



S.A.No.841 of 1998

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 16.12.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.No.841 of 1998

Gandhi Ammal (Died) ... Appellant/1st Respondent/Plaintiff
2.Saminathan
3.Mariammal
4.Selva Pandian
5.Chitra ... Appellants 2 to 5

[Appellants 2 to 5 - brought on record as LR's of the deceased sole appellant vide order dated 06.04.2022 made in C.M.P(MD)No.1018 of 2022 in S.A.No.841 of 1998]

Vs

1.Ammachi @ Koothadichi
2.Pappathi @ Duraichi Ammal ... Respondents 1 & 2/Appellant & 2nd Respondent/Defendants
3.Arunachala Thevar (died) ... 3rd Respondent

[R3 - impleaded vide order dated 06.04.2022 made in M.P(MD)No.1 of 2008 in S.A.No.841 of 1998]

4.Esakki
5.Lakshmi
6.Manickam
7.Chithai
8.Paramasivam ... Respondents 4 to 8



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[R4 to R8 - brought on record as LR's of the deceased R3 vide order dated 30.09.2022 made in CMP(MD)No.6131 of 2022 in S.A.No.841 of 1998]

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.11.1997 passed in A.S.No.28 of 1996 on the file of the Principal Sub Court, Tenkasi reversing the judgment and decree dated 29.02.1996 passed in O.S.No.147 of 1993 on the file of the District Munsif's Court, Shencottah.

For Appellants : Mr.T.S.R.Venkatramana
For Respondents : No appearance

J U D G M E N T

1.1 The plaintiff in O.S.No.147 of 1993 on the file of the District Munsif's Court, Shencottah, has filed the present Second Appeal. The suit was laid originally as O.S.No.563 of 1989 before the District Munsif's Court, Tenkasi, and it was later transferred to the District Munsif's Court, Shencottah and re-numbered as O.S.No.147 of 1993. For narrative convenience, the parties would be referred to as per their rank before the trial Court.

1.2 The suit was laid for a decree against the second defendant claiming right of pre-emption under Section 22 of the Hindu Succession Act *vis-a-vis* the



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suit property. The suit was decreed by the trial Court and in A.S.No.28 of 1996 filed by the first defendant before the Subordinate Court, Tenkasi, there was a reversal in fortune for the plaintiff.

2. The facts may be briefly stated:

- A certain Subbammal had purchased the property in two schedules
Vide a sale deed dated 18.03.1948. It comprises of residential buildings bearing Door Nos.95 and 95A.
- Subbammal had two daughters. They are Gandhi Ammal, the plaintiff herein and Ammachi @ Koothadichi, the first defendant.
- While so, Gandhi Ammal was given in marriage to certain Arumuga Konar. Through that marriage, she begot a son by name Arunachalam. He was later examined as D.W.2. Be that as it may, the marriage between Gandhi Ammal and Arumuga Konar was dissolved and thereafter, Arumuga Konar stated to have preferred comfort elsewhere. While so, Gandhi Ammal, the plaintiff herein was left with her son Arunachalam. In due course, Gandhi Ammal came across a certain



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Saminatha Chettiyar, who at the relevant time was a widower. Both developed interest for each other and this culminated in a marriage and this marriage was an inter-caste marriage. The community to which Gandhi Ammal belongs did not approve the marriage. It harassed her and her son. She was therefore, constrained to leave Ilanji, a small hamlet from where she hailed, and moved to Theni, which is almost 250 kms from Ilanji.

- After all this drama, Subbammal, the mother of the plaintiff, and the first defendant died *intestate* in 1988. Thereafter, Gandhi Ammal returned to the Village and learnt that the first defendant was afoot to alienate the building bearing Door No.95A to the second defendant. This property is shown as Schedule-I property. Wasting no time, she approached the concerned Sub Registrar to lodge her objection to any proposed transaction involving the property in Schedule-I herein. The statutory authority/the Sub Registry has explained its inability to come to the rescue of the plaintiff. In these circumstances, the plaintiff laid O.P.No.4 of 1989 under Section 22 of the Hindu Succession Act. This was filed on 26.04.1989. Along with this, the plaintiff had also taken



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out an Interlocutory Application under Order 39 Rule 2 C.P.C for an order of interim injunction. It appears that the trial Court had granted an order of injunction. The copies of O.P.No.4 of 1989 and also interim application are available on record as Ext.A.1 and Ext.A.2. However, even before communication of the interim order passed by the trial Court to the first defendant, on 28.04.1989, Vide Ext.A.3 sale deed, the first defendant had sold the property to the second defendant. As the efforts taken ended in vain, the plaintiff had laid a suit again pivoting the cause of action on the statutory right of pre-emption and seeks a decree that the second defendant be directed to transfer Schedule-I property to the plaintiff for the sale price mentioned in Ext.A.3. Schedule-II property is the pathway to Schedule-I property.

