



A.S.No.279 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM :
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

A.S.No.279 of 2015

1. B. Thanigeswari
2. Soundari @ Soundariam
3. R. Nalini
4. M. Vijayalakshmi
5. J. Sivasankari

... Appellants

..Vs..

N. Senthilkumar

... Respondent

PRAYER : First Appeal filed under Section 96 C.P.C. against the decree and judgment dated 05.12.2014 made in O.S.No.1451 of 2011 on the file of the II Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.M. Sriram

For Respondent : Mr.V. Ponnappa Bharathi
for Mitraa Legal

JUDGMENT

The unsuccessful plaintiffs in O.S. No.1451 of 2011 on the file of the II Additional City Civil Court, Chennai, have filed the present first appeal.



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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 suit was filed by the plaintiffs for partition of the suit property morefully described in the plaint bearing Old Plot No.10, New No.11, Dr. Radhakrishnan Nagar, 1st street, Old Washermenpet, Korukkupet, Chennai 600 021, measuring 2280 sq. ft comprised in Re-Survey No.3805/part, within the boundaries stated therein with a tea shop at No.111/11, NSC Bose Road, Sowcarpet, Chennai 600 079 measuring 200 sq. ft.

4. The case of the plaintiffs in brief is as follows:

- a) The plaintiffs are the sisters of the defendant Senthil Kumar. They were born to Thiru.R.Natarajan (since deceased) and Tmt.R.Manonmani (since deceased).
- b) Late.Natarajan, during his life time purchased the suit property through a registered sale deed dated 30.04.1962, (a certified copy of which was marked as Ex.A1), from one Naga Malegewara Chetty



and others. He put up a superstructure consisting of 7 portions.

- c) The plaintiffs and the defendant along with their parents were initially residing in the suit property.
- d) Natarajan died on 19.11.2002, subsequent to which, the defendant continued to occupy one portion of the suit property and leased out 6 portions and started receiving rents therefrom.
- e) The defendant did not take care of his mother Manonmani and in fact the plaintiffs were taking care of her.
- f) Manonmani died on 04.06.2010.
- g) The defendant continued to run the tea shop after the death of his father and started earning atleast Rs.30,000/- per month apart from the rental income of Rs.12,000/- per month.
- h) When the plaintiffs sought for division of the suit property, the defendant threatened them with dire consequences.
- i) The defendant does not have any independent source of income and he has been enjoying the suit property by continuing to run the tea shop and also receiving rents from the other 6 portions.
- j) Since the suit property absolutely belonged to the father of the plaintiffs and the defendant, the plaintiffs are each entitled to 1/6



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share in the suit property.

5. The suit was resisted by the defendant on the following grounds:

- i. The suit property was purchased by the defendant in the name of his father and a superstructure was put up by the funds provided by the defendant.
- ii. The plaintiffs were given in marriage and each one of them were presented with 20 sovereigns of gold jewels, silver articles and all other household articles that are necessary to run a family.
- iii. The plaintiffs immediately after their marriage left the home and they are not in the occupation of the suit property.
- iv. The father of the plaintiffs and the defendant, was an alcoholic and he had literally closed the shop leaving only 6 steel tumblers, 6 glass tumblers and one aluminium vessel and kerosene stove totally worth about Rs.200/- and the defendant is now running the tea shop in his own capacity and it is not a joint family business.
- v. The plaintiffs do not have any right or share in the suit property and therefore, they cannot claim any share over the same.



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Hence, the defendant prayed for dismissal of the suit.

6. On the basis of the above pleadings, the learned II Additional Judge, City Civil Court, Chennai, framed the following issues:

- i. "Whether the plaintiffs are entitled to 5/6 shares in the suit property?
- ii. Whether the plaintiffs have no right in this suit property?
- iii. Whether the plaintiffs have been given much more than their share in the suit property?
- iv. Whether the father of the defendant has closed the tea business which was subsequently started by the defendant?
- v. To what other relief if any is the plaintiff entitled to?"

7. In the trial Court, the 5th plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A8. The defendant examined himself as D.W.1 and marked Ex.B1 and Ex.B2.

8. After full contest, the learned II Additional Judge, City Civil



Court, Chennai, dismissed the suit vide his decree and judgment dated 05.12.2014 on the following grounds.

- i. Though the certified copy of the sale deed dated 30.04.1962 (Ex.A1) shows that the father of the plaintiffs and the defendant was the original owner of the suit property, the plaintiffs were given cash and jewels at the time of their marriage towards their share in the suit property.
- ii. A copy of the mortgage deed dated 06.08.1992 (Ex.B1) shows that the suit property was mortgaged by the father and the mortgage was redeemed only by the defendant and the plaintiffs did not contribute any amount for redemption of mortgage.
- iii. Apart from Ex.B1 mortgage loan, the father of the plaintiffs and the defendant borrowed several amounts from various persons and the defendant alone discharged all the loans.

9. Aggrieved over the decree and judgment dated 05.12.2014 the present appeal is filed by the plaintiffs.

10. The points for consideration in the present appeal are as



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follows:

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- i. Whether the plaintiffs are entitled to 5/6 shares in the suit property?
- ii. Whether the jewels and cash given as sreedhana at the time of marriage of the plaintiffs can be construed as giving a share in the property of the father?

