



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S.(MD)No.215 of 2017 and
CMP(MD) No.12142 of 2017

1.S.Sukumar

2.R.Neela

...Appellants/Defendants 1 & 2

Vs.

1.S.Panneerselvam

2.R.Sivakamu

3.D.Sakunthala

4.P.Bhuvaneswari

5.R.Meera

6.R.Kalaivani

7.P.Durga

8.S.Saravanakumar

9.N.Ramados

10.S.Mani

11.T.Boopathy

12.T.Rajasekar

13.A.Senthilkumar

...1st Respondent/Plaintiff

...Respondents 2 to 13/

Defendants 3 to 14

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 06.01.2017 in O.S.No.123 of 2015, on the file of the I Additional District Judge, (PCR), Tiruchirappalli.

For Appellants : Mr.H.Lakshmi Shankar

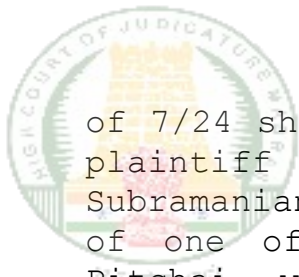
For R1 : S.Kameswaran

For R2 to R13 : No appearance

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned I Additional District Judge, (PCR), Tiruchirappalli made in O.S.No.123 of 2015, dated 06.01.2017.

2.The appellants are the defendants 1 & 2. The suit has been preferred by the plaintiff seeking preliminary decree for partition

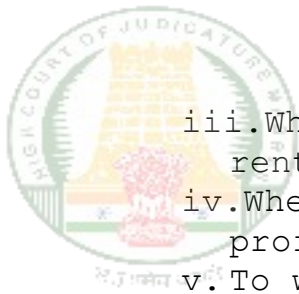


of 7/24 share of the suit property; according to the plaintiff, the plaintiff and the defendants 1 to 4 are the children of the late Subramanian and Akilambal; the defendants 5 to 8 are the legal heirs of one of the deceased son of the said Subramanian, by name, Pitchai, who also died intestate on 13.02.2015; a person by name, Ponnimuthammal, who is the relative of the plaintiff's father Subramanian executed a registered Gift Deed on 25.10.1951 in favour of Subramanian, in respect of Item 1 of suit property; she also executed a Will, dated 17.11.1955 bequeathing item 2 of the suit property also in favour of the plaintiffs father Subramanian; after the death of the said Ponnimuthammal, the Will came into existence and Subramanian entitled for the second item of suit property; immediately after executing the settlement deed, dated 25.10.1951, the said Subramanian became entitled to Item 1 and Item 2 of the suit property and he was put into possession; the father of the plaintiff and the defendants died intestate in the year 1956 and their mother also died on 12.10.1984; after the death of their father, the suit property devolved on his wife and three sons, as per the law prevailed at the time of death; so three sons became entitled to 1/4 share each and the remaining 1/4 share of the wife of late Subramanian would be inherited by her three sons and three daughters; hence, the plaintiffs and the first defendant are entitled to 7/24 share each and the defendants are entitled to 1/24 share each; the defendants 5 to 8 are the legal heirs of predeceased son of Subramanian and they would also get 1/24 share of their branch; since the first defendant claimed that except himself no other siblings are entitled to any share in the suit properties, the plaintiff filed a suit for partition; the tenants in the suit property are the defendants 9 to 14 in the suit and they are only formal parties.

3.The defendants 1 & 2 contested the suit by stating that since the properties are the self acquired property of their father, all the sons and daughters would get equal share among themselves in the suit property. The plaintiff has filed the suit with an ulterior motive of defeating the shares of the defendants in the suit property. Hence, the suit has to be dismissed.

4.On the basis of the above pleadings, the learned trial judge has framed the following issues:-

- i. Whether the plaintiff is entitled for preliminary decree for partition of 7/24th share in respect of the suit properties as prayed for?
- ii. Whether the plaintiff is estopped from claiming share in the properties without contributing to the development of the property?



- iii. Whether the plaintiff is entitled for past profit by rental income as prayed for?
- iv. Whether the plaintiff is entitled for future mesne profits; as prayed for?
- v. To what other reliefs?

WEB COPY

5. During the course of the trial, on the side of the plaintiff, the plaintiff himself was examined as PW 1 and Ex.A1 to A6 were marked. On the side of the defendants one witness was examined as DW 1 and no documents have been marked.

6. At the conclusion of the trial, the learned trial judge has found that the plaintiff is entitled for a preliminary decree for partition of his 7/24 share in the suit property and passed a preliminary decree for partition to that effect. The defendants 1 & 2 preferred this appeal suit, challenging the above said judgment.

