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A.S.No.336 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1. Sabapathy Mudaliar
2. Panchatcharam
3. Dr.Kumarasami
4. Dr.Thanikachalam
5. Paramasivam
6. Murugan
7. Mohankumar
8. Jagadeesan
9. Dayalan
10. Bhoopathy

...Appellants

-Vs-

1. P.B.Shamugasundaram (died)
2. Deivalprasadam (died)
3. Chockammal
4. Dhanalakshmi
5. Shivaji
6. Balaji

... Respondents

Prayer: First Appeal filed under Section 96 of CPC praying against the Judgment and Decree of the Court of the III Additional Judge, City Civil Court, Chennai in O.S.No.14297 of 2010, dated 11.09.2012.

For Appellants : Mr.V.Murali, legal aid counsel

R1 and R2 : Died

R3 : exparte



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For R4 : No appearance
For R5 : Mr.M.Devendran
For R6 : Mr.T.N.Rajagopalan

JUDGMENT

This appeal suit has been filed as against the Judgment and Decree passed in O.S.No.14297 of 2010, dated 11.09.2012, on the file of III Additional Judge, City Civil Court, Chennai, thereby dismissed the suit for declaration and injunction.

2. The appellants are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The property, situated at 49, T.S.V.Kovil Street, Mylapore, Madras-600 004, was originally purchased by one M.Duraiswamy Mudaliar and his brother T.K.M.Devaraja Mudaliar. They were born to Manicka Mudaliar, who is the brother of Deivasigamani Mudaliar.



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4. The first plaintiff is the brother of the purchaser and the plaintiffs 2 to 4 are the sons of Devaraj Mudaliar. The defendants are the husband and son of one Sivabooshanam, daughter of Deivasigamani Mudaliar and his wife Nayagammal. The said Nayagammal filed a suit for maintenance, after the demise of her husband Deivasigamani Mudaliar, before this Court in C.S.No.114 of 1943. The said suit ended in compromise, whereby it was agreed that a sum of Rs.75/- per month as maintenance and she can live in the said scheduled property. As per the terms of the decree, she had continued to live in the suit property till her demise, namely 27.12.1989.

5. The case of the plaintiffs is that the said property reverted to them as reversioner. The first plaintiff herein is the fourth defendant in the earlier suit in C.S.No.114 of 1943. As per the compromise decree, a charge has been created in respect of the B schedule property. Further, the said Nayagammal is entitled to reside till her lifetime in the A schedule property and maintenance is paid separately and charge under B schedule property. The suit property was purchased on 21.12.1970 by the first plaintiff and Duraisamy Mudaliar. Therefore, the said Nayagammal neither had any pre-existing right in and over the property and her right over the property can be sourced to the said



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compromise decree. Therefore, the plaintiffs are entitled to the suit schedule

property, after the demise of the said Nayagammal. She had two daughters viz.,

Sivabooshanam and Gokila. In the suit property, there was a tenant. Therefore,

the plaintiffs issued notice to the defendants calling upon them not to deal with

the property. The defendants issued reply notice stating that they are entitled to

have the property by virtue of pre-existing right of the said Nayagammal. That

apart, she had left with a Will in favour of Sivabooshanmmal and her husband.

The further case of the plaintiffs is that the said Nayagammal herself has no

right to the suit property and as such, the Will executed by her has no

significance. In fact, she had owned several house in the Madras city and also

had 10 acres of land in Somangalam village. Therefore, she was at no point of

time dependent upon the maintenance of Rs.75/-. It is a misconceived action on

the part of the defendants to assert the right under the provisions of Section

14(1) of the Hindu Succession Act. The creation of restricted estate in favour of

Hindu female is legally permissible and Section 14(1) does not operate as bar

or would it enlarge the limited right conferred into an absolute one. The suit

property was not given in view of the maintenance or arrears of maintenance.

The compromise decree confers only shelter till her lifetime, without any right

over the property. It is also not in recognition of any pre-existing right. As the



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plaintiffs are in possession of the property and since the defendants are creating hindrance to the peaceful possession and enjoyment, they have sought for declaration and permanent injunction with an alternative remedy of recovery of possession.

