



SA.No.344/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.06.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

SA.No.344/2011 & CMP.No.2174/2022

Sumathi

... Appellant
/ Plaintiff

Versus

1.T.M.Palani
2.T.P.Mohan
3.Susila
4.N.Nagalakshmi
5.S.Radhamani

.. Respondents /
Defendants

*****RR4&5** impleaded vide order dated 22.01.2018
made in MP.No.1/2012 in SA.No.344/2011

Prayer :- Second Appeal filed under Section 100 of CPC., against the decree and judgment dated 10.11.2010 in AS.No.20/2010 on the file of the learned Principal District Judge, Erode, confirming the decree and judgment dated 30.11.2009 in OS.No.101/2007 on the file of the learned I Additional Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.S.S.Ragavan for



SA.No.344/2011

Mr.R.Subramanian

WEB COPY

R1 : Died
For RR 2 & 3 : Mr.S.Kaithamalai Kumaran
For RR4&5 : No appearance

JUDGMENT

- (1) The present Second Appeal is preferred against the judgment and decree of the learned Principal District Judge, Erode, dated 10.11.2010 in AS.No.20/2010 confirming the judgment and decree of the learned I Additional Subordinate Judge, Gobichettipalayam, dated 30.11.2009 in OS.No.101/2007.
- (2) The suit was filed by a daughter against her father/1st respondent and her brother and sisters/other respondents. The suit had been dismissed by the Trial Court and the First Appeal filed by her before the First Appellate Court also suffered a judgment of dismissal.
- (3) There were many items of properties in the suit schedule given to the plaintiff and the contention of the 1st respondent/father was that the properties are self-acquired properties having been bequeathed to him



SA.No.344/2011

under a Will and that therefore, they are not ancestral in nature.

Naturally, when the father is alive, there cannot be any partition of his properties which he claims to be self-acquired.

- (4) Before the First Appellate Court, the appellant herein had also filed an application under Order 41 Rule 27 of CPC seeking to produce additional documents to establish the fact that properties are ancestral in nature. Though opportunity was given, counter was not filed by the present respondents to that particular application.
- (5) Both the Courts below held that the properties can be categorised only as self-acquired properties of the 1st respondent/father and that, partition had not opened since he was alive and dismissed the suit.
- (6) The Second Appeal has not been admitted.
- (7) Now the situation has changed. The 1st respondent/father has died. In his written statement, he has very categorically stated that the properties are his self-acquired properties. If that be so, on the death of the father, the self-acquired properties will have to devolve in accordance with the Succession Act and all the Class I heirs would be entitled to a share. The appellant as a daughter, is automatically



SA.No.344/2011

entitled to a share.

- (8) The said share will have to be worked out only before the Trial Court. The entire scope of the litigation now changes and both the decrees and judgments of the Courts below which were rendered are on the basis that the properties were self-acquired properties of the 1st respondent/father and therefore, the daughter cannot seek partition since the father was alive, have to be interfered with, since the father/1st respondent has died and the appellant is entitled to a share.
- (9) The judgment and decree of the Trial Court, namely, the I Additional Subordinate Court, Gobichettipalayam dated 30.11.2009 in OS.No.101/2007 as well as the judgment and decree dated 10.11.2010 in AS.No.20/2010 on the file of the learned Principal District Judge, Erode, are set aside and the matter is remanded back to the Trial Court to now work out the shares which would fall to the share of the appellant herein/plaintiff in view of the fact that in the written statement, the 1st respondent/father had specifically stated that the properties are self-acquired properties and as the daughter of the 1st respondent, the appellant herein is automatically entitled to a



SA.No.344/2011

WEB COPY

share in the properties. Let the Trial Court, therefore, re-examine the entire issue on this new turn on events and work out the preliminary decree which has to be granted or rather, a share which has been granted to the appellant herein.

- (10) The learned counsel for the appellant while filing applications to bring on record the legal representatives of the deceased 1st respondent, had brought on record the brother and sisters ; but omitted to bring on record the mother as a party to the Second Appeal. An application had been filed and the endorsement shows that it was dismissed as not pressed. It is represented that however another application has been filed to recall that particular order. Let me not enter into a discussion on all those aspects, but rather leave it to the privilege of the Trial Court to now re-examine the parties to the litigation and take note of the fact that the 1st defendant in the suit is dead and call upon the plaintiff to file necessary application to bring on record the legal representatives of the deceased 1st defendant and also take note of the fact that some of the properties had been dealt with by the defendants and also if applications are filed, implead the subsequent purchasers



SA.No.344/2011

WEB COPY

and in the presence of all the parties including the subsequent purchasers, work out the preliminary decree and in the final decree application, work out the equity according to which the shares must be allotted to each member of the family of the 1st defendant / father.

(11) Therefore, the judgments and decrees of the Trial Court as well as the First Appellate Court are set aside and the matter is remanded back to the Trial Court, namely, the learned I Additional Subordinate Court, Gobichettipalayam, for fresh disposal of OS.No.101/2007 in accordance with law in view of the fact that 1st respondent/father had now died and had very specifically claimed that properties are his self-acquired properties.

(12) In the result, the Second Appeal is **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2022

AP
Internet : Yes



SA.No.344/2011

To
WEB COPY

- 1.The Principal District Judge
Erode.
- 2.The I Additional Subordinate Judge
Gobichettipalayam.
- 3.The Section Officer
VR Section, High Court
Chennai.



WEB COPY



SA.No.344/2011

C.V.KARTHIKEYAN, J.,

AP

SA.No.344/2011

23.06.2022