7. The learned counsel for the appellant submitted that the plaintiffs did not prove that the father died in the year 1956, before the commencement of Hindu Succession Act 1956, whatever may be the case, even before 1956, as per the Hindu Women's Rights to Property Act, 1937, the daughters are not excluded from getting equal share in their father's self acquired properties, as per Section 3 (1) of Hindu Women's Rights to Property Act of 1937, widow of a Hindu, who dies intestate is entitled to the same share as that of her son; hence she will not be deprived from claiming equal share in the self acquired properties of the father; the learned trial judge overlooked both the Acts and held that the plaintiff is entitled to 7/24 share and the daughters are entitled to only 1/24 share each; since the finding of the trial Court is wrong, it requires interference.

8. The learned counsel for the respondent submitted that the defendant did not prove that their father died after 1956 and that the daughters also got equal daughter's share in the father's self acquired property as per Section 8 of Hindu Succession Act 1956; hence, the learned trial judge is right in passing the preliminary decree for partition, in respect of 7/24 share in the suit properties, in favour of the plaintiff'.

9. Based on the rival submissions, I feel that the following point for consideration are relevant for disposal of this Appeal suit.

- i. Whether the apportionment of share as held by the learned trial judge as per preliminary decree is correct and in accordance with the law in force?

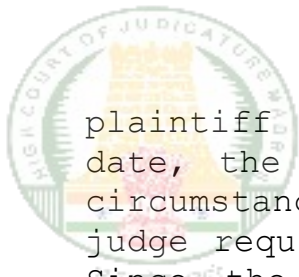


10.The relationship between the parties is not in dispute. The fact that the suit item 1 was acquired by the father of the plaintiff by virtue of a settlement deed executed by one Ponnimuthammal is also not in dispute. The very same Ponnimuthammal had executed a registered Will on 17.11.1955 and bequeathed item 2 as well in favour of the plaintiff's father. Since the Will came into effect after the death of Ponnimuthammal, the father of the plaintiff became entitled to both items 1 & 2. It is claimed by the plaintiff that his father died in the year 1956 and his mother also died on 12.10.1984. It is strange to notice that the plaintiff is able to specify the date of the death of his mother; but he has simply stated that his father died in the year 1956. Since Hindu Succession Act, 1956 came into force with effect from 17.06.1956, it is obligatory on the part of the plaintiff to prove that the father died any time before the said date.

11.It is claimed by the respondents that the defendants did not specifically deny the fact that the father died in the year 1956. It is obligatory on the part of the plaintiff to prove before the Court that he is not governed by the provisions of the Hindu Succession Act, 1956, by establishing the fact that his father died some time before 17.06.1956. In the absence of any such proof, the Court can presume that there is no certainty as to the date of the death of the father, unmindful of the specific denial of the defendants. The Hindu Succession Act being a beneficial legislation, this benefit should be given to the daughters as well.

12.The learned counsel for the appellant submitted that even for the sake of arguments, it is taken that the father died before the commencement of Hindu Succession Act, 1956, even the provisions of the Hindu Women's Rights to Property Act, 1937 will not exclude the daughters from getting equal share in the self acquired properties of their father. Section 3(1) of Hindu Women's Rights to Property Act, 1937 would show that the act was passed in order to ensure that the widow of hindu also gets a share when he dies intestate. Sub Section 3(2) would show that the arrangements is only in respect of Hindu Joint family properties.

13.Admittedly, the suit properties are self acquired properties of the father of the plaintiff. Section 3(1) of Hindu Women's Rights to Property Act, 1937 though specifies about the right of the widow, it does not make any explicit exclusion of the daughters from inheriting equal share in the self acquired properties of the father. The learned trial judge had omitted to look into this vital aspect of law. The learned trial judge omitted to appreciate the evidence with regard to the absence of proof on the side of the



plaintiff to show that the father died before 17.06.1956, on which date, the Hindu Succession Act, 1956 came into force. Under such circumstances, the preliminary decree passed by the learned trial judge requires modification, in respect of apportionment of shares. Since the daughters also get equal share in the self acquired properties of the father, all the sons and daughters who stood as the plaintiff, defendants 1 to 4 along with the predeceased son, Pitchai (D5 to D8) are entitled to 1/6 share each. The legal heirs of the predeceased son of late Subramanian would get 1/6 share for their branch. **Thus, the point is answered.**

14.In the result, this Appeal Suit is disposed and the judgment and decree of the learned I Additional District Judge, (PCR), Tiruchirappalli, dated 06.01.2017 made in O.S.No.123 of 2015 is modified to the effect that the plaintiff is entitled to get 1/6 share in the suit properties and the preliminary decree for partition is passed in respect of 1/6 share in the suit properties. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

To

1.The I Additional District Judge, (PCR), Tiruchirappalli.

COPY TO

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-12685[F] dated 17/03/2022)

JUDGMENT MADE IN
A.S.(MD)No.215 of 2017 and
CMP(MD) No.12142 of 2017
16.03.2022

srr(CO)

TR(07.06.2022) 5P 5C