

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 08.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.862 of 2014

Karthikeyan ...Appellant/1st Defendant

Vs

1.S.Perumalsamy Gounder ...1st Respondent/Plaintiff

2.Jansirani ...2nd Respondent/2nd Defendant

Prayer:- This Appeal Suit has been filed, under Section 96 CPC as against the judgment and decree dated 24.01.2013 passed in O.S.No.52 of 2011 by the learned First Additional District Judge, Coimbatore.

For Appellant : Mr.S.K.Rakhunathan

For R1 : Mr.C.Veeraraghavan

For R2 : Mr.Umapathy

JUDGMENT

(This case has been heard through Video Conferencing)

This appeal has been filed challenging the judgment and decree dated 24.01.2013 passed in O.S.No.52 of 2011 by the learned First Additional District Judge, Coimbatore.

2. The appellant is the 1st defendant and the 1st respondent is the plaintiff and the 2nd respondent is the 2nd defendant in O.S.No.52 of 2011. The said suit has been filed by the plaintiff praying for partition of his 1/3rd share in the 'A' Schedule and to declare his absolute right in the 'B' Schedule property.

3. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.

4.1. The brief case of the plaintiff is as follows:

The plaintiff first married one Savithiri, out of their wedlock, the defendants 1 and 2 were born. The plaintiff was

working as cashier in the State Bank of India. The Item No.1 of 'A' Schedule property was allotted to him under the registered partition deed dated 23.12.1923 between the plaintiff and father and brothers of the plaintiff, which was referred as 'C' Schedule property in the aforesaid partition deed. Further, the registered partition deed dated 15.12.1983 was executed between the mother and brothers of the plaintiff's 1st wife Savithiri, the 'C' Schedule property was allotted to her share. The said Savithiri had been in actual possession and enjoyed the allotted property. She died intestate on 15.09.1991, leaving behind the plaintiff and defendants 1 and 2 to succeed her properties as Item No.2 of 'A' Schedule property. Therefore, both Item Nos.1 and 2 of 'A' Schedule properties comes to the plaintiff and defendants 1 and 2, and they have enjoyed the property jointly thereby, the plaintiff and defendants 1 and 2 were each entitled to 1/3rd share in both Schedule properties. The partition deed dated 23.12.1983 recited that 'B'-1, 'B'-2 and 'B'-3 Schedule properties have been enjoyed by the father of the plaintiff namely Sivasubramanian till the end of his lifetime. After the death of the said Sivasubramanian, the plaintiff has become absolute owner of the 'B' Schedule property.

4.2. After the death of his 1st wife Savithiri, the plaintiff second married one Kamalam. Thereafter, the plaintiff along with his 2nd wife and the defendants 1 and 2 were living as one family. Further, the defendants 1 and 2 were got married and compelling the plaintiff to relinquish his right in the said suit properties. The plaintiff is ready to partition the properties and allot 1/3rd share each but the defendants have not agreed and seeks claiming right over the 'B' Schedule property. Therefore, the plaintiff had lodged a complaint to the police and he was directed to approach the Court. Hence, he filed the suit.

5. The brief case of the defendants is as follows;-

The defendants in their written statement contended that the plaintiff has not disclosed anything about the property allotted to their paternal grand father Sivasubramanian in the partition. The defendants were forced to live separately and further the defendants denied that the marriage of the defendants done by the plaintiff. After the 1st defendant's marriage, the 1st defendant was compelled to relinquish their right in the suit properties. Thereafter, on 20.02.2008, the plaintiff has executed a settlement deed as regards 10 cents in 'A' Schedule Item 1 property. The defendants also came to know that the plaintiff had also executed another settlement deed in favour of one Kamalam for an extent of 3 acres. According to the defendants, Item 2 of 'A' Schedule property belongs to their mother Savithiri therefore, the plaintiff has no rights to execute the Settlement Deed.

6. Based on the pleading of the parties, the following issues were framed by the Trial Court;-

Issues;-

1. Whether the plaint 'B' Schedule property is the absolute property of the plaintiff?
2. Whether the defendants are entitled to any right over the plaint 'B' Schedule property/
3. To what relief is the plaintiff is entitled?

The issues are recast as below;-

1. What is the character of item 1 of A Schedule and B Schedule properties to plaint?
2. To what share is the plaintiff entitled to in each of them?
3. To what relief is the plaintiff entitled to?

7. Before the Trial Court, on the side of the plaintiff, PW1 was examined and Ex.A1 to Ex.A7 were marked and on the part of the defendants, the 1st defendant himself examined as D.W.1 and Ex.B1 to B3 were marked.

