



A.S.No.224 of 2007
and M.P.Nos.1 to 4 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.224 of 2007
and M.P.Nos.1 to 4 of 2011

Y.L. Veerabadaran

.. Defendant No.1/Appellant

Vs.

1.Y.L. Linga Devaru @ Borappa

.. Plaintiff/Respondent

2.Y.L. Jeyaraj

.. Defendant No.2/Respondent

Prayer: First Appeal filed under Section 96 of the Code of Civil Procedure, against the order Judgment and decree dated 23.12.2005 and made in O.S.No.8 of 2004 on the file of the District Judge, Ootakamund.

For Appellant

: Mr.G.Govarthanan for
B. Ramamurthy

For Respondents

: Mr. S. Kingston Jerold [for R1]
R2 – Died



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JUDGEMENT

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[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

1st Defendant in the suit in O.S.No.81 of 2004 on the file of the District Court, Ooty, is appellant in this Appeal in A.S.No.224 of 2007.

2. Brief facts that are necessary to dispose of this appeal are as follows:

2.a. 1st Respondent in the Appeal is the Plaintiff in the suit in O.S.No.81 of 2004 filed for partition of the suit properties by metes and bounds and to allot 2/4th share to the 1st Respondent and for consequential reliefs.

2.b. It is the case of the 1st Respondent that the suit properties originally belonged to late Y. Lingay Gowder, the father of the Plaintiff and the Defendants. It is the further case of the 1st Respondent that Late Y.Lingay Gowder executed his Last Will and Testament dated 4.11.1963 and bequeathed all his properties to his five sons viz., Y.L. Lingappa, Y.L.Veerabadran (1st Defendant), Y.L.Jeyaraj (2nd Defendant), Y.L.Lingadevaru (Plaintiff) and Y.L.Puttuswamy. It is further stated



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that father Y.Lingay Gowder died on 08.01.1967. It is the contention of the 1st

Respondent that the eldest brother Y.L.Lingappa had relinquished his share in favour of the Plaintiff, defendants and Puttusamy for consideration. It is admitted that the Plaintiff 's younger brother by name Y.L.Puttusamy died intestate on 11.09.1987 leaving behind his widow by name Banu Reka and mother Y.L.Lakshmiammal as his legal representatives. They have not been impleaded as parties in the suit for partition.

2.c It is also stated in the plaint that under a Registered Partition Deed dated 23.02.1996 executed between Y.L. Lakshmiammal and Banu Reka the properties of Y.L.Puttusamy were partitioned by metes and bounds and that they are entitled to 1/4th undivided share in the suit property left by Y.L.Puttusamy. In the plaint it is also stated that the Plaintiff's mother Lakshmiammal died on 02.09.2003 leaving behind her last Will and Testament dated 20.08.2003 registered as Document No.31 of 2003. Stating that the Plaintiff's mother had bequeathed her 1/4th undivided share in the suit property to the Plaintiff absolutely through the Registered Will dated 20.08.2003 the Plaintiff claimed half share in all the suit properties.



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2.d. The Trial Court by its Judgment and Decree dated 25.12.2005 granted a decree in favour of the Plaintiff in respect of the $\frac{1}{2}$ share in the suit property holding that the Will executed by mother is proved. Aggrieved by the same the above appeal is preferred.

3. Learned counsel appearing for the Appellant submitted that the suit for partition is not maintainable without impleading all the co-owners of the property who are members of the family. Admittedly the suit is filed by the Plaintiff as against two of his brothers without impleading the mother and wife of Y.L. Puttusamy who are entitled to the share of Y.L.Puttusamy. The Will executed by the mother of the Appellant, is disputed on the ground that there are several suspicious circumstances surrounding the execution of the Will. The trial Court failed to take note of the fact that without impleading the other legal heirs, it cannot finally and effectively adjudicate the genuineness or the validity of the Will. Admittedly wife of Puttusamy is not a party and she is entitled to half share in the $\frac{1}{4}$ th share of Puttusamy. However, it is stated by Plaintiff that there was a partition between the wife of Puttusamy Mrs.Banu Rekha and mother and that the



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entire $\frac{1}{4}$ share of Puttusamy was allotted to mother. It is admitted before this Court that daughters of testatrix (mother of Plaintiff) are not impleaded;

4. The suit for partition without impleading all the parties is liable to be dismissed for non-joinder of necessary parties even if the person who is not impleaded is holding a fraction of share. From the pleadings it is seen that the Will alleged to have been executed by the mother in favour of other sharers is in dispute and several suspicious circumstances is alleged. It is also contended that mother was not in a sound disposing state. In such circumstances, such contentious issues should be settled only in the presence of all parties and the Court cannot presume that by subsequent transactions the shares of others had been crystalised without impleading them as parties. All the daughters of Testatrix should be made as parties if the plaintiff relies upon a Will executed by his mother to claim more share.

5. We find that the Judgment and Decree of the trial court is not according to law. Therefore, we are unable to sustain the decree for partition for non joinder of necessary parties. In a suit for partition, all the parties, who are entitled to a



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share or has a legitimate claim in the property have to be impleaded. However an

opportunity should be given to the plaintiff to implead all the necessary parties.

Hence, this appeal is allowed and the Judgment and Decree of the trial Court in O.S.No.81 of 2004 (District Court, Nilgiris) is set aside. The matter is remitted to the trial Court to implead wife and mother of Y.L.Puttusamy and the four daughters of Sri.Y.Lingay Gowder.

6. The Petition to implead other legal heirs shall be filed within four weeks from the date of first appearance of parties. The suit shall be disposed of within nine (9) months from the date of first appearance after giving full opportunity to the parties to lead fresh evidence.

7. In view of the above, the Appeal Suit is allowed with the above direction. Consequently, connected Miscellaneous Petitions are closed. There is no order as to costs.

[S.S.S.R., J.] [P.B.B.,J.]
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