar
For R5 : Mr.M. Praveen Kumar



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JUDGMENT

The appellant is the plaintiff in O.S.No.9129 of 2010 on the file of the II Additional Judge, City Civil Court, Chennai. He filed the suit for partition of the suit property into 15 equal shares and to allot six such share to him.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3.The case of the plaintiff in brief is as follows:

The suit property bearing Old No.4, New No.2, Dharmaraja Koil Street, Choolai, Chennai, measuring 401 sq.ft. within the boundaries stated therein originally belonged to one Subbarayalu Naidu. His only son T.S.Srinivasalu Naidu inherited the property after the death of his father Subbarayalu Naidu during the year 1939. T.S.Srinivasalu Naidu died on 09.12.1978 leaving behind the plaintiff and the defendants as his legal heirs. The eldest son of the deceased T.S.Srinivasalu Naidu, namely Rajendran, embraced Christianity and also relinquished all his rights in the



suit property. The younger son of Late T.S.Srinivasalu Naidu namely Sathendra also died during the year 2002 as a bachelor. Therefore, both Rajendran and Sathendra are not added as parties to the present suit. The plaintiff and the 1st defendant are son and daughter respectively of T.S.Srinivasalu Naidu. The defendants 2 to 4 are the sons and daughters of deceased Ahalya who is also the daughter of T.S.Srinivasalu Naidu. The father of the plaintiff and the 1st defendant was in absolute possession and enjoyment of the suit property till his death on 09.12.1978. The plaintiff and the 5th defendant discharged the mortgage loan obtained by T.S.Srinivasalu Naidu during his life time. In fact the plaintiff and the 5th defendant spent more than Rs.1,50,000/- for safeguarding the property and for paying taxes to the Government. Now the superstructure over the suit property is in dilapidated condition and though the plaintiff requested the defendants for partition of the suit property they evaded. Hence the suit.

4. The suit was resisted by the defendants on the following grounds :

- 1) The suit is liable to be dismissed for non-joinder of necessary parties.
- 2) It is false to contend that the plaintiff and the 5th defendant spent



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more than Rs.1,50,000/- for safeguarding the suit property and for paying taxes to various authorities of the Government.

- 3) Since the 1st defendant is one of the legal heirs of Late T.S.Srinivasalu Naidu, she is entitled to get 1/5 share in the suit property and similarly defendants 2 to 4 together entitled to get another 1/5 share and the defendants 5 & 6 are entitled to 1/5 share each in the suit property.
- 4) As per Section 26 of the Hindu Succession Act, where a Hindu by conversion to another religion, children born to him / her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens and in the instant case succession opened on the death of T.S.Srinivasalu Naidu on 09.12.1978 and on the date of death of Rajendran on 20.09.2003.
- 5) There is no proof that the deceased Rajendran converted to Christianity.
- 6) The plaintiff's claim of 6/15 share in the suit property is incorrect as per the Hindu Succession Act.



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7) The 5th defendant discharged the mortgage loan on 09.08.1956 and on the principles of equity, the 5th defendant is entitled to get compensation for the same by way of adjustment by other sharers of the suit property.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- 1) Whether the plaintiff is entitled for partition and separate possession of the suit property as prayed for ?
- 2) Whether the suit is bad for non-joinder of necessary parties?
- 3) Whether the 5th defendant is entitled for compensation and adjustment by other sharers in the suit property?
- 4) To what relief?

6. In the trial Court, the plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A9. The 5th defendant examined himself and no oral and documentary evidence was adduced on his side.

7. After full contest, learned II Additional Judge, City Civil



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Court, Chennai, partly decreed the suit filed by the plaintiff and passed a preliminary decree dated 26.11.2015 for partition of the suit property into five equal shares and to allot one such share to the plaintiff. Since the plaintiff had claimed 6/15 share in the suit property, he has filed the present appeal.

8. Heard Mr.N. Kumar Rajan, learned counsel appearing for the appellant Mr.M. Praveen Kumar, learned counsel appearing for the 5th defendant.

