



S.A.(MD) No.705 of 2006

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.705 of 2006

and

M.P.(MD) No.1 of 2006

1.Balasubramanian
2.Meenakshi Ammal

... Appellants/Respondents/
Defendants

Vs

Thavamani Ammal

... Respondent/Appellant/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 17.11.2005 made in A.S.No.42 of 2005 on the file of the Principal District Court, Tuticorin reversing the judgment and decree dated 25.01.2005 made in O.S.No.82 of 2003 on the file of the Sub Court, Kovilpatti.

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.S.Muthumalai Raja



S.A.(MD) No.705 of 2006

WEB COPY

JUDGMENT

The defendants, who were unsuccessful in defending a suit for partition in O.S.No.82 of 2003 on the file of the Sub Court, Kovilpatti, have come before this Court with this appeal. The suit was laid for partition of plaintiff's 1/3rd share in an only item of suit property which is a residential building comprised of 3 separate portions bearing separate door numbers. The trial Court dismissed the suit, whereas the first appellate Court found reason to interfere with the same and allowed the appeal and decreed the suit in A.S.No.42 of 2005. Hence, the second appeal. For narrative convenience, parties would be referred to by their rank before the trial Court.

2. The facts fall within a narrow compass. The suit property as stated earlier is a residential building with a ground floor portion, upstairs portion and another portion adjacent to it, all of which form one single unit. This property was purchased vide Ext.A.1-sale deed dated 24.04.1930 by certain Annamalai Chettiar. He was married to the second defendant Meenakshi



S.A.(MD) No.705 of 2006

WEB COPY

Ammal. While so, on 01.05.1963, Annamalai Chettiar passed away leaving behind his only daughter the plaintiff herein and his son, the first defendant. Both the children of Annamalai Chettiar were minors at the time when he died. The plaintiff has now laid the suit seeking 1/3rd share in the suit property under Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as “the Act” for brevity).

3. The suit was resisted by both the defendants. Their core contention was that soon after the demise of Annamalai Chettiar, there was a family arrangement presided over by three named relatives of Annamalai Chettiar, in which the second defendant was appointed as a guardian of both the children and that it was agreed that the property would go entirely to the first defendant, the son. Based on this, the first defendant had also executed certain simple mortgage deeds in between.

4. Before the trial Court, both sides adduced oral and documentary evidences. For the plaintiff, she examined herself as P.W.1, whereas for the defendants, the second defendant was examined as D.W.1. In addition, she



S.A.(MD) No.705 of 2006

also examined D.W.2, one of the Panchayathars before whom, the oral family arrangement was said to have taken place.

5. Believing the version of D.W.2, the trial Court dismissed the suit whereas the first appellate Court did not find it adequate enough, and reversed the said finding. Hence, the appeal at the instance of the defendants.

6. This appeal was admitted for considering the following substantial questions of law:

“(i) Whether the findings of the lower appellate Court are vitiated by its failure to consider Ex.B-1 to B-5 corroborating the evidence of DW-1 and DW-2 establishing the family arrangements?

(ii) Whether the lower appellate Court is correct in not advertng to the proved and admitted facts by way of dealing with the property after the death of the Annamalai Chettiar in the year 1963 on pursuant to the family arrangements? and

(iii) Whether the lower appellate Court is correct in not independently framing the points for determination which is held to be mandatory under Order 41 Rule 31 of Civil Procedure Code?”



S.A.(MD) No.705 of 2006

WEB COPY

7. Heard both sides.

8. The learned counsel for the appellants/defendants forcefully argued that the mother had represented both the minors in the family arrangement and this stands proved through the evidence of D.W.2. At the best, the plaintiff can only be considered as a licensee of the property as she has also been provided adequately during her marriage and also subsequently. He added that the second defendant has since died during the pendency of this appeal. He also added that at the time when the suit was laid, Section 23 of the Act was very much available in the statute and that its subsequent repeal vide Act 39 of 2005 cannot take away the vested right of the first defendant to prevent partition of the dwelling house.

9. The submissions of the learned counsel for the appellants might have impressed this Court may be half a century ago, but not in the new millennium especially when Act 39 of 2005 came into force. Here is a situation where the plaintiff had acquired 1/3rd share in the property as a heir



S.A.(MD) No.705 of 2006

of Annamalai Chettiar. This property is her independent property and the second defendant, as a natural guardian of the plaintiff, has the duty only to preserve the person and the property of the minor and does not have any right to give up any of the right of the minor without the intervention of the Court. Obviously it is not done. Therefore, irrespective of whether there was an oral family arrangement as contended by the defendants is true or otherwise, yet the fact remains that even if it had taken place, that would be plainly incompetent. Necessarily, the plaintiff is entitled to 1/3rd share in the property.

10. It is not adequately known whether the second defendant had executed any testamentary or non-testamentary document as regards her 1/3rd share in the property. Hence, this Court has to presently presume that she has died intestate and hence, the 1/3rd share of the plaintiff will subsequently enlarge into one half share. However, if she had executed any testamentary or non-testamentary document during the pendency of the suit, then the parties in whose favour such document or documents are executed are at liberty to approach the trial Court to modify the preliminary decree herein passed



S.A.(MD) No.705 of 2006

provided the genuineness of such documents are proved in accordance with law.

11. In conclusion, this Second Appeal is dismissed and the judgment and decree dated 17.11.2005 made in A.S.No.42 of 2005 on the file of the Principal District Court, Tuticorin reversing the judgment and decree dated 25.01.2005 made in O.S.No.82 of 2003 on the file of the Sub Court, Kovilpatti, is upheld but with a modification of enhancement of share of the plaintiff to one half share in the suit property. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2022

Internet: Yes
Index: Yes/No

abr



WEB COPY



S.A.(MD) No.705 of 2006

N.SESHASAYEE, J.

abr

To

- 1.The Principal District Judge, Tuticorin.
- 2.The Sub Judge, Kovilpatti.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.(MD) No.705 of 2006

20.10.2022