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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.S.No.87 of 2017

Devathal

...Appellant/Plaintiff

vs.

Periasamy

... Respondent/Defendant

PRAYER: Appeal Suit is filed under Order 41 Rule 1 of the Code of Civil Procedure read with Section 96 of the Code of Civil Procedure, against the judgment and decree of the learned III Additional District Judge, Dharapuram in O.S.No.17 of 2016 dated 02.01.2017.

For Appellant : Mr.A.K.Kumarasamy, Senior Counsel
for Mr.S.Kaithamalai Kumaran

For Respondent : Mr.M.Guruprasad

J U D G M E N T

The plaintiff, in O.S.No.17 of 2016, which was pending on the file of the III Additional District Court, Dharapuram, is the appellant herein. The respondent in the present appeal who was also the defendant is her own brother. For the sake of convenience, let me revert back to the nomenclature as was referred to in the trial Court viz., plaintiff and defendant. To reiterate, the plaintiff is the appellant and the defendant is the respondent herein.

2. The plaintiff, had filed the suit in O.S.No.17 of 2016, which was subsequently taken up for trial, by the learned III Additional District Judge, Dharapuram, for partition and separate possession of $\frac{1}{2}$ share with respect to the suit properties. In the plaint, it had been stated that the father of the plaintiff and the defendant viz., Kandhasamy Gounder had died in the year 2001. The mother of the plaintiff and the defendant



had pre-deceased the father. The properties mentioned in the schedule to the plaint, to which the partition is now sought for, are ancestral properties. Claiming $\frac{1}{2}$ share in the suit properties, the suit has been filed.

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3. In the written statement, the defendant also put up the very same stand that the properties are ancestral in nature and that the mother had pre-deceased the father. It was claimed that therefore, when the father and the defendant were alive, they were both equally entitled to $\frac{1}{2}$ share and on the death of the father, the $\frac{1}{2}$ share of the father has to be divided into two shares, leaving the plaintiff entitled to $\frac{1}{4}$ th un-divided share and the defendant who already had $\frac{1}{2}$ share entitled to another $\frac{1}{4}$ th un-divided share, leaving the defendant with $\frac{3}{4}$ th share.

4. The learned Additional District Judge had framed the following issues for trial:

1. Whether the suit is hit by res judicata?
2. Whether the plaintiff can seek partition and separate possession under the Act 39 of 2005 amended by the Central Government to the Hindu Succession Act?
3. Whether the plaintiff is entitled for partition and permanent injunction?
4. To what other reliefs are the parties entitled?

5. The parties went to trial and during the course of trial, the plaintiff examined herself as PW1 and for good measure the defendant also examined himself as DW1. On the side of the plaintiff, Exs.A1 to A6 were marked. Ex.A1 is the partition deed dated 12.08.1974. Ex.A2 is the death certificate of the father dated 07.10.2001 and Ex.A6 was the plaint in O.S.No.229 of 2011, and probably based on the particular suit, the first issue of res judicata was framed by the trial Judge. The defendant marked Exs.B1 to B3. The defendant primarily marked documents relating to possession and claimed exclusivity on that particular aspect and marked Kisth receipts as Ex.B1, property tax receipts as Ex.B2 and Computerized chitta as Ex.B3.

6. Heard Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the appellant and Mr.M.Guruprasad, learned counsel appearing for the respondent.

7. The point which arises for consideration under Order 41 Rule 31 of the Code of Civil Procedure is the effect of the



8. I am deeply impressed with the arguments advanced in a most sanguine manner by Mr.A.K.Kumaraswamy, learned Senior Counsel who pointed out that by the introduction of amendment of Section 6 of the Hindu Succession Act, 1956, the daughters must be recognized to have share in ancestral property. The issue had travelled to the Hon'ble Supreme Court, since there were conflicting verdicts by different High Courts and finally the issue was settled in the year 2020 by the judgment in Vineeta Sharma Vs. Rakesh Sharma and others reported in 2020 (9) SCC 1: 2020 (5) CTC 302, in which the Hon'ble Supreme Court after examining various judgments and the object behind the Act held that the daughter is actually entitled to an equal share as that of the son in ancestral property.

137. Resultantly, we answer the reference as under:

137.2. 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.

137.4. 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 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be



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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.

10. It had thus been held that a daughter is entitled to an equal share in the ancestral property. This would naturally mean that when the father was alive, the father and the son and daughter in the instant case, formed part of a joint family and all three were entitled to an equal undivided $1/3^{\text{rd}}$ share in the property. On the death of the father, his share once again devolved on to the son and the daughter viz., the plaintiff and the defendant herein, and this would also mean that consequent to the death of the father, the plaintiff and the defendant would get equal shares in the share of the deceased father. Equal shares would only mean that they would each then get an undivided $1/2$ share in the property.

11. The learned trial Judge erred in holding that the daughter was not entitled to a share in the ancestral property. Answering issue No.2, the learned Judge held that the plaintiff cannot claim share on the basis of the amendment to the Hindu Succession Act 1 of 1990 and the amendment Act 39 of 2005. The learned Judge has stated that

எனவே வாதி இந்து வாரிசுரிமை சட்டம்
1/1990-ன்படியும், மத்திய அரசு கொண்டுவந்த திருத்த சட்டம் 39/2005-ன்படியும்
பரிகாரம் கோர முடியாது.

12. It was also pointed out by the learned Judge that the plaintiff had married long back. Probably the learned Judge held that the daughter is unreasonable in claiming an equal share. But, the son cannot deny an equal share, when she is entitled to under law.

13. I hold that the daughter and son are equally entitled to an equal $1/2$ undivided share in the suit schedule properties. The point framed is answered accordingly.

14. The judgment of the trial Court is interfered with and the decree granted is set aside. A decree is granted that the plaintiff/ appellant herein is entitled to undivided $1/2$ share in the suit properties.

15. Accordingly, this Appeal Suit is allowed. The judgment and decree of the trial Court is set aside. The suit is decreed in the above terms as the plaintiff is entitled to an



undivided ½ share in the suit properties. Let further proceedings move forward before the trial Court. In view of the nature of the relationship between the parties, there will be no order as to costs.

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Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

dsa

To

The III Additional District Judge,
Dharapuram.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.M.Guruprasad, Advocate SR.No.8194
+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.7981

A.S.No.87 of 2017

SSV(CO)
CB(02/03/2022)