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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NOS.340 AND 348 OF 2016

AND

C.M.P.NOS.6292 AND 6351 OF 2016

1.S.Saravanan
2.S.Kannan
3.Rajathi
4.Gokila Rani

...Appellants / Respondents 1 to 4 /
Plaintiff 1 to 4 in both Second Appeals

Vs.

1.Jeyanthi

...1st Respondent / Appellant /
2nd Defendant

2.Santhi
3.Lakshmi
4.Amaravathi
5.Venkatesan
6.Kumar

...Respondents 2 to 6 / Respondents 5 to 9 /
Defendants 1,3 to 6 in S.A.No.340 of 2016

1.Lakshmi
2.Amaravathi
3.Venkatesan
4.Kumar

...Respondents 1 to 4 / Appellants /
Defendants 3 to 6

5.Santhi

...5th Respondent / 5th Respondent /
1st Defendant

6.Jeyanthi

...6th Respondent / 6th Respondent /
2nd Defendant in S.A.No.348 of 2016

PRAYER IN BOTH SECOND APPEALS : The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.01.2016 made in A.S.No.48 of 2014 and 53 of 2014 respectively on the file of the I Additional Subordinate Judge, Salem, reversing the judgment and decree dated 26.06.2014 made in O.S.No.656 of 2010 on the file of the I Additional District Munsif, Salem.



For Appellant
in both Cases

: Mr.G.Arul Murugan

For Respondents
in both Cases

: Mr.K.Sathish Kumar

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C O M M O N J U D G M E N T

The plaintiffs are the appellants before this Court. Aggrieved by the reversal judgment passed in their favour by the First Appellate Court, they have preferred the above Second Appeals.

2. On notice, the respondents entered appearance. The learned counsel for both sides have agreed to argue on the basis of the substantial questions of law, which reads as follows:-

(a) Whether the first Appellate Court was right in holding that Section 8 of the Hindu Succession Act will not be applicable in respect of the suit property which is ancestral property at the hands of the appellants' father and the appellants are entitled for partition of their share?

b) Whether the first Appellate Court was right in reversing the decree of the trial Court passed holding that only Section 15(a) of the Hindu Succession Act will be applicable and the suit property devolved on late Sankaran and therefore, it became his separate property and the appellants cannot claim rights?

c) Whether the lower Appellate Court was right in ignoring the admission made by the defendant during recording of the statements before the trial Court under Section 165 of the Evidence Act and holding that the plaintiff is not entitled for protection?

d) Whether the first Appellate Court was right in ignoring the Mortgage Deed / Ex.A11 executed by late Sankaran on behalf of the minor appellants in deciding the claim of the appellants for partition?

e) Whether the lower Appellate Court was right in reversing the decree of the trial Court merely on presumptions, when the appellants are not bound by the alienation done by late Sankaran in respect of their share?

3. The crucial issue in these Second Appeals is that whether the succession is governed by Section 8 or Section 15(a) of Hindu Succession Act.



4. According to the appellants/plaintiffs, the property belong to their father Sankaran under Partition Deed dated 26.06.1981. In the said family partition, 'C' - Schedule property was allotted to their father. He died intestate on 21.05.2008 and therefore, the plaintiffs and the first defendant became co-parceners in the ancestral property and are entitled to equal share. However, after the death of the father, they came to know that the property was sold to defendant Nos.2 to 6 under the Sale Deeds dated 29.08.1981 and 25.02.1982. The sale made by Sankaran by his immoral debts could not bind on them. Therefore, they filed a suit for declaration declaring the Sale Deeds made to defendant Nos. 2 to 6 as null and void and for partition of the property into four equal shares.

5. Defendant Nos. 2 to 6 being the purchasers of the suit property, denied the averments made in the plaint. They have claimed that it is a separate property of Sankaran and the said Sankaran is the absolute owner of the suit property and sold the same to defendant Nos.2 to 6 for a valid sale consideration and it is binding on the plaintiffs. There is no co-parcener or joint family possession and therefore, the claim of the plaintiffs to declare the Sale Deeds after lapse of 30 years, is barred by limitation.

