



WEB COPY



S.A.No.882 of 2008
and M.P.No.1 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.882 of 2008

and

M.P.No.1 of 2008

1.Dhanammal

2.Kannammal

..Appellants

vs.

1.Krishnaveniammal (Died)

2.B.Lakshmiammal

3.Kasthuriammal

4.B.Srinivasalu

5.B.Vishnu

6.K.Gumasekaran (Given up)

..Respondents

(R1 Died, Appellants 1 & 2 and RR2 to 4 (already on record) are LR's of the deceased R1, R6 given up vide Court order dated 27.02.2023 made in S.A.No.882 of 2008)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the decree and Judgment dated 26.09.2007 in AS.No.47 of 2006 on the file of the Sub Court, Ranipet, reversing the decree and Judgment dated 16.11.2005 in OS.No.305 of 2004 on the file of the District Munsif Court, Arakkonam.



For Appellants : Mr.S.Gowri Shankar
For Respondents : No appearance

JUDGMENT

The appellants are the plaintiffs in OS.No.305 of 2004 on the file of the District Munsif Court, Arakkonam (originally R.O.S.No.246 of 1995 on the file of the Sub Court, Ranipet). They filed the suit against the defendants 1. Krishnaveniammal, 2.Lakshmiammal, 3.Kasthuriammal, 4.B.Srinivasalu, 5.B.Vishnu and 6.K.Gunasekaran for partition of the suit property morefully described in the plaint as a house bearing Door No.27, Gandhi Road, Palanipet, Arakkonam Town, Vellore District. They sought for partition of the suit property into six equal shares and to allot two such shares to them.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in nutshell is as follows:



S.A.No.882 of 2008
and M.P.No.1 of 2008

WEB COPY

The suit property is the self acquired property of one K.Babu Naidu father of the plaintiffs and the defendants 2 to 4. The defendants 5 & 6 are the tenants in the suit property. The first defendant D.Krishnaveniammal (Since deceased) is the mother of the plaintiffs and the defendants 2 to 4. After the death of Babu Naidu, the plaintiffs and the defendants 1 to 4 became entitled to 1/6 share in the suit property. According to them, the defendants 1 to 3 are residing in a portion of the suit property while the fourth defendant is residing in a different place. It is their further contention that since the defendants did not come forward to divide the suit property as requested by the plaintiffs they were forced to file the suit.

4.The defendants 1 to 3 in their written statement admitted that the suit property is the self acquired property of their father. However, the fourth defendant in his written statement had contended that the suit property is the ancestral property of his father and hence, the plaintiffs and the defendants 1 to 3 cannot claim any share in the suit property as they are all female heirs.



S.A.No.882 of 2008
and M.P.No.1 of 2008

WEB COPY

5. After full contest, the learned trial court judge decreed the suit in favour of the plaintiffs vide his decree and judgment dated 16.11.2005 by observing that the suit property is the self acquired property of late Babu Naidu, the father of the plaintiffs and the defendants 2 to 4 and husband of the first defendant and hence the plaintiffs are each entitled to 1/6 share.

6. Aggrieved over the decree and judgment passed by the trial Court, the defendants filed an appeal in AS.No.47 of 2006 on the file of the Sub Court, Ranipet. The learned Subordinate Judge, Ranipet, after analysing the oral and documentary evidence adduced on both sides held that the suit property is an ancestral property of late Babu Naidu and therefore, the plaintiffs can get only 1/12 share in the suit property. It was further held that the appellants did not adduce any acceptable evidence to show that the suit property was purchased by Babu Naidu from out of his own earnings.



S.A.No.882 of 2008
and M.P.No.1 of 2008

7. Now the present second appeal is filed by the plaintiffs and the same is admitted on the following substantial questions of law:

- i. "Whether the lower appellate court erred in law in holding that the suit property is an ancestral property when the same was already sold to a third party under Ex.A3 sale deed and subsequently purchased by the plaintiff's father under Ex.A1 sale deed out of his own funds.
- ii. Whether the lower appellate court erred in law in disregarding Ex.A1 and Ex.A3 sale deeds when the fourth defendant failed to plead and prove that they are sham and nominal documents.
- iii. Whether the plaintiffs and the defendants 2 and 3 are entitled to an equal share along with the fourth defendant under Section 6 of the Hindu Succession Act as amended by Act 39 of 2005?"

8. Though notice was served on the respondents and their names were printed in the cause list, there is no representation on behalf of the respondents, either in person or through a counsel.

9. Heard Mr.S.Gowri Shankar, learned counsel for the



S.A.No.882 of 2008
and M.P.No.1 of 2008

appellants.

WEB COPY

10. Mr.S.Gowri Shankar, learned counsel for the appellants contended that though the plaintiffs adduced the Sale deed dated 15.09.1960 (Ex.A1) to show that their father Babu Naidu purchased the suit property in his name from out of his own earnings, the first appellate court had erroneously held that the plaintiffs have not adduced sufficient evidence to show that late Babu Naidu purchased the suit property from out of his own earnings. He would also contend that even if the properties are held to be ancestral properties, the plaintiffs would be entitled to 1/6 share in the suit property as per the decision of the Hon'ble Supreme Court in *Vineeta Sharma vs. Rakesh Sharma* reported in (2020) 9 SCC 1. His another contention is that during the pendency of the present second appeal Krishnaveniammal, the mother of the plaintiffs died and therefore, the plaintiffs are now entitled to 1/5 share each.

11.A Perusal of Ex.A1 clearly shows that the suit property was purchased by late Babu Naidu from out of his own earnings. In any event even if the suit property is held to be ancestral one, the plaintiffs would get equal shares as that of the sons as per the decision of the Apex Court in *Vineeta Sharma vs. Rakesh Sharma* (cited supra) wherein it has been



S.A.No.882 of 2008
and M.P.No.1 of 2008

observed thus:

WEB COPY

" The substituted provisions of Section 6(1) of the HS Act, 1956 provide that on and from the commencement of the 2005 Amendment Act, the daughter is conferred the right of a coparcener. Section 6(1) (a) makes a daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1) (a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth.

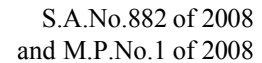
In this way, now by legal fiction, daughters are treated as coparceners. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son.

.....

137.*Resultantly, we answer the reference as under:*

137.1.*The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.*

137.2.*The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition*



137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. *The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.*

137.5. *In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.*

138. *We understand that on this question, suits/appeals are*



S.A.No.882 of 2008
and M.P.No.1 of 2008

WEB COPY

pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months."

Thus, the substantial questions of law are answered accordingly.

12. In the result,

- i. the Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the decree and Judgment dated 26.09.2007 in AS.No.47 of 2006 passed by the Subordinate Judge, Ranipet, is set aside.
- iii. the decree and judgment dated 16.11.2005 in OS.No.305 of 2004 passed by the District Munsif Court, Arakkonam, is modified and it is held that the plaintiffs are each entitled to 1/5 shares in the suit property.

17.04.2023

mtl

Index : Yes/No

Speaking / Non-speaking order



WEB COPY



S.A.No.882 of 2008
and M.P.No.1 of 2008

R.HEMALATHA, J.

mtl

To

1. The Sub Court, Ranipet.
2. The District Munsif Court, Arakkonam.
3. The Section Officer, VR Section, High Court, Madras.

S.A.No.882 of 2008
and M.P.No.1 of 2008

17.04.2023