



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S. (MD) No. 102 of 2017

V.Sankar ... Appellant / 1st Defendant

Vs.

1. V.Ulaganathan
2. P.Balammal
3. S.Mariammal
4. S.Rajeswari
5. M.Susila
6. Latha
7. B.Uma
8. P.Shanthi
9. G.Gowri
10. G.Maheswari
11. V.Indrani

... Respondents 1 to 11 / Plaintiffs

12. J.Pandiammal ... 12th Respondent / 2nd Defendant

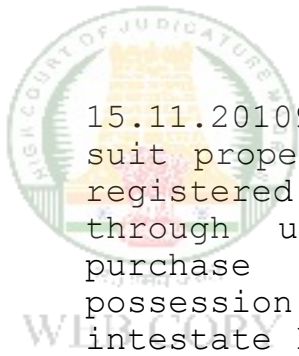
PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the learned V Additional District Judge, Madurai, dated 12.12.2014 in O.S. No. 179 of 2012.

For Petitioner : Mr.K.Suresh Kumar
For Respondents : No appearance

J U D G M E N T

This appeal has been preferred challenging the judgment and decree of the learned V Additional District Judge, Madurai, dated 12.12.2014 made in O.S. 179 of 2012.

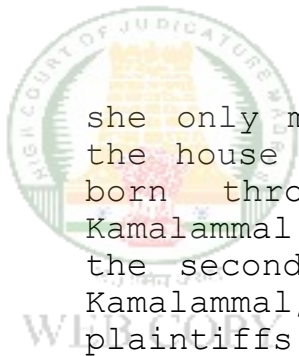
2.The appellant is the first defendant in the suit; the plaintiffs filed the suit for partition and separate possession of 11/13th share in the suit properties; the properties were originally owned by one Veerappan Chettiar, who had two wives; the plaintiffs 1 to 9 are the children of Veerappan Chettiar born through his 1st wife Jayalakshmi; the plaintiffs 10 and 11 and defendants 1 and 2 are the children of Veerappan Chettiar born through his 2nd wife Kamalammal; Veerappan Chettiar died on 29.03.1999; Jayalakshmi died on



15.11.20109 and Kamalammal died on 21.07.2012; the 1st item of the suit property was purchased by Veerappan Chettiar by virtue of the registered sale deed, dated 04.09.1970 and the 2nd item was purchased through unregistered sale deed, dated 30.06.1979; from the date of purchase of the suit properties, Veerappan Chettiar was in possession and enjoyment of the same; Veerappan Chettiar died intestate by leaving behind his 1st wife and the plaintiffs and the defendants 1 and 2 as his legal heirs; Jayalakshmi died intestate on 15.11.2009 and Kamalammal died on 21.07.2012; as the legal heirs of the deceased Veerappan Chettiar, the plaintiffs and defendants 1 and 2 also became entitled to the suit properties; Kamalammal being the 2nd wife got married to Veerappan Chettiar, while his marriage with his 1st wife Jayalakshmi was subsisting; even though Kamalammal is not entitled for any share in any properties, because of the illegal marriage, her children are entitled to the shares; the plaintiffs issued notice for partition on 20.10.2012; the defendants have received the notice and did not come forward for division of properties; hence, the suit has been filed to divide the suit properties into 13 equal shares and to allot 11/13th share to the plaintiffs and pass a preliminary decree for partition.