9. It is the contention of the plaintiff that since the suit property is a coparcenary property and not the separate property of the father of the plaintiff and the 1st defendant, the preliminary decree passed by the trial Court dividing the suit properties into five equal shares and allotting one such share to the plaintiff is erroneous.

10. Per contra learned counsel appearing for the 5th respondent contended that the suit property originally belonged to Late Subbarayalu Naidu and T.S.Srinivasalu Naidu is his only son who inherited the suit



property under Section 8 of the Hindu Succession Act from his father. His further contention is that after the death of T.S.Srinivasalu Naidu, all his sons and daughters are entitled to get equal share in the suit property as per Section 8 of the Hindu Succession Act. His specific contention is that the suit property cannot be treated as an ancestral property of T.S.Srinivasalu Naidu. Since one of the sons of T.S.Srinivasalu Naidu got converted to Christianity and another son Sathendra died as a bachelor there are five sharers and the division of the suit property into five equal shares and allotment of one such share to the plaintiff by the trial Court is absolutely in order.

11. The points for consideration in the instant appeal are,

- 1) Whether the suit property is the ancestral property of the plaintiff and the defendants or separate property of Late T.S.Srinivasalu Naidu?
- 2) Whether the plaintiff is entitled to get 6/15 share in the suit property as claimed by him in the suit?

Points No. 1 & 2



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12. It is seen from oral and documentary evidence adduced on both sides that the suit property was originally owned by Late Subbarayalu Naidu. Late T.S.Srinivasalu Naidu was his only son. He inherited the suit property under Section 8 of the Hindu Succession Act after the death of his father Subbarayalu Naidu. It is the admitted case of the plaintiff and the defendants that one of the sons of Late T.S.Srinivasalu Naidu converted to Christianity and another son Sathendra died as a bachelor. Section 26 of the Hindu Succession Act reads thus :

"26. Convert's descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens."

13. It is also admitted that the children born to Late Rajendran (who converted to Christianity during his life time) are still Christians. This is clear from their names mentioned in the genealogical tree submitted by the counsel. It is also to be pointed out that the 5th defendant did not dispute the said fact. So there are only five sharers as far as the present suit is concerned. The contention of the plaintiff that the suit property is an ancestral property cannot be accepted for the simple reason that Late



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T.S.Srinivasalu Naidu (father of the plaintiff and the 1st defendant) inherited the suit property from his father under Section 8 of the Hindu Succession Act and it has become his exclusive property. It is also an admitted fact that the suit property is the self acquired property of late T.S.Srinivasalu Naidu. In the circumstances, the property acquired by the father of the plaintiff Late T.S.Srinivasalu Naidu from his father is his separate and exclusive property and cannot be construed as an ancestral property as alleged by the plaintiff. Therefore, the legal heirs of late T.S.Srinivasalu Naidu are entitled to get 1/5th share in the suit property as there are five sharers.

14. The father of the plaintiff obtained a loan of Rs.10,000/- on 09.08.1956 by executing a mortgage deed. According to the plaintiff, the said mortgage debt was discharged by him. However, he did not adduce any acceptable oral or documentary evidence to substantiate his contention in this regard. The 5th defendant during the course of cross examination had deposed that the mortgage loan was discharged even during the lifetime of his father late T.S.Srinivasalu Naidu. However, it was contended by him that he gave money to his father. This is not proved by the 5th defendant.



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Therefore, the trial Court had rightly held that the 5th defendant is not entitled for compensation as claimed by him. In the circumstances, the preliminary decree passed by the trial Court dividing the suit property into five equal shares and allotting one such share to the plaintiff is perfectly in order and I do not see any reason to interfere with the same. Accordingly, the points 1 & 2 are answered against the plaintiff.

15. In the result,

- i. The Appeal Suit is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the decree and judgment dated 26.11.2015 made in O.S.No.9129 of 2010 on the file of the II Additional City Civil Court, Chennai, is upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.

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To

1. The II Additional City Civil Court, Chennai,
2. The Section Officer, V.R. Section, High Court, Madras.

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