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S.A.No.922 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

S.A.No.922 of 2013

1.Pavayammal
2.Sampoornam
3.R.Prabha
4.Makudapathi alias R.Mukeshraja ...Appellants/Defendants

Vs.

Sampoornam
W/o Ammasai Gounder. ...Respondent/Plaintiff

PRAYER:Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 06.11.2012 passed in A.S.No.40 of 2012 on the file of the Principal District and Sessions Judge, Erode, by reversing the judgment and decree dated 23rd December 2011, made in O.S.No.54 of 2008 on the file of Subordinate Judge, Gobichettipalayam.

For Appellants : Mr.P.R.Balasubramanian
For Respondent : Mr.N.Manoharan



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JUDGMENT

There was one Chennimalai Gounder, who had two sons, both of whom were named Nachimuthu. We are concerned with the partition of the family related to senior Nachimuthu. Senior Nachimuthu passed away in the year 1978. He had left behind his legal heirs Pavayammal, his wife who is the first defendant, his predeceased son's legal heirs, who are defendants 2 to 4 and the plaintiff, his daughter.

2.The family consisting of Chennimalai Gounder and the two Nachimuthus entered into a partition under Ex.B2. Since the senior Nachimuthu had died, the branch of senior Nachimuthu was represented by his son E.N.Ramasamy. In the partition deed B schedule property was allotted to E.N.Ramasamy. The plaintiff seeks for 1/6th share of the property allotted to the family of senior Nachimuthu Gounder. This case deals with a simple application of Section 8 of The Hindu Succession Act.

3.On the death of senior Nachimuthu, the succession opens. Senior Nachimuthu had died intestate. Therefore, his Class I heirs succeed to his estate equally. On that day, the legal heirs of Nachimuthu were E.N.Ramasamy, Pavayammal and Sampooram, the plaintiff. Each of them will be entitled to 1/3rd share in the properties which fell to the share of



senior Nachimuthu. In other words, half share of B schedule will go to E.N.Ramasamy as a coparcener and the plaintiff, first defendant and defendant Nos.2 to 4 will be entitled to $\frac{1}{3}$ rd share in the properties which fell to the share of senior Nachimuthu. In other words, half share of B schedule will go to E.N.Ramasamy as a coparcener and the plaintiff, first defendant and defendant Nos.2 to 4 will be entitled to $\frac{1}{3}$ rd of the half share which fell to the share of senior Nachimuthu. In fine, the plaintiff will be entitled to $\frac{1}{6}$ th share, her mother Pavayammal to $\frac{1}{6}$ th share and the family of E.N.Ramasamy will be entitled to $\frac{4}{6}$ th share.

4.It is not a case of ancestral property, whereby, Section 6 applies. Therefore, the question of applying Section 6 does not arise here. Hence, the questions suggested by the learned Counsel for the appellant as joint family property is totally inapplicable.

5.Mr.N.Manoharan, the learned Counsel for the respondent/plaintiff would submit that Pavayammal had passed away on 10.05.2021, her share of $\frac{1}{6}$ th will now have to be divided between her legal heirs, i.e., E.N.Ramasamy and Sampooranam. Therefore, the share of the plaintiff will be $\frac{1}{6}$ th share + $\frac{1}{12}$ th, share of the defendants Nos.2 to 4, together will be $\frac{4}{6}$ th share + $\frac{1}{12}$ th share.



6. Following the recent judgment of the Supreme Court, the trial court is requested not to wait for the parties to file a final decree application but take up the suit for final decree proceedings and proceed in accordance with law by appointing an advocate commissioner. The parties are directed to appear before the trial court for the purpose of the final decree proceedings on 06.06.2023.

7. The questions of law raised by the learned counsel for the Appellants do not arise for consideration because the right claimed by the plaintiffs is as a legal heir of the deceased senior Nachimuthu and not as a coparcener. Hence, the issue of applying Section 6 of the amended Hindu Succession Act does not arise at all. The defendants Nos.2 to 4 being the major sharers, the court below is requested to work out the equity in their favour, but that too in manner in accordance with law.

8. In view of the above, this second appeal is dismissed. The judgment and decree of the subordinate judge, Gobichettipalayam in O.S.No.54 of 2008 dated 23.12.2011 has reversed by the judgment and decree in A.S.No.40 of 2012 dated 06.11.2012 by the Principal District Judge Erode stands confirmed. No Costs. Memo filed by the respondent is recorded. Connected Miscellaneous Petition is closed.



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Index : Yes/No

Speaking : Yes/No

Neutral Citations : Yes/No

V.LAKSHMINARAYANAN. J.

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To:

- 1.The Subordinate Judge,
Gobichettipalayam.
- 2.The Principal District and Sessions Judge,
Erode.
3. The Section Officer
VR Section
High Court of Madras
Chennai.

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