



A.S.No.1256 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.1256 of 2015
and C.M.P.No.11683 of 2021

1.Sellammal
2.Prabulatha
3.Chandra
4.Dhanalakshmi

...Appellants

-Vs-

Jothi

...Respondent

Prayer:- Appeal Suit filed under Section 96 C.P.C., and Order 41 Rule 1 & 2 against the judgment and decree dated 24.03.2014 made in O.S.No.1 of 2011 passed by the learned Additional District Judge, Salem.

For Appellants : Mr.P.Jagadeesan

For Respondent : No appearance



A.S.No.1256 of 2015

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JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The defendants in the suit in O.S.No.1 of 2011 on the file of the learned Additional District Judge, Salem are the appellants in the above appeal.

2. The sole respondent herein as plaintiff, filed the suit in O.S.No.1 of 2011 for partition of her 7/20th shares in all the suit properties and for consequential reliefs.

3. The learned counsel appearing for the appellants has filed a Memo dated 27.09.2022 indicating that the 1st appellant who is the mother-in-law of the sole respondent by name Jothi died on 18.01.2020. Since the daughters of 1st appellant are also on record as appellants 2 to 4, this Court is inclined to record the death of 1st appellant and the status of appellants 2 to 4 as legal heirs of the deceased 1st appellant.

4. The relationship between the parties is not in dispute. The plaintiff is the daughter-in-law of one Kandasamy who is the son of one Muthu



A.S.No.1256 of 2015

Gounder. The suit properties are described in two items comprising of agricultural properties and house.

5. It is admitted that the suit properties were allotted to the father of said Kandasamy under a registered Partition Deed dated 15.07.1974 which was among the heirs of his father Muthu Gounder. Therefore, there is no dispute with regard to character of suit properties as ancestral.

6. It is admitted that the wife of Kandasamy by name Sellammal is the 1st appellant herein and the 1st defendant in the suit. Kandasamy died leaving behind his wife, three daughters and the plaintiff's husband one Mr.Soundaram @ Soundararajan who was the only one son of Kandasamy. Mr.Soundaram @ Soundararajan married the plaintiff on 14.03.1999 but died on 23.12.1999. The three daughters of Kandasamy are defendants 2 to 4 in the suit.

7. The suit was contested by the defendants mainly on the ground that the plaintiff had left the matrimonial home after the death of her husband Mr.Soundaram @ Soundararajan. It is the case of the plaintiff in the suit that



A.S.No.1256 of 2015

there was a panchayat pursuant to which the plaintiff had relinquished her right in the suit properties. Though an unregistered Release of Deed dated 14.03.2000 is relied upon by the defendants, however, the defendants have not proved the execution of the unregistered Release Deed through sufficient evidence. The defendants only stated that a sum of Rs.1,00,000/- was paid by the employer of plaintiff's deceased husband as compensation and a further sum of Rs.15,000/- was paid to the plaintiff by the Government through the Member of Legislative Assembly. It is only based on the panchayat under an unregistered Release Deed the defendants claimed that the plaintiff will not get any share in the ancestral properties of the said Kandasamy.

8. The defendants / appellants specifically pleaded that the said Kandasamy executed a Will in respect of all the suit properties in favour of other defendants on 21.08.2000.

9. The Trial Court framed the following issues:

“(i) whether the plaintiff is having 7/20th share in the suit properties?”

“(ii) whether the plaintiff has released her right in the



A.S.No.1256 of 2015

property in favour of the 1st defendant's husband namely Kandasamy?

(iii) whether the plaintiff is entitled for preliminary decree for partition and possession?

(iv) whether the plaintiff is entitled for injunction as prayed for?

(v) whether the court fee paid by the plaintiff is proper?

(vi) to what right the plaintiffs are entitled to?"

10. Before the Trial Court the plaintiff examined herself as P.W.1 and marked Exs.A1 to A12. On the side of the defendants / appellants three witnesses were examined including the 4th defendant who had been examined as D.W.1. Defendants marked Exs.B1 to B17. The Trial Court held that the unregistered Release Deed alleged to have been executed by the plaintiff is not proved. The Trial Court held that the 1st defendant's husband by name Kandasamy had no right to deal with the entire property. However, it is held that the said Kandasamy is entitled to execute the Will to the extent of his interest in the property by virtue of Section 30 of the Hindu Succession Act.



A.S.No.1256 of 2015

WEB COPY

Therefore the Trial Court held that the plaintiff is entitled to equal share in the suit properties to which her husband is entitled to.