6. The trial Court found that Section 8 of the Hindu Succession Act will apply and therefore, the plaintiffs are entitled to the relief of partition. Since there is no proof that the property devolved as per Section 15(4) of the Hindu Succession Act, and the sale was made by Sankaran to defendant Nos.2 to 6. Against the judgment of the trial Court, defendant No.2 preferred a First Appeal in A.S.No.48 of 2014 and defendant Nos.3 to 6 preferred a First Appeal in A.S.No.53 of 2014 and the First Appellate Court had taken up both the Appeals together and had reversed the findings of the trial Court and held that it is not Section 8 of the Hindu Succession Act, but only, Section 15 (1) will govern the devolution of interest and thereby, by partition, the property becomes an absolute property of the father of the plaintiffs and therefore, the sale is legal and valid and the parties are not entitled to the partition. Aggrieved by the same, these Second Appeal have been preferred.

7. Insofar as questions of law Nos. 1 and 2 are concerned, it is imperative for this Court to peruse the materials placed before this Court. At the outset, the plaint discloses the fact that the property belongs to the joint family through the paternal grand mother. On her death, sons of paternal grand mother entered into a partition on 26.06.1981. The evidence of P.W.1/first plaintiff also reiterates the fact that the suit property was purchased by the paternal grand mother, Periyakkal,



by virtue of Sale Deed. Again, it is affirmed that after the death of Periyakkal, her sons have partitioned the same. From the evidence, it is clear that the said Periyakkal had purchased the property by virtue of the Sale Deed and enjoyed the same as their own property. As contended by the learned counsel for the appellants, that it was not purchased by the joint family nucleus by Rama Goundar, paternal grand father in the name of Periyakkal being his wife. As long as the factum that the property purchased by the paternal grand father in the name of Periyakkal is pleaded and proved, then it shall be construed as independent property of Periyakkal and not ancestral property of the family.

8. Further, the learned counsel for the appellants relied on Ex.All, Mortgage Deed, in which, their father along with the first plaintiff, Saravanan, executed the mortgage in favour of one of his brothers. In the said Mortgage Deed, it is categorically mentioned that the property belongs to the joint family through fore fathers, which means, it is the ancestral property. S.Nos.95/2 and 95/3 were mortgaged specifically, which are the suit properties. Therefore, the Mortgage Deed made in favour of the father of defendant Nos. 2 to 6 clearly shows that it is the joint family property and it amounts to admission. Therefore, the property should have been considered as joint family property and not absolute owner of Periyakkal. However, the First Appellate Court has applied its mind and found that the Mortgage Deed does not contain the suit properties, which form part of S.Nos.95/2 and 95/3, but also other properties in S.Nos.95/5 and 95/7. There is no specific explanation or evidence to clarify as to why the minor sons were included in the Mortgage Deed. In the absence of any materials to show that the suit property was treated as ancestral property, the finding of the First Appellate Court was that the property cannot be treated as ancestral property.

9. I do find that the findings of the First Appellate Court are based on reasons on the basis of the clear evidence that Periyakkal became the owner of the property by virtue of the purchase made by her under the registered Sale Deed and it devolved on her sons. Once it is proved that the property was purchased by Periyakkal and in the absence of any proof that it was purchased in the name of Periyakkal, it should be construed as absolute property of Periyakkal.

10. Section 15 of the Hindu Succession Act deals with the devolution of interest of woman dying intestate. Admittedly, sons and daughters of a Hindu woman are entitled to inheritance and it excludes other legal heirs. In that view of the matter, the finding of the First Appellate Court that the property absolutely belongs to Periyakkal and on devolution, the



plaintiffs' father Sankaran inherited the property from Periyakkal, is the independent property, is correct and it cannot be treated as ancestral property and that will not give any rights to the grand children to claim a share as co-parceners therein. Therefore, the said Sankaran had absolute right to alienate the property, which he did in the year 1981-1982. At the time of sale, the first plaintiff was 15 years old, and it is always open to him to challenge the same within three years after he attained majority. But, he has not chosen to challenge the sale within a period of limitation. On the other hand, he would plead that the suit is within limitation from the date of his knowledge. However, there is no question of law raised on this point. As already discussed, the devolution of interest governed by Section 15 of the Hindu Succession Act and not by Section 8 of the Act. Therefore, all the substantial questions of law are answered against the appellants.

In the result, the judgment and decree dated 11.01.2016 made in A.S.Nos.48 and 53 of 2014 respectively, on the file of the I Additional Subordinate Judge, Salem, stands confirmed and the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

- 1.The I Additional Subordinate Judge,
Salem.
- 2.The I Additional District Munsif,
Salem.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to M/s.G.Arul Murugan, Advocate Sr.No.4149

+1cc to M/s.K.Sathish Kumar, Advocate Sr.No.4225

S.A.Nos.340 and 348 of 2016
and C.M.P.Nos.6292 and 6351 of 2016

SRA (CO)
RVM(02/06/2022)