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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2022

PRONOUNCED ON : 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.NO.362 OF 2015

(Through Video Conferencing)

Muthusamy Gounder

... Appellant/Ist Defendant

Vs

1.S.Thangammal
2.K.Lakshmi
3.Sulochana
4.M.Ganesan

... Respondents/Plaintiff, Defendants 2 to 4

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 15.04.2015 passed in OS.No.266 of 2013, by the I Additional District Judge, Erode.

For Appellant : Mr.A.K.Kumarasamy, SC
for Mr.S.Kaithamalaikumaran

For Respondents : Mr.A.Thiyagarajan-R1
Mr.P.Parthikannan-RR2 to 4

JUDGEMENT

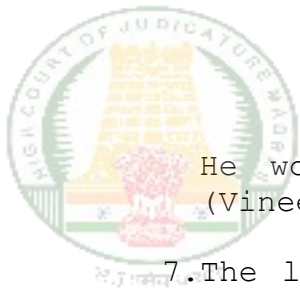
- 1.This Appeal Suit has been filed, by the 1st Defendant, against the judgement and decree, dated, 15.04.2015, passed in OS.No.266 of 2013, by the I Additional District Judge, Erode.
- 2.The case of the Plaintiff is that the 1st Defendant is the father of the Plaintiff and the Defendants 2 to 4 and the suit property is the ancestral property of the 1st Defendant. The 1st



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Defendant and 4th Defendant had entered into a registered partition deed, on 14.02.2002, with regard to the ancestral property of the 1st Defendant and in the said partition, the A-Schedule property of the said partition was allotted to the 1st Defendant and the B-Schedule property of the partition was allotted to the 4th Defendant. As per the Hindu Succession Amendment Act, 2005 (Act 39 of 2005), the women are the coparceners and hence, the Plaintiff and the Defendants 2 and 3 are entitled to equal shares in the ancestral property. The Plaintiff has been enjoying the suit property jointly with the 1st Defendant. The demand for partition made by the Plaintiff was evaded. Hence, the suit has been filed for partition of the suit properties into four equal shares and allot one such share to the Plaintiff and to appoint a Commissioner for such purpose and for costs.

3. The case of the Defendants is that the relationship between the parties are true and the suit property is the ancestral property of the 1st Defendant. In the partition on 14.02.2002, the 'A' schedule property was allotted to the share of the 1st Defendant and the B-Schedule property was allotted to the 4th Defendant and since then, they have been in separate possession and enjoyment of the same. The Plaintiff did not object to the said partition. All the female heirs of the 1st Defendant, namely, the Plaintiff and the Defendants 2 and 3, after their marriage, got separated themselves from the joint family status and hence, there were no coparceners. Since the Plaintiff is not a coparcener, she is not entitled to any share. In such circumstances, the suit is liable to be dismissed.
4. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 and Ex.A2 were marked and PW.1 was examined. On the side of the Defendants, DW.1 and DW.3 were examined. The Trial Court had granted a preliminary decree for partition in favour of the Plaintiff. Aggrieved against the same, this Appeal Suit has been filed by the 1st Defendant.
5. This Court heard the submissions of the learned counsel on either side.
6. The learned counsel for the Appellant has submitted that the partition took place in the year 14.02.2002 between the Defendants 1 and 4 and so, the property is not a joint family property and it is an absolute property of the 1st Defendant. The Hindu Succession (Amendment Act) 2005 came into force on 09.09.2005 and as such the Plaintiff cannot claim to be a coparcener and hence, he would pray for allowing this appeal.



He would rely on the decision reported in 2020 5 CTC 302 (Vineeta Sharma Vs. Rakesh Sharma and others).

7. The learned counsel for the Respondents would submit that the Plaintiff is a coparcener by birth as per the Hindu Succession (Amendment) Act, 2005. It is admitted by both the parties that the property is a joint family property and therefore, she is entitled to claim a share in the property. The 4th Defendant also gave consent for partition. The Trial Court appreciated evidence properly and therefore, he prays for dismissal of this appeal.
8. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.
9. It is the admitted case of both the parties that the registered partition had been entered into between the 1st Defendant and the 4th Defendant on 14.02.2002. The Plaintiff claims right over the property as a coparcener by birth as per the Hindu Succession (Amendment) Act, 2005.
10. Section 6 of the Hindu Succession Amendment Act, 2005 (Act 39 of 2005) provides for "Devolution of interest in coparcenary property". It is relevant to quote the said Section, as under:-

Section 6:- 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 in 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 subsection 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.

11. In this case, the partition had been entered into on 14.02.2002 i.e. prior to 20.12.2004. The partition between the parties is a valid one. Now, the Plaintiff cannot claim any right over the properties of the 1st Defendant. The Trial Court erred in looking into the exception class in the Act. Therefore, it is necessary to interfere with the impugned judgement of the courts below and accordingly, this appeal deserves to be allowed.

12. In fine, this Appeal Suit is allowed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The I Additional District Judge,
Erode.

2. The Record Keeper,
V.R.Section,
Madras High Court.

+1cc to M/s.A.Thiyagarajan, Advocate, S.R.No.24883

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.24902

A.S.No.362 of 2015

RGN(CO)

RLP(17/06/2022)