8. After analysing both the oral and documentary evidence, the Trial Court decreed the suit in favour of the plaintiff. Aggrieved over the same, the 1st defendant preferred this appeal suit.

9. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and also perused the entire materials on record.

10. The learned counsel for the appellant submitted that the respondents 1 and 2 are father and sister respectively of the appellant. The said suit was filed by his father viz., Perumalsamy, (plaintiff) for dividing the 'A' Schedule property into three equal shares and allot one share to the plaintiff and for declaration, declaring that the "B" schedule property is the absolute property of the plaintiff. The 'B' schedule property was allotted by the appellant's grand father viz., Sivasubramanian and further, he had allotted B1 property to the appellant's father Perumalsamy with condition that during his lifetime, he has to enjoy the property and after his demise, it shall devolve to his father Perumalsamy. The Trial Court failed to consider this aspect and passed a decree in favour of the plaintiff. The learned counsel for the appellant also submitted that the Item 2 of the 'A' schedule property belongs to his mother and therefore, the plaintiff cannot claim any share in that property and only the legal heirs of the deceased Savithri are entitled to Item 2 of 'A' schedule property. Hence, this appeal has to be allowed.

11. The learned counsel for the appellant, in support of his

contentions, has relied upon the following citations;-

a) AIR 1986 SC 1753=1986 (3) SCC 567 (The Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others)

b) AIR 1979 MAD 1 (The Additional Commissioner of Income Tax, Madras Vs. P.L.Karuppan Chettiar)

c) 1968 (81) LW 504 (MAD) (Nallaswami Gounder Vs. Kamakshi Ammal and Others)

d) AIR 1967 SC 1153 (Valliammai Achi Vs. Nagappa Chettiar and Another)

12. The learned counsel for the 1st respondent/plaintiff submitted that, 'B' schedule property is not a joint family property and the 1st respondent is the absolute owner of the 'B' schedule property. Therefore, the defendants cannot claim any share in the said property. After analysing the entire material facts, the trial Court had rightly decreed the suit in favour of the 1st respondent/plaintiff. Hence, he prays for dismissal of the appeal.

13. The learned counsel for the 1st respondent/plaintiff, in support of his contentions, has relied upon the following citations;-

a) 2014 (1) CTC 73 (Arunagiri Vs Ayyar Muthuraja and Others)

b) 2017 (3) CTC 170 (M.Krishnamoorthy Vs. K.Pondeepankar and Others)

c) 2016 (2) CTC 306 (Uttam Vs. Saubhag Singh and Others)

In this case, the appellant/1st defendant never stated anything about 'B' Schedule property. Further, he stated that all the properties were not included in the plaint and therefore he plaintiff is not entitled for any prayer.

14. In this case, the 1st defendant/DW1 deposed that his grand father viz., Sivasubramanian had executed a partition deed dated 23.12.1983 stating that he has to enjoy the schedule of properties as mentioned in the partition deed till his lifetime. After his demise, it should be gone to his sons. The Sivasubramanian died on 26.12.2004. After his demise, the B1 Schedule property was allotted to the plaintiff and B2 property was allotted to Subbaiyan and B3 property was allotted to Chinnadurai and after the death of Sivasubramanian, all his three sons including the plaintiff were enjoying their share as absolute owners.

15. On a perusal of records, it is clear that the item 2 of the 'A' schedule property belongs to the first wife of the plaintiff and mother of the defendants 1 and 2, viz., Savithri. Hence, as per Hindu Succession Act, 1956, after the demise of the said Savithri, the plaintiff and the defendants are entitled to the Item 2 of A schedule property.

The relevant portion of the Hindu Succession Act, 1956 reads

as follows;-

.....15.General rules of Succession in the case of female Hindus.-(1) The property of a female Hindu lying intestate shall devolve according to the rules set out in Section 16, -

a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;.....

16. After analyzing the oral and documentary evidence adduced on either side, the trial Court came to a proper conclusion that the plaintiff is entitled to 1/3 share in the 'A' schedule property and also the plaintiff is the owner of the B schedule property and accordingly, decreed the suit in favour of the plaintiff. Therefore, no interference is warranted in this case, Hence, this Appeal suit is liable to be dismissed.

17. In fine, the Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The First Additional District Judge,
Coimbatore.

2.The Record Keeper, VR Section,
Madras High Court.
Chennai.

+1cc to M/s.C.Veeraraghavan, Advocate, S.R.No.32767

A.S.No.862 of 2014

PMK(CO)
SB(26/07/2022)