3.The 1st defendant has filed his written statement by stating that the plaintiffs and defendants are the children born through Veerappan Chettiar through his two wives; the 1st wife of Veerappan Chettiar is Kamalammal and her younger sister Jayalakshmi is the 2nd wife of Veerappan Chettiar; the said Kamalammal and his younger sister Jayalakshmi have jointly filed a suit in O.S. No. 440 of 1968 before the District Munsif Court, Trichy for management of the Temple after the death of Veerappan Chettiar and obtained a decree; in the said case, it has been stated that, Kamalammal was the wife of Veerappan Chettiar and Jayalakshmi was the sister of Kamalammal and it will prove that, Kamalammal is the 1st wife of Veerappan Chettiar; but however, he married two wives even before the year 1949; hence, both the marriages were valid and both the wives are entitled to seek the shares; the Hindu Marriage Act and the Hindu Succession Act are not applicable to this case; the Hindu Marriage Act and the Hindu Succession Act were codified laws and came into effect from 1955; hence, the two wives of Veerappan Chettiar would be entitled to equal shares and the plaintiffs 1 to 9 are entitled to their shares out of $\frac{1}{2}$ share allotted to their mother - Jayalakshmi and the plaintiffs 10 and 11 and defendants 1 and 2 are entitled to their share out of $\frac{1}{2}$ share allotted to their mother Kamalammal; if the share is worked out on this basis, the defendants are entitled to get $\frac{1}{4}$ out of $\frac{1}{2}$ share of their mother, i.e., 1/8 share; hence, the preliminary decree should be passed by allotting 1/8th share to each of the defendants.

4.The 1st plaintiff has filed the reply statement stating that Kamalammal married one Ramasamy Chettiar prior to her marriage with Veerappan Chettiar; despite Jayalakshmi was her younger sister,



she only married Veerappan Chettiar first; Kamalammal had been to the house of the Veerappan Chettiar just to maintain the children born through Jayalakshmi; later, Veerappan Chettiar married Kamalammal as well; even as per the law existed in the year 1949, the second marriage is illegal; so, no share can be allotted to Kamalammal, though her children would get equal share with the plaintiffs 1 to 9.

5.On the basis of the above pleadings, the learned trial Judge framed the following issues:

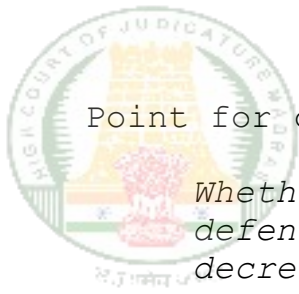
- (i) Whether the plaintiffs are entitled for 11/13 shares each in the suit property?
- (ii) Whether the plaintiffs are entitled to permanent injunction restraining the defendants, his men and his agent in any way alienating or encumbering undivided 2/3 share over the suit schedule mentioned properties?
- (iii) Whether the defendants are to pay the plaintiffs cost of the suit?
- (iv) To what other relief, the parties are entitled to?

On 09.12.2014, Issue Nos.2 and 3 were deleted and the following additional issue was framed:

- 1. Whether the 1st defendant is entitled to preliminary decree for partition of his 1/8th share in the suit properties?

6.During the course of trial, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and Exs.A1 to A13 were marked. On the side of the defendants, one witness was examined as DW1 and Ex.B1 to Ex.B3 were marked. At the conclusion of the trial, the learned Judge, considered the evidence available on record and decreed the suit by allotting 11/13 share to the plaintiffs and 1/13 share to the 1st defendant and passed a preliminary decree for partition to that effect. Aggrieved over the same, the 1st defendant has preferred the appeal.

7.The learned counsel for the appellant submitted that his ground of appeal was based on the decision rendered in **AIR 1985 SC 1102**. In the said judgment, it is held that two widows of Hindu male have got joint shares in the right of survivorship; the trial Judge has not properly discussed the impact of the above decision and arrived at a wrong conclusion by presuming that both wives of Veerappan Chettiar were not alive when Veerappan Chettiar died; the learned trial Judge has not applied the law of the facts of the case appropriately; the learned trial Judge allotted 1/13 shares to the 1st defendant instead of allotting 1/8 share. Hence, the Appeal should be dismissed. However, the stand of the respondents before the trial Court and other records are also taken up for consideration.



Point for consideration:-

Whether the allotment of share is 1/13 to the 1st defendant and 11/13 to the plaintiffs by preliminary decree passed by the learned trial Judge is fair and proper?

