



S.A.No.178 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.178 of 2021
and
C.M.P.No.3707 of 2021

1. Krishnamoorthi
2. Baggiyaraj
3. Prabu
4. Anand Kumar ... Appellants

Vs.

1. Saraswathi
2. Godawari ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 25.09.2019 made in A.S.No.23 of 2017 on the file of the Principal District Court, Thiruvannamalai, confirming the Judgment and Decree in O.S.No.56 of 2013 dated 22.09.2016 on the file of the Principal Sub Court, Thiruvannamalai.

For appellants : M/s.Harini
for Mr.J.Lenin

For respondents : No appearance



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JUDGMENT

The above second appeal is filed by the defendants 1 and 3 to 5, challenging the concurrent judgment and decree for partition passed by the learned Sub Judge, Thiruvannamalai, in a suit in O.S.No.56 of 2013 which was confirmed by the learned Principal Sub Judge, Thiruvannamalai, in A.S.No.23 of 2017.

2. The facts of the case are briefly set out hereinbelow and the parties are referred to in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff, who is the sister of the defendants, had filed the above suit for partition of her 1/3rd share in the suit schedule properties. The plaintiff and the defendants are siblings.

2.2. It is the case of the plaintiff that her father Ramaswamy Naidu had not acquired any ancestral property and by his sheer hard



work, he had acquired nearly 14 acres of land. The said Ramaswamy Naidu had purchased a house site in his wife's name, Kaveri Ammal. They had jointly put up a construction in the third item of the suit properties which is now vacant.

2.3. Kaveri Ammal died at a young age and the plaintiff, being the eldest member of the family, was forced to shoulder the family burden and subsequently, got married at the age of 26 on 25.04.1977. Within one month from the plaintiff's marriage, her father Ramaswamy Naidu died and at that time, the second defendant was aged about only 12 years.

2.4. The first defendant who lacked the capacity to manage the properties had reduced the 14 acres of land to an extent of 5 acres by alienating the properties with the consent of the second defendant. The plaintiff and the second defendant demanded partition and at this juncture, the first defendant's wife pleaded with the plaintiff and her sister to retain the properties as joint properties till such time her



children become earning members. In order to ensure the family harmony, they had postponed the request.

2.5. The plaintiff had called upon the first defendant to perform the marriage of the second defendant as it was his responsibility. The first defendant brought a bridegroom who was aged twice that of the second defendant which was immediately turned down by her. The first defendant, enraged by the second defendant's rejection, physically assaulted her, which prompted the plaintiff to bring her to Chennai where she got married to her another cousin.

2.6. Thereafter, the plaintiff and the second defendant called upon the first defendant to effect partition. However, the first defendant, who initially agreed to effect partition, on 25.12.2012, had refused to effect the partition and on the contrary, started setting up separate title in his name.



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2.7. Therefore, the plaintiff issued a legal notice on 07.01.2013 and reply notice was issued by the first defendant on 23.01.2013. Since the first defendant was not coming forward for the partition, the suit came to file.

2.8. The defendants 1 and 3 to 5 filed a written statement as well as additional written statement in which they would contend that the alienation of properties by the first defendant is only to settle the mortgage loan that the father of the defendants and the plaintiff had taken. The first defendant would further submit that their father Ramaswamy Naidu mortgaged the properties and received loan and thereafter, he died. Ramaswamy Naidu had not discharged the mortgage debts and died intestate, leaving behind his legal representatives viz., the plaintiff and the first and second defendants.

2.9. It is the contention of the first defendant that after settling the mortgage debts and loan, the first defendant is in possession and enjoyment of the suit schedule properties. He had mutated the revenue



records and also settled the properties in favour of his sons viz., Bakkyaraj, Prabhu and Anandh Kumar.

2.10. That apart, the defendants had pleaded that the purchase of the properties that have been made by Ramaswamy Naidu was nothing but only from and out of the joint family funds and now, only an extent of 4 acres and 74 cents is available in the hands of the first defendant as it is the joint family properties.

2.11. Therefore, the plaintiff would be entitled only to 1/5th share, whereas, the defendants 2 to 5 are entitled to 3/5th share in the properties. The first defendant had also pleaded ouster. The second defendant also claimed partition in her written statement, but the plaintiff had refused the claim in the written statement and additional written statement.

TRIAL COURT:

3. The Trial Court had framed the following issues:



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“(i)Whether the plaintiff is entitled for partition as prayer for ?

(ii)Whether the second defendant is entitled for partition as prayed for towards her share ?

(iii)To what relief ?”

4. The plaintiff had examined herself as P.W.1 and marked Exs.A1 to A5. The first defendant had examined himself as D.W.1 and marked Exs.B1 to B14.

5. Ultimately, the Learned Judge decreed the suit.

LOWER APPELLATE COURT:

6. Challenging the same, the defendants 1 and 3 to 5 had filed an appeal in A.S.No.23 of 2017 and the learned Principal District Judge, Thiruvannamalai, confirmed the judgment and decree of the Trial Court and dismissed the appeal.



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DISCUSSION:

7. Challenging the same, the defendants 1, 3 to 5 had filed the above appeal. This second appeal has not been admitted and the matter was adjourned for hearing. The only contention that has been put forward is, being joint family properties, the plaintiff is not entitled to 1/3rd share and she is entitled only to the share of her father.

8. Heard the learned counsel for the appellants.

9. The suit is one for partition which has been filed by the sister against her brother and sister. Admittedly, the property in question belongs to the father of the plaintiff and defendants. In the light of the judgment of Hon'ble Supreme Court in the case of the ***Vineetha Sharma vs Rakesh Sharma reported in (2020) 9 SCC*** wherein the plaintiff is entitled to equal share, the judgment of both the Courts below granting 1/3rd share in the suit schedule properties to the plaintiff has to be necessarily be upheld and it is accordingly upheld.



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Accordingly, this second appeal stands dismissed as it do not disclose any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The District Judge,
Thiruvannamalai.
2. The Principal Sub Judge,
Thiruvannamalai.
3. The Section Officer,
V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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