11. Heard, Mr.M. Sriram, learned counsel appearing for the appellants and Mr.V. Ponnappa Bharathi, learned counsel appearing for the respondent.

Points No. 1 & 2

12. It is an admitted fact that the suit property was the self acquired property of late Natarajan (father of the plaintiffs and the defendant). He purchased the property from one Naga Malegewara Chetty from out of his own earnings as is seen from the certified copy of sale deed dated 30.04.1962 (Ex.A1). It is also admitted that Natarajan died intestate and his wife Manonmani also died subsequently. The plaintiffs have filed the suit seeking for partition of the suit property into 6 equal shares and to allot one such share to them. Section 8 of the Hindu



Succession Act reads thus:

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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 heirs, 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;

(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.

Class 1 Heirs

- Sons.
- Daughters.
- Widow.
- Mother.
- Son of a pre-deceased son.
- Daughter of a pre-deceased son.
- Son of a pre-deceased daughter.
- Daughter of a pre-deceased daughter.
- Widow of pre-deceased son
- Son of a pre-deceased son of pre-deceased son
- daughter of a pre-deceased son of pre-deceased son



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- Widow of a pre-deceased son of pre-deceased son

In the instant case Natarajan died intestate and therefore his property would devolve upon his son and daughters, who are Class-I legal heirs.

13. The learned counsel appearing for the respondent relied on the decision in *Smt. Hemalatha vs. Sri. Venkatesh and others* in W.P. No.39982 of 2018 (High Court of Karnataka, Bengaluru) and contended that when the plaintiffs were given either dowry or gift at the time of marriage the same would also have to be made part of partition and thus the plaintiffs cannot claim any share over the suit property. The abovesaid ruling would not apply to the facts of the present case because in that case at the time of marriage of the plaintiff certain properties were given to her by way of dowry/gift and in such circumstances beneficiary of Section 6 of the Hindu Succession Act cannot once again seek for partition of joint family properties without referring to the properties already received by her at the time of marriage as dowry/gift or otherwise.

14. Relying on the deposition of P.W.1, the learned counsel for



the respondent contended that since at the time of marriage, the plaintiffs were given jewels and cash and therefore, they cannot claim any share in the suit property. Though it is admitted by P.W.1 that she was given 5 sovereigns of gold and other household articles, the same cannot be construed as a share in the suit property.

15. Another contention of the learned counsel for the defendant is that the suit property was mortgaged by the father on 06.08.1992 and that the defendant redeemed the mortgage through his own earnings and that the plaintiffs did not contribute even a single pie towards the same.

16. The trial court had held that the defendant alone redeemed the suit property mortgaged by his father. It is pertinent to point out that the defendant did not adduce any documentary evidence to show that he redeemed the mortgage. Ex.B1 is a cancelled mortgage deed and a perusal of the same shows that the purpose of obtaining loan was for performing the mortgagor's son's marriage. The 2nd mortgage was obtained on 22.12.1993 and all the mortgage loans were repaid in the year 1999 i.e. during the life time of Natarajan. This was admitted by the



defendant during the course of cross examination. In the absence of any acceptable oral/documentary evidence, it cannot be held that the defendant alone discharged the mortgage loan.

17. Apart from that the defendant in his written statement had gone one step further by contending that the suit property was purchased with his money in the name of his father and he only contributed money for putting up a superstructure. The suit property was purchased by late.Natarajan on 30.04.1962, during which time the defendant was not even born. The defendant during the course cross examination admitted that he was born only in the year 1963. It is also evident from the records that the superstructure was put up in the year 1974 and got completed in the year 1984. The defendant was just 11 years old during 1974 and therefore, the contention of the defendant that he contributed funds for putting up the construction cannot be accepted. It was also admitted by the defendant that he was only assisting his father in the tea shop and he did not have any independent source of income. Unfortunately, the learned trial court judge had given a finding that the plaintiffs cannot claim any share in the suit property on the ground that they were given



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jewels and other household articles during their marriage and that the defendant had redeemed the mortgage loans. The grounds on which the suit was dismissed by the trial court cannot be sustained in view of the specific provisions of Section 8 of the Hindu Succession Act as to how a property of a Hindu male dying intestate would devolve on his death. As already observed, the suit property is the self acquired property of the father and he died intestate. The relationship between the parties are not disputed and in the circumstances, the trial court ought to have decreed the suit filed by the plaintiffs by granting 5/6 shares to them.

18. In view of the above observations, point No.1 is answered in favour of the plaintiffs and point No.2 is answered against the defendant.

19. In the result,

- i. the Appeal Suit is allowed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the decree and judgment dated 05.12.2014 made in O.S.No.1451 of 2011 on the file of the II Additional Judge, City Civil Court, Chennai, is set aside.



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iii. A preliminary decree for partition of the suit properties into 6 equal shares and to allot five such shares to the plaintiff's with costs.

iv. The plaintiff's can file final decree petition for partition before the II Additional Judge, City Civil Court, Chennai.

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R. HEMALATHA, J.

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To

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

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