3. The second defendant was set ex-parte and only the first defendant contested the suit. The case of the first defendant in essence is that the plaintiff had eloped with Saminatha Chettiyar, and that even before that some time in 1985, the properties were orally divided in the presence of certain named panchayathars and hence, she is barred from ascertaining the right under Section 22 of the Hindu Succession Act. Indeed, the property was sold



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to the second defendant Vide Ext.A.3 sale deed.

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4.1 The dispute went to trial and before the trial Court, the plaintiff examined herself as P.W.1. The first defendant examined herself as D.W.1. She also examined Arulachalam, the biological son born to the plaintiff and her erstwhile husband Arumuga Konar on her side as D.W.2. It appears that Arunachalam was working under the second defendant's husband Natarajan. After analyzing the evidence before it, the trial Court decreed the suit and the first appellate Court dealt it otherwise. Allowing the appeal and dismissing the suit, the first appellate Court held that: (a) the plaintiff as P.W.1 had admitted in her cross examination about the partition which the 1st defendant had pleaded in her evidence. Indeed she has deposed that out of the two houses bearing Door Nos.95 and 95A, she obtained a house bearing Door No. 95 to her share. To corroborate the said oral partition, she had also executed sale deed pertaining to certain agricultural lands to her son D.W.2 vide Ext.B. 1 dated 26.11.1993. In this document, she has recited about the oral partition between her and the 1st respondent; and (b) right of preemption is available only till partition takes place and not thereafter. Challenging this decree, the plaintiff has come forward with the second appeal.



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4.2 During the pendency of the appeal, the plaintiff had passed away and her heirs were impleaded as appellants 2 to 5. This appeal was admitted for considering the following substantial questions of law:

“i) Whether the finding of the appellate court that the suit is not properly framed is legal and proper?

ii) Whether the suit filed without a prayer to set aside the sale in favour of the second respondent is bad when the said sale is attacked as collusive and fraudulent?

iii) Whether the documents produced by the respondents are admissible and could be relied to prove the alleged partition?”

5. The learned counsel for the appellants submitted that the first appellate Court had gone wrong in construing that right of preemption is a weak right and that it is not a right on the land, but it is only a right to seek and make an offer. To buttress his case, he relied on the authority in ***Nagammal and others Vs Nanjammal and another*** [1970 1 MLJ 358]. The first appellate Court appeared to have been guided by the dictum in ***Radhakishan***



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Laxminarayan Toshniwal Vs Shridhar Ramchandra Alshi and others [AIR 1960 SC 1368], but that was not based on Section 22 of the Hindu Succession Act, but under Section 205 of Berar Land Revenue Code. So far as the right of preemption under Section 22 of the Hindu Succession Act is concerned, it is statutory in character which the first appellate Court has overlooked.

6. This Court would have been in absolute agreement with the submissions of the learned counsel for the appellants and would have willingly abide by the dictum in ***Nagammal and others*** case, if only, there was no partition between the plaintiff and the 1st defendant. Section 22 of the Hindu Succession Act as explained in ***Nagammal and others*** case makes it clear that the right of preemption is available only against the co-sharer/coheir. This implies there should not have been any partition of assets among the co-sharers. Here is a case where the 1st defendant has pleaded that there was an oral partition between the parties some time in 1985 and the plaintiff has categorically admitted it in the cross examination. It appears that besides the house bearing Door Nos.95 and 95A, there was another agricultural property that belonged to the sisters. The plaintiff has admitted to the oral partition both as



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concerning the house properties and also the agricultural properties, the later vide her recital in Ext.B.1-settlement deed in favour of her son D.W.2.

7. When properties are divided and specific properties have come to vest in a specific sharer, then Section 22 of the Hindu Succession Act may not have any application. This Court therefore, concurs with the line of reasoning of the first appellate Court.

8. In fine, this Second Appeal is dismissed and the judgment and decree dated 05.11.1997 passed in A.S.No.28 of 1996 on the file of the Principal Sub Court, Tenkasi reversing the judgment and decree dated 29.02.1996 passed in O.S.No.147 of 1993 on the file of the District Munsif's Court, Shencottah, is confirmed. No costs.

16.12.2022

Internet : Yes
Index : Yes/No
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To

- 1.The Principal Subordinate Judge,
Tenkasi.
- 2.The District Munsif, Shencottah.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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Pre-delivery Judgment made in
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