



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.269 of 2010

T.V.Rajalaksmi

... Appellant / Appellant / 3rd Defendant
-Vs-

1.Sankaraiah Naidu

2.Andal

... Respondents / Respondents / Plaintiffs

3.Sankarapandi

4.Hemalatha

5.Kuttuva M.Santhini

6.Rajini

... Respondents / Respondents /
Defendants 1, 2, 4 & 5

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.12.2008 made in A.S.No.20 of 2008 on the file of the Additional District Court, Fast Track Court No.1, Madurai against the judgment and decree dated 29.12.2005 confirming the order made in O.S.No.127 of 1996 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.A.R.M.Ramesh

For R1 : Mr.M.Saravanan

For R3, R4 & R6 : Mr.V.R.Venkatesan

JUDGMENT

The 3rd defendant in O.S.No.127 of 1996 on the file of the District Munsif Court, Thirumangalam is the appellant in this second appeal.

2. The plaintiffs filed the said suit claiming 10/18th share in the suit properties and for consequential permanent injunction. The appellant was the sole contestant. She filed written statement controverting the plaint averments. Based on the divergent pleadings, the issues were framed. The first plaintiff examined himself as P.W.1 and Ex.A1 to Ex.A4 were marked. The husband of the appellant was examined as D.W.1. Ex.B1 to Ex.B6 were marked. After consideration of the evidence on record, the trial court on 29.12.2005 passed preliminary decree granting 3/4th share in favour of the 1st plaintiff and the 3rd plaintiff. Permanent injunction was granted that no construction should be put up in the suit properties till the final decree proceedings are over. Aggrieved by the same, the appellant herein filed A.S.No.20 of 2008 before the Additional District and Sessions Judge (Fast Track Court No.1), Madurai. By the impugned judgment and decree dated 11.12.2008, the decision of the trial court was confirmed and the appeal was dismissed.



Challenging the same, the second appeal came to be filed.

3. The second appeal was admitted on 25.02.2022 on the following substantial question of law:-

"Whether the preliminary decree passed by the courts below warrants modification in the light of the amendment made to Section 6 of the Hindu Succession Act, 1956 by the Central Act and the other subsequent development that have taken place in this case ?"

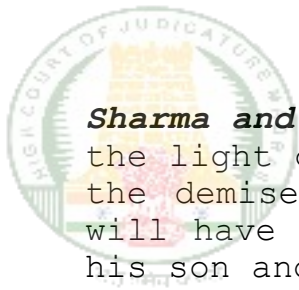
4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and modify the judgment and decree passed by the courts below.

5. Per contra, the learned counsel appearing for the contesting respondents submitted that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record.

7. The suit properties are dry lands. They originally belonged to M.S.K.V.Sankaraiah Naidu. He was married to one Avudaiammal. They were blessed with a son who was called Sankaraiah Naidu @ Karnan and a daughter by name Andal. The wife, son and daughter of M.S.K.V.Sankaraiah Naidu are the plaintiffs in the present suit. Sankaraiah Naidu @ Karnan got married to Rajini. They were blessed with a son Sankarapandi and daughter Hemalatha. Even though Sankaraiah Naidu @ Karnan was very much alive, his wife Rajini and son Sankara Pandi sold the entire suit properties in favour of the appellant Rajalakshmi under two deeds of sale namely Ex.B1 dated 14.06.1995 and Ex.B2 dated 19.06.1995. Only thereafter, the present partition suit was filed in the year 1996. It is obvious and beyond dispute that in the suit property which is a coparcenary property, M.S.K.V.Sankaraiah Naidu, his son Sankaraiah Naidu @ Karnan and grandson Sankarapandi had 1/3rd share each. Following the demise of M.S.K.V.Sankaraiah Naidu, his share devolved on his wife Avudaiammal, daughter Andal and son Sankaraiah Naidu @ Karnan. As a result, Sankaraiah Naidu @ Karnan / first plaintiff had 4/9th share in the suit property. While Avudaiammal/ second plaintiff had 1/9th share in the suit property, the third plaintiff / Andal had 1/9th share in the suit property and Sankara Pandi / first defendant had 1/3rd share in the suit property.

8. This was the position that prevailed in the year 1996. However, on account of the amendment made to Section 6 of the Hindu Succession Act, 1956 by the Central Act and as interpreted by the Hon'ble Apex Court in **2020 (5) CTC 302 (Vineetha Sharma Vs. Rakesh**



Sharma and others), the situation underwent a complete change. In the light of the subsequent statutory developments and on account of the demise of Avudaiammal during the pendency of the suit, Andal will have 1/3rd share in the suit properties. Sankaraiah Naidu and his son and daughter namely D1 & D2 will have 2/9th share each.

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9. During the pendency of this second appeal, the first plaintiff Sankaraiah Naidu @ Karnan passed away. Therefore, his share devolved in equal measure on his wife Rajini, son Sankarapandi and daughter Hemalatha. The appellant had purchased the entire suit property from Sankarapandi and Rajini. Of-course, when they sold the suit properties in favour of the appellant, they did not have full title. But then, this is a classic case, in which, Section 43 of the Transfer of Property Act will have to be necessarily invoked. The subsequent accretion in the matter of title in favour of Sankarapandi and Rajini will have to necessarily enure in favour of the appellant. It is seen that the appellant had also purchased whatever share that Andal had in the suit property. That leaves us with the share of the second defendant Hemalatha.

10. Without going too much into nitty-gritties, the appellant states that Hemalatha would be entitled to 22 ½ % share in the suit properties. It is also seen that Hemalatha sold her interest in the suit properties in favour of Shanmuga Priya who is none other than the wife of Sankarapandi. A copy of the said sale deed dated 05.08.2021 registered as document No.3550/2021 executed by Rajini Devi, Sankarapandi and Hemalatha in favour of Shanmuga Priya purporting to convey 97 cents of land in the suit properties has been filed before this Court. Therefore, it is declared that the appellant Rajalakshmi is entitled to 77.5 % undivided share in the suit properties, while Shanmuga Priya wife of Sankarapandi is entitled to the remaining undivided share 22.5% in the suit properties. Preliminary decree passed by the Court is modified accordingly.

11. The substantial question of law is answered accordingly in favour of the appellant. The second appeal is partly allowed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge,
Fast Track Court No.1, Madurai.

2.The District Munsif Court,
Thirumangalam.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.N.C.ASHOKKUMAR, Advocate (SR-9795[F] dated
03/03/2022)

+1 CC to M/s.A.R.M.RAMESH, Advocate (SR-9876[F] dated 03/03/2022)

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_RD(28.03.2022) 4P 7C