6. Resisting the same, the defendants filed a written statement stating that the suit itself is not maintainable for non-joinder of necessary parties. Only male members of the Duraiswamy Mudliar's family, Devaraj Mudaliar's family and Nagaraja Mudaliar's family have been made as parties. The daughters born to them have not been made as parties. Due to the misunderstanding arose between Nayagammal and Deivasigamani Mudaliar, she was sent out from joint family and as such, she filed a suit for maintenance in C.S.No.114 of 1943 before this Court against Duraisamy Mudaliar, Devaraja Mudaliar, Nagaraja Mudaliar, Sabapathy Mudaliar and Gnanambai Ammal. In acknowledgment of pre-existing right over the joint family business a compromise was arrived at and accordingly, a decree was passed on 20.09.1943 in C.S.No.114 of 1943 whereby, a maintenance amount of Rs.75/- per month was agreed to be paid with a charge over B schedule property. She was also given the right of residence till her lifetime in the suit property. Therefore, the defendants in the



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said suit acknowledged and accepted the pre-existing right of Nayagammal in the joint family and she was granted residence. Subsequent to the amendment of Hindu Succession Act in the year 1956, the limited estate of Nayagammal got enlarged into an absolute estate, since the maintenance includes food, shelter and cloth. The suit property with a limited right of residence, which is one of the three limbs of the maintenance, will automatically be enlarged to absolute right subsequent to 1956. She had enjoyed the property till her demise viz., 27.12.1989. She had paid property tax and other revenue dues in respect of the suit schedule property. Therefore, she had executed a Will dated 18.11.1988, thereby bequeathed the suit property in favour of her daughter and son-in-law to enjoy the suit property till their lifetime. After their lifetime, the absolute right over the suit property would devolve on the defendants 5 and 6. Therefore, at no point of time, the plaintiffs were in possession and enjoyment of the suit property.

7. After completion of pleadings, the Trial Court framed the following issues:-

- “ 1. Whether the Plaintiffs are entitled to get the relief of declaration and injunction and alternative relief of recovery of possession for all or any other reasons stated in the Plaint?*
- 2. To what other reliefs the Plaintiffs are entitled?”*



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8. On the side of the plaintiffs, they had examined P.W.1 and marked Exs.A1 to 4. On the side of the defendants, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court dismissed the suit. Hence, this Appeal suit.

9. The plaintiffs raised grounds that the said Nayagammal was given only life interest and thereafter, the property should revert to the family consisting of Duraiswamy Mudaliar and Devaraja Mudaliar. The said Nayagammal filed a suit for maintenance, after the demise of her husband and the same ended in compromise. Therefore, the defendants in the said suit were under no obligation to pay any maintenance. She had enjoyed the property as life estate holder till her lifetime and it is not open to the defendants, as her legal representatives, to make any claim. Therefore, the provisions under Section 14(2) of the Hindu Succession Act would only operate and not Section 14(1) of the Hindu Succession Act.

10. As per the compromise decree in C.S.No.114 of 1943 dated 20.09.1943, the said Nayagammal is entitled to reside in A schedule property



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till her lifetime and she is entitled to get maintenance of Rs.75/- per month and a charge was created thereon in respect of the B schedule property.

11. Now, the only point for consideration in this appeal suit is whether the provisions under Section 14(2) of the Hindu Succession Act would apply or not?

12. It is relevant to extract the provisions under Section 14(1) and 14(2) of the Hindu Succession Act, which are as follows:-

“14. Property of a female Hindu to be her absolute property.-(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”



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13. As per the compromise decree, the said Nayagammal was in possession and enjoyment of the suit property and after her demise, her legal representatives were in possession and enjoyment of the suit property without any hindrance. In fact, the plaintiffs failed to exercise their right over the property till the demise of the said Nayagammal.

14. It is relevant to rely upon the Judgment reported in *Air 1977 SC 1944* in *Vaddeboyina Tulasamma and others Vs Vaddeboyina Sesha Reddi (dead) Lrs.*, wherein it was held as follows:-

“ It is, therefore, clear that the compromise by which the properties were allotted to the appellant Tulasamma in lieu of her maintenance were merely in recognition of her right to maintenance which was a pre-existing right and therefore, the case of the appellant would be taken out of the ambit of Section 14(2) and would fall squarely within Section 14(1) read with the Explanation thereto. Thus the appellant would acquire an absolute interest when she was in possession of the properties at the time when the 1956 Act came into force and any restrictions placed under the compromise would have to be completely ignored.”

15. From the above said facts and circumstances, the rights conferred upon the said Nayagammal is coming under the provisions under Section 14(1)



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of the Hindu Succession Act. Since after the demise of husband, the wife becomes co-owner of the property, if she had right to possess the land as co-owner, the question of divesting her of the said right by invoking sub section (2) Section 14 of the Hindu Succession Act would not arise.

16. The objective of Section 14(1) of the Hindu Succession Act is to create an absolute interest. In case of a limited interest of the wife, such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male, who owned self-acquired property, is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of. Further, the following propositions emerge from the above referred V.Tulasamma's case.

“(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is' concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;”

17. Therefore, the defendants have absolute right over the suit property and the Trial Court had rightly dismissed the suit and this Court finds no



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infirmity or illegality in the Judgment and Decree passed in O.S.No.14297 of 2010, dated 11.09.2012, on the file of III Additional Judge, City Civil Court, Chennai and this Appeal Suit is liable to be dismissed.

18. Accordingly, this Appeal Suit is dismissed. No costs.

11.12.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

The III Additional Judge, City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN. J,

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