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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

O.S.A.No.266 of 2020
and C.M.P.No.13249 of 2020

1.T.A.Sasikala
2.T.A.Lalitha
3.A.Ananthalakshmi
4.A.Anand

... Appellants

Vs

- 1.The Chief Manager,
Indian Bank,
Corporate Office,
P.B.No.5555, No.254-260,
Avvai Shanmugam Salai,
Royapettah, Chennai - 14.
- 2.The Branch Manager,
Indian Bank,
Chetpet Branch, Chennai.
- 3.The Indian Overseas Bank,
Rep. By its General Manager,
Zonal Officer,
IOB Central Office Building,
3rd Floor, No.763, Anna Salai,
Chennai - 2.
- 4.The Branch Manager,
Indian Overseas Bank,
Kilpauk Branch, Chennai - 10.
- 5.UCO Bank,
Rep., by its General Manager,
Zonal Office,
No.328, Thambuchetty Street,
Chennai - 1.



6.The Branch Manager,
UCO Bank,
Chetpet Branch,
779, Poonamalee High Road,
Chennai.

7.ICICI Bank,
Neyveli Branch,
Rep. By its General Manager,
5/5 Main Bazaar Street,
Neyveli Township, Neyveli - 3.

8.The Life Insurance Corporation of India,
Rep. By its Branch Manager,
Dr.Ambedkar Road,
Neyveli - 607 803.

9.M/s NLC TN Power Limited,
(A Subsidiary company of NLC India Limited)
A Government of India Enterprises,
AJV between NLC India Limited and TANGEDCO
Harbour Estate, Tuticorin 628 004.

10.The General Manager (HR),
M/s. NLC TN Power Limited,
(A Subsidiary company of NLC India Limited)
A Government of India Enterprises,
AJV between NLC India Limited and TANGEDCO
Harbour Estate, Tuticorin 628 004.

11.The Regional Labour Commissioner (Central),
Near Lotus Tank,
New No.5, Old No.1A (IInd Floor)
Lady Doak College Road,
Chinnachokkikulam,
Madurai - 625 002.

12.T.A.Malligabai

13.T.A.Padmagandhi

14.T.A.Premakumari

... Respondents

Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Order 43 Rule 1 CPC against the fair and decreetal order in O.A.No.723 of 2019 in C.S.No.4559 of 2019 dated 06.08.2020.



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For Appellants : Mr.N.Suresh
For Respondents : Mr.Sharath Chandran
for R12 and R14

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 06 August 2020 recorded on O.A.No.723 of 2019 in C.S.No.4559 of 2019. This appeal is by the original plaintiffs.

2. Learned advocate for the appellants has submitted that the impugned order is erroneous since Sections 8 and 9 of the Hindu Succession Act, 1956 are not properly considered and error of law has crept up. It is also submitted that while deciding the injunction application, any final pronouncement should not have been made and further that the impugned order travels to that extent where the case of the plaintiffs atleast plaintiffs 3 and 4 would be prejudiced even during the course of trial. Reliance is also placed on the decision of the Supreme Court of India in Babu Lal and Others Vs. M/s.Vijay Solvex Limited and Others ((2014) 16 SCC 680) to contend that at the interim stage, no declaration should be made which may prejudice the case. It is submitted that this appeal be entertained.

3. On the other hand, learned advocate for the contesting respondents i.e. original defendants 12 and 14 has submitted that the learned single Judge can not be said to have fallen in any error while recording the impugned order dated 06.08.2020 which may call for any interference. It is submitted that para 11 of the impugned order is only the consequence of the true reading and interpretation of Sections 8 and 9 of the Hindu Succession Act, 1956 and therefore the same may not be interfered with. So far other consequences of the impugned order is concerned, it is even conceded on behalf of these two defendants that the estate of the deceased brother are to be shared by five surviving sisters, two being plaintiffs and three being defendants. So far these two defendants i.e. defendants 12 and 14 (2 out of 5 sisters) are concerned, there is no contest and appropriate order can be passed by the Court even treating it to be final order. It is submitted that no interference be made by this Court and even further order may be passed considering this concession.



4. Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds that one Mr.T.P.Authi Raj had six daughters and one son viz., T.A.Balaji. The point at issue is not the estate of Authi Raj, who died intestate. The point at issue is the estate of Balaji. Balaji had six sisters. Out of these six sisters, one sister had predeceased him. Five surviving sisters are there. Out of these five surviving sisters, plaintiffs 1 and 2 are the two sisters, defendants 12, 13 and 14 are remaining three sisters. Plaintiffs 3 and 4 are the children of predeceased sister. The suit is for the following reliefs:

"(a) To declare that the Plaintiffs and the Defendants 12 to 14 are entitled to share the benefits payable on the death of T.A.Balaji lying with Defendants 1 to 11;

(b) To declare that the Plaintiffs 1 and 2 are entitled to 1/6 share each, Plaintiffs 3 and 4 together entitled to 1/6th share and the Defendants 12,13 and 14 each entitled to 1/6th share in the amount payable on the death of T.A.Balaji and lying with Defendants 1 to 11;

(c) To grant an order of permanent injunction restraining the Defendants 1 to 11 from disbursing the amount lying with them and payable on the death of T.A.Balaji, excluding the Plaintiffs;

(d) to direct the Defendants to pay the cost of this Suit; and

(e) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

5. The issue is in very narrow compass, as to whether the estate of Late Balaji was to be shared by six sisters and their next generation or amongst five surviving sisters. This is a point at issue, which, considering the plaint as it stands now, is to be tried by the learned single Judge.

6. The entitlement of plaintiffs 3 and 4 is examined by learned single Judge keeping in view the relevant provisions of Sections 8 and 9 of Hindu Succession Act, 1956. Specific reference is made to these provisions in para 9 and 10 of the impugned order which we have taken note of. On conjoint consideration of the said provisions, learned single Judge arrived at the conclusion as noted in para 11 which reads as under:



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"11.....Therefore, on a reading of Section 9 it is clearly evident that applicants 3 and 4 do not succeed to the estate of the late T.A.Balaji. Therefore, the applicants 1 and 2 and respondents 12 to 14 are alone entitled to the share in the estate of late T.A.Balaji in the hands of the respondents 1 to 11 each being entitled to a 1/5th share...."

(emphasis supplied)

7. True it is that the said finding would prejudice plaintiffs 3 and 4 but there can not be any half way pronouncement in this regard. The reading of Sections 8 and 9 leads to this consequence only. Learned single Judge, while deciding the application before him was required to express opinion on this fact. Even if it has consequence inconvenient to any party that itself will not be a ground to come to the conclusion that it ought not to have been declared by learned single Judge. We do not find any infirmity either in law or in fact in this regard. Therefore, no interference is required.

8. So far other consequences are concerned, as conceded by the learned advocate for defendants Nos. 12 and 14, there is no contest that all five sisters are entitled to the estate of deceased brother which would come to 1/5 share. Therefore, we arrive at the conclusion that so far exclusion of plaintiffs 3 and 4 as declared by learned single Judge is concerned, the same can not be said to be erroneous in any manner. So far the claim of rest of the parties are concerned, there is no contest amongst them whether they stand as plaintiff or as defendant. Suffice it to note no interference is required so far this appeal is concerned. The parties may proceed with the litigation if anything is left to be decided or adjudicated among themselves.

9. So far the reliance on the decision of Hon'ble Supreme Court of India (cited supra) is concerned, there cannot be any dispute with regard to the proposition of law therein. However, as noted in the said judgment suit was held to be not maintainable, while in the case on hand only the rights of the parties under Sections 8 and 9 are considered and therefore the said judgment will not help the appellants.



10. This appeal is dismissed with above observations. No costs. Consequently, connected miscellaneous petition is closed.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

- 1.The Chief Manager,
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Corporate Office,
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Near Lotus Tank,
New No.5, Old No.1A (IInd Floor)
Lady Doak College Road,
Chinnachokkikulam,
Madurai - 625 002.

12.The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s.A.Saravanan, Advocate Sr.957
+1cc to Mr.S.P.Patel, Advocate Sr.918
+1cc to M/s.Govind Chandrasekhar, Advocate Sr.888
+1cc to M/s.N.Suresh, Advocate Sr.871
+1cc to Mr.N.Nithianandam, Advocate Sr.732

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