



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.472 of 2012
and M.P.No.1 of 2012

Annakodi

...Appellant/ Appellant/ Plaintiff
Vs.

1.A.Natarajan
2.C.Kolandayammal (Died)
3.A.Chenniyappa gounder
4.M.Sumathi @ Gunasundari
5.D.Gomathi
6.C.Saminathan

...Respondents/Respondents/Defendants

[The 2nd respondent had died even during the pendency of the suit and R3 to R6 were impleaded in the place of the 2nd respondent through an order passed in I.A.No.251 of 2010 in O.S.No.543 of 2008, dated 21.06.2010]

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.54 of 2011 by the Ist Additional Sub Judge, Erode dated 05.01.2012 confirming the judgment and decree passed by the II Additional District Munsif of Erode in O.S.No.543 of 2008, dated 31.03.2011.

For Appellant : Mr.V.S.Kesavan

For Respondents: Mr.s.Mukunth for
M/s.Sarvabhauvman Associates for R1

R2 - Died

R3 to R6 Notice Served No appearance

JUDGMENT

The plaintiff is the appellant in this second appeal. The appellant filed a suit for partition claiming for 1/3 share in the suit property on the ground that the suit property along with other properties originally belonged to one Perianna gounder and that his five sons under registered Partition Deed dated 04.09.1958, marked as EX.A1, divided the property among themselves and one Arumuga gounder was allotted "E" Schedule property. The further case of the appellant is that the said Arumuga gounder is none other than the father of the plaintiff and defendants 1 and 2 who are the brother and sister of the plaintiff. It is further stated that the said Arumuga gounder died intestate on 18.01.2008 leaving behind the plaintiff and



the 1st and 2nd defendants. The appellant sought for the division of the property and for allotment of her share in the property. However, the 1st defendant did not agree to such a partition and left with no other option, the appellant proceeded to file the suit seeking for the relief of partition.

2.The 1st defendant who is the brother of the appellant filed a written statement to the effect that the appellant had married in the year 1977 itself and the suit property was jointly enjoyed by the 1st defendant and his father and there was a notional partition that took place between the 1st defendant and his father and each became entitled to half share in the suit property. The further case of the 1st defendant is that his father executed a registered Settlement Deed dated 13.02.2006, marked as Ex.B1 and settled his half share in favour of the 1st defendant. The 1st defendant has therefore, claimed an absolute right over the suit property and has taken a stand that the appellant is not entitled for any share in the suit property.

3.Both the Courts below after considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, came to a conclusion that there was a notional partition between the 1st defendant and his father and thereby, half share in the property absolutely vested with the father of the 1st defendant and this was settled in favour of the 1st defendant. As a result, both the Courts held that the 1st defendant is the absolute owner of the suit property and the appellant is not entitled for any share in the property. Aggrieved by the same, the plaintiff has filed the present second appeal.

4.This Court framed the following substantial question of law:

Where it is an admitted case that the property in question is in the nature of a joint family property, whether both the Courts below were right in denying a share in the property to the plaintiff by virtue of the right derived from the Hindu Succession (Amendment) Act, 2005 which enabled the daughter to become a coparcenar in her own right in the same manner as the son?

5.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents. The 2nd defendant died even during the pendency of the suit and her legal representatives have been brought on record and they are respondents 3 to 6 in the present second appeal. These respondents are supporting the case of the appellant and they are sailing along with the appellant.



6.A careful reading of the Settlement Deed executed by the father of the appellant namely Arumuga gounder, in favour of the 1st respondent explicitly shows that the property in question is in the nature of a joint family property. The recital in the Settlement Deed marked as Ex.B1 describes the property as a joint family property. Therefore, there is no need to conduct an enquiry and find out the nature of the suit property.

7.The Hindu Succession (Amendment) Act, 2005 through which Section 6 of the Hindu Succession Act, 1956 was amended, came into force w.e.f. 09.09.2005. The effect of this amendment has been elaborately dealt with by the Hon'ble Supreme Court in Vineeta Sharma vs. Rakesh Sharma & others reported in 2020 (5) CTC 302 and the relevant paragraph is extracted hereunder:

129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation



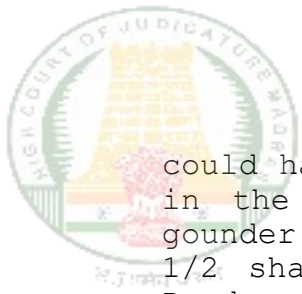
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to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

8. It is clear from the law settled by the Hon'ble Supreme Court that the substituted Section 6 of the Act will apply to the daughter who is born before or after the Amendment. Insofar as the daughters born prior to 09.09.2005, they will be deprived of the right only if the disposition or alienation had taken place before 20.12.2004. The Hon'ble Supreme Court has gone to the extent of holding that even preliminary Decree in a partition suit will not take away the right conferred on the daughter and she can participate in the proceedings and seek for her share. The Hon'ble Supreme Court has completely rejected the ground of oral partition which is based only on oral evidence and has held that such a plea simpliciter will not take away the right of the daughter.

9. In view of the above, immediately on the coming into force of the Amendment Act, 2005, the appellant who is admittedly the daughter of Arumugam gounder became a coparcenar in her own right in the same manner as the son namely the 1st defendant. The Amendment Act does not discriminate between the married and unmarried daughter and therefore, the marriage of the appellant in the year 1977, pales into insignificance. There is absolutely no material to show that there was a notional partition and the proviso to Section 6(1) of the Act will apply only where there is any disposition or alienation including any partition or testamentary disposition of the property which should have taken place before 20.12.2004. In this case, admittedly the disposition of the property had taken place only on 13.02.2006 when Arumuga gounder executed a Settlement Deed in favour of the 1st defendant.

10. The effect of the above amendment is that the plaintiff and the 2nd defendant who are the daughters of Arumuga gounder also became entitled to 1/4 share in the joint family property. Hence, as on the date of the coming into force of the 2005 Act, Arumuga gounder, his son the 1st defendant and his two daughters the plaintiff and the 2nd defendant, will get one share each in the joint family property. As on the date, when Arumuga gounder executed a Settlement Deed in favour of the 1st defendant, he



could have executed the settlement only insofar as his 1/4 share in the joint family property is concerned. The said Arumuga gounder did not have the right to execute a Settlement Deed for 1/2 share in the suit property. To the extent the Settlement Deed exceeded 1/4 share of Arumuga gounder, it becomes non est in the eye of law. Unfortunately, both the Courts below failed to take note of the effect of the 2005 Amendment Act and on this ground alone, the judgments of both the Courts below are liable to be interfered in the present second appeal. Hence, the substantial question of law framed by this Court is answered in favour of the appellant.

11.The resultant position is that on the demise of Arumuga gounder, his 1/4 share in the suit property will vest with the 1st defendant by virtue of the Settlement Deed Dated 13.02.2006. Accordingly, the 1st defendant will be entitled for his 1/4 share in the joint family property and also the 1/4 share of Arumuga gounder. The appellant/plaintiff will be entitled for 1/4 share in the suit property and the legal heirs of the deceased 2nd defendant together will be entitled for the balance 1/4 share in the suit property. A preliminary decree to this effect is passed in this second appeal.

12.In the result, the Judgments and Decrees passed by both the Courts below are set aside and the second appeal is allowed to the extent indicated herein above. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

ssr

To

1.The Ist Additional Sub Judge, Erode.

2.The II Additional District Munsif of Erode.

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.8571

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.8452

S.A.No.472 of 2012
and M.P.No.1 of 2012

RP (CO)
SB (29/03/2022)