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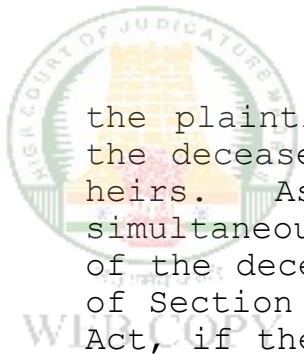
8. The fact that both the plaintiffs and the defendants have derived title from their deceased father Veerappan Chettiar is not in dispute. Originally the properties belonged to late Veerappan Chettiar and there is no dispute on that score also. It is claimed by the plaintiffs that Jayalakshmi is the 1st wife and the Kamalammal is the 2nd wife, whereas, the 1st defendant has stated that Kamalammal is the 1st wife and Jayalakshmi is the 2nd wife. However, the learned trial Judge got convinced that Jayalakshmi is the 1st wife of the deceased Veerappan Chettiar.

9. Since the marriage of Veerappan Chettiar with the 2nd wife had taken place prior to the commencement of the Hindu Marriage Act, 1955, it cannot be considered that the second marriage is invalid, even though the 1st wife was alive. Both Kamalammal and Jayalakshmi married to Veerappan Chettiar and their marriage is valid as per the law existed at that point of time, irrespective who married him first.

10. The one and only point for consideration is that whether the widows of the deceased Veerappan Chettiar are entitled to $\frac{1}{2}$ share each after his death or whether the wives have equal share along with other children as the Class I legal heirs. Admittedly, Veerappan Chettiar died intestate and the plaintiffs and the defendants claimed the right by way of inheritance. The learned trial Judge has recorded a finding that both the wives of Veerappan Chettiar were not alive at the time when Veerappan Chettiar died.

11. By taking into consideration to be of the existence of both the wives of Veerappan Chettiar at the time he died, it has been seen whether the decision reported in **AIR 1985 SC 1102** and cited by the learned counsel for the appellant would change their respective share from 1/13 to 1/8. On perusal of the above judgment, it is seen that the male Hindu died in the year 1999 after the commencement of Hindu Succession Act, 1956. The property being the self-acquired property of the deceased Veerappan Chettiar, there is no confusion in allotment of shares to his legal heirs irrespective of the fact, whether the wives are alive or dead. The provisions set out under Sections 8, 9 and 10 of the Hindu Succession Act, 1956 have to be properly applied while allotting the shares among the legal heirs of the deceased Veerappan Chettiar who died intestate.

12. As per Section 8 of the Act, the property of Veerappan Chettiar's share devolved upon the Class I legal heirs. Admittedly,
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the plaintiffs and the defendants are being sons and daughters of the deceased Veerappan Chettiar, they will fall under Class I legal heirs. As per Section 9 of the Act, Class I legal heirs take simultaneously. As per Section 10 of the Act, the intestate widows of the deceased Hindu would be in accordance with the sub-section 1 of Section 10 of the Act. As per sub-section 1 of Section 10 of the Act, if there are more than one widows for the intestate, all shall take one share jointly between themselves. The surviving sons and daughters and the mother of the intestate shall take one share each in accordance with sub-section 2 of Section 10 of the Act.

13. The property has not been divided any time before and this suit for partition. This suit has been filed for the first time after the death of Veerappan Chettiar and his two wives. Hence, there is no quarrel as to who can inherit his properties except the plaintiffs and the defendants. The plaintiffs and the defendants being Class I legal heirs of the deceased Veerappan Chettiar, they are entitled to take equal shares among themselves. The learned trial Judge has rightly applied the law despite recording a wrong finding that the wives of Veerappan Chettiar were not alive at the time of his death. But however, the apportionment of the share to the parties equally has been done only in accordance with law in force. Hence, I find no reason for interference.

In the result, this Appeal Suit is dismissed and the judgment and decree in O.S. No. 179 of 2017 on the file of the learned V Additional District Judge, Madurai, dated 12.12.2014 is hereby confirmed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

vji

To

1. The learned V Additional District Judge,
Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

A.S. (MD) No. 102 of 2017
25.03.2022

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