



S.A.No.1552 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1552 of 2002

1.Santha

2.Prabhavathi

...Appellants

Vs.

1.K.V.Janarthana Rao (Died)

2.Dr.K.Gangaram

3.K.R.Ravindran

4.K.R.Lalithakumar

5.K.R.Sundariammal

6.Geetha

7.Radha

8.Santha

9.K.J.Bharathi (Died)

...Respondents



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WEB COURT

(R9 brought on record as LR of the deceased R1 vide order of the Court dated 09.07.2019 made in C.M.P.No.328 of 2013 in S.A.No.1552 of 2002)

(R9 died – Memo recorded vide Court order dated 03.08.2021 in S.A.No.1552 of 2002).

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 15.02.2002 made in A.S.No.75 of 2001 on the file of the II Additional District Judge at Salem, confirming the Judgement and Decree dated 13.12.2000 made in O.S.No.672 of 1987 on the file of the Additional Sub Judge at Salem.

For Appellants : Mr.T.Murugamanickam
Senior Counsel
Ms.Zeenath Begum

For Respondents : Died
1 & 9

Mr.P.Dinesh Kumar
Amicus Curiae.



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JUDGMENT

The plaintiffs are the appellants before this Court challenging the concurrent Judgement passed by the Courts below with reference to the suit 3rd item of the property. The brief facts which are necessary for disposing of the above Second Appeal are herein below set out:

2. The plaintiffs had filed the suit O.S.No.672 of 1987 on the file of the Additional Subordinate Court, Salem in respect of the 4 items of the property. It is informed by the learned senior counsel appearing for the plaintiffs that the suit was decreed in respect of Item nos.1 and 2 and the same was not challenged and therefore attained finality. Likewise, the suit has been settled out of the Court with reference to the 4th item of the suit schedule property. Therefore, the dispute is only with reference to the 3rd item of the property.



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3. It is the plaintiffs' case that all the properties including the 3rd item of the property was purchased by their father late K.V.Krishna Iyer from out of his self acquired funds. The 1st defendant is the wife of the said K.V.Krishna Iyer. The said K.V.Krishna Iyer and the 1st defendant had four sons Rajaram, Prabakaran and defendants 2 and 3. The said Rajaram had died in the year 1982 and defendants 4 and 5 are his sons and the 6th defendant is his wife, defendants 7 to 9 are his daughters. Similarly, Prabakaran the other son had died in the year 1986 as a Bachelor and issue less. Apart from the four sons, K.V.Krishna Iyer had four daughters. The plaintiffs herein and one Leelavathi who passed away in the year 1968 are the daughters of the said K.V.Krishna Iyer.

4. It is the case of the plaintiffs, that K.V.Krishna Iyer died intestate in the year 1977 leaving behind him the surviving plaintiffs



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and the defendants as his legal representatives. The 1st item of the suit property is a residential building. The 2nd, 3rd and 4th items were agricultural lands. As already stated the Second Appeal is only with reference to the 3rd item of the suit property.

5. It is the case of the plaintiffs that notice was issued on 26.09.1987 calling upon the parties to partition the properties. The 2nd defendant had come forward with a reply notice dated 12.10.1987 stating that partition has to be done only with regard to the 3rd item of the property and not the 4th item and that therefore the plaintiffs have come forward with the above suit for partition. The plaintiffs are entitled to a 1/7th share each and defendants 1 to 3 to a similar share and defendants 4 to 9 together are entitled to a 1/7th share.

6. The 2nd defendant had filed a written statement which was adopted by the 1st defendant in which they had contended that the 3rd item of the property was not available for partition as it belonged to



the 1st defendant and that they had no objection to the division with reference to the items 2 and 4. With reference to the 1st item of the suit property the defendants would submit that the plaintiffs were not entitled to partition as it is a residential building. The defendants would also submit that the plaintiffs were not entitled to 1/7th share as claimed and was only entitled to 21/840th share each.

7. Pending the suit, the 1st defendant, mother had passed away and the 2nd defendant had claimed a right to the 3rd item of the property on the strength of the Will, Ex.B.5 executed by the 1st defendant in his favour in and by which she had bequeathed the 3rd item of the property upon him. The Trial Court had therefore, dismissed the suit with reference to the 3rd item of the property and granted decree granting a 1 ½ share to the plaintiffs in the suit 1st and 2nd items of property. As regards 4th item of the property, the same was settled out of the Court.



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8. Aggrieved by the said Judgement and Decree, in so far as it related to the 3rd item of the suit property, the plaintiffs had filed A.S.No.75 of 2001 on the file of the II Additional District Court, Salem. The learned II Additional District Judge, Salem by his Judgement and Decree dated 15.02.2002 was pleased to dismiss the appeal and confirmed the Judgement and Decree of the Trial Court. Aggrieved by the same, the plaintiffs are before this Court.

9. The above Second Appeal has been admitted on the following Substantial Questions of Law:

(i) When a decree has been obtained against female members of the joint family declaring that the properties standing in their name are for the benefit of the entire joint family, whether it cannot be held that this decree is not binding on the other male members of the joint family?

(ii) Whether an ex-parte decree will not constitute res



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10. On 16.10.2019, the following additional Substantial Question of law was formulated:

“Whether the Judgement of the Lower Appellate Court is vitiated in that as a final Court of fact, it has not rendered Judgement on all the issues framed by the Trial Court?”

11. It is informed that the 2nd defendant Janarthana Rao, who is the 1st respondent in the Second Appeal passed away and his wife was brought on record as his legal representative and he had no other issues. The said Bharathi has also passed away and a memo has been filed to record her death.

12. Considering the above fact, this Court is not going into the merits of the case as succession is now as per the provisions of the



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Hindu Succession Act. The 2nd defendant / 1st respondent who was the contesting respondent and in whose favour the 3rd item of the suit property has been bequeathed is no more and his wife has also passed away after she has been brought on record. Since there is no legal heirs as described in Section 15 (1) (a) of the Hindu Succession Act, the property will now devolve upon the Class II heirs, namely, the heirs of the husband who are the appellants and respondents 3 to 8.

13. A preliminary decree granting an equal right in the 3rd item of the suit schedule property to the appellants as well as respondents 3 to 8 is passed. The property should devolve equally upon the remaining children of the 1st defendant viz; the siblings of the deceased 2nd defendant as per Hindu Succession Act. Since some of the legal representatives are no more, their share will devolve on their respective legal representatives.

14. The Second Appeal is allowed and a preliminary decree for



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partition is passed granting an equal share in the 3rd item of the property subject matter of O.S.No.672 of 1987 on the file of the Additional Sub Court, Salem, on the appellants and respondents 3 to 8. No costs.

15.02.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The II Additional District Judge at Salem.
- 2.The Additional Sub Judge at Salem.



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P.T. ASHA, J,

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