11. In other words the Trial Court granted a decree for partition in respect of $4/16^{\text{th}}$ shares in all the suit properties, after holding that the plaintiff and 1st defendant are entitled to $1/2^{\text{th}}$ shares in the $1/2^{\text{th}}$ shares that would be taken by her husband. As pointed out earlier, the Trial Court specifically held that the Release Deed and the Deed of Muchalika were not proved by examining any independent witnesses. It is admitted by the defendants / appellants that no amount was paid by the defendants to get Release Deed and the amount paid to the plaintiff was by the employer of her deceased husband and the Government. The case of defendants that they paid substantial amount is unsustainable. The Trial Court is justified in holding that documents under Exs.B3 and B4 are not helpful to the defendants denying the relief of partition to the plaintiff, since they are neither registered nor stamped. The findings of the Trial Court that the documents Exs.B3 and B4 were not proved cannot be faulted for want of registration and stamp duty in respect of the document Ex.B3 dated 14.03.2000 and Ex.B4 dated 14.03.2000. The documents are not admissible in evidence.



A.S.No.1256 of 2015

WEB COPY

12. One of the objections raised by the appellants before the Trial Court was that the plaintiff married another person after the death of her husband and that therefore she is not entitled to inherit the share of her husband in the joint family property. This argument was rejected by the Trial Court as the widow of Mr.Soundaram @ Soundararajan married long after the death of her husband. It is well settled that the property vested under Hindu Succession Act, cannot be divested merely because the widow had married somebody after the death of her husband. Section 28 of Hindu Succession Act saves the widow from any disqualification in the absence of any other provisions to disqualify her.

13. However, the Trial Court has granted a decree in respect of 4/16th shares in all the suit properties even after noticing the amendment in the Hindu Succession Act, 2005.

14. After 2005, Section 3 reads as follows:

“Section 3 - Substitution of new section for section 6

“For section 6 of the principal Act, 1956, the following section shall be substituted, namely:--



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A.S.No.1256 of 2015

'6 (l). Devolution of interest in coparcenary property. (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,--

(a) by birth become a coparcener in her own right the same manner as the son ;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.



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A.S.No.1256 of 2015

(2) Any property to which a female Hindu becomes entitled by virtue of subsection (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,--

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and



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A.S.No.1256 of 2015

(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased so or a pre-deceased daughter, as the case may be.

Explanation.-- For the purposes of this sub-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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect--



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A.S.No.1256 of 2015

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.--For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court.



A.S.No.1256 of 2015

WEB COPY

15. The Large Bench of the Hon'ble Supreme Court has settled the position that the female members are entitled to equal share along with the sons in all the joint family properties and the daughters are entitled to the share as per 2005 amendment irrespective of the date of death of father before or after the commencement of amendment. The Trial Court had failed to take note of the position as interpreted by the Hon'ble Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma & Ors.* reported in (2020) 9 SCC 1.

16. It is admitted that the plaintiff is the wife of Mr.Soundaram @ Soundararajan who is the brother of appellants 2 to 4 and appellants 2 to 4 are also entitled to equal share along with their brother, the husband of plaintiff / respondent. 1st appellant namely the mother-in-law of plaintiff and mother of appellants 2 to 4 also died during the pendency of the appeal. The 1st appellant's share will go only to the daughters excluding daughter-in-law as per Section 15(1) of the Hindu Succession Act. Since daughters are entitled to equal share they are entitled to 1/5th shares each. The Trial Court has also held that Will executed by their father in respect of his share is valid. Since the father is also entitled to 1/5th shares and the Will executed by father under Ex.B5 is valid in respect of his 1/5th shares daughters are also entitled to the 1/5th shares of their



A.S.No.1256 of 2015

WEB COPY

father. Therefore the judgment and decree of the Trial Court granting 4/6th shares to the plaintiff is liable to be modified. Out of the 1/5th shares of plaintiff's husband, plaintiff and 1st appellant, mother of plaintiff's husband are entitled to each 1/10th shares.

17. Accordingly this appeal suit is partly allowed and the judgment and decree of the Trial Court is set aside by granting a decree for partition in favour of the plaintiff in respect of 1/10th shares in all the suit properties. No costs. Consequently, connected miscellaneous petition is closed.

[SSSRJ] [NMJ]

27.10.2022

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Index : Yes/No

Speaking/Non Speaking order



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A.S.No.1256 of 2015

S.S.SUNDAR, J.,

AND

N.MALA, J.,

cda

To

- 1.The Additional District Judge, Salem.
- 2.The Section Officer, VR Records,
High Court, Chennai.

A.S.No.1256 of 2015

27.10.2022