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AS No.124 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.124 of 2017

Mr.Vedagiri

.. Appellant

vs.

1.Mrs.Vijayalakshmi
2.Mrs.Mallika
3.Mr.Krishnamoorthy
4.Mrs.Santhi
5.Bharathi
6.Mani @ Subramani

.. Respondents

PRAYER : This Appeal Suit is filed under Order XLI, Rule 1 of CPC under Section 96 of the Code of Civil Procedure to set aside the judgment and decree dated 08.12.2016 passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu in OS No.220 of 2010.

For Appellant

: Mr.A.Prabhakaran



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For Respondents-1 to 5 : Ms.K.R.B.Dhaaranee
for Mr.K.V.Babu

For Respondent-6 : Ex Parte

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 08.12.2016 passed by the learned Principal District Judge, Kanchipuram District in OS No.220 of 2010.

2. The appellant is the defendant and the respondents are the plaintiffs in the suit.

3. The respondents/plaintiffs instituted suit for partition. For passing preliminary decree for partition of the plaintiffs' 2/8th share and for a direction against the appellant to render accounts in respect of rental income from the date of the suit till the date of separate possession and to pay the plaintiffs' 2/8th share in the rental income.

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4. The plaint averments state that the mother of the first plaintiff is Rajamani Ammal and the first defendant is her son. Plaintiffs 2 to 5 are the grandchildren of Rajamani Ammal through her deceased first daughter Smt.Jayalakshmi. Smt.Rajamani Ammal had four daughters and a son. Smt.Rajamani Ammal and the appellant had purchased the suit schedule mentioned property jointly out of savings and earnings from Varadarajalu Pandalu under a registered Sale Deed dated 14.02.1957. Smt.Rajamani Ammal was doing Milk Vending business and she was also a pensioner. Later the schedule mentioned property was mortgaged to one one D.Jaganatha Naidu for a sum of Rs.500/- in order to celebrate Nagabushnam's marriage and later it was discharged. They are in joint possession of the property till Rajamani Ammal died on 26.08.1994. The first plaintiff's sister Jayalakshmi died intestate in the year 1984 leaving behind the plaintiffs 2 to 5. Her husband predeceased her. The first plaintiff's younger sister Thirupurasundari died unmarried in the year 1978. The plaintiffs are jointly entitled to 2/8th share in the suit property. The first



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defendant/appellant is entitled to 5/8th share and the second defendant is entitled to 1/8th share. Though the plaintiffs orally demanded for amicable partition, the first defendant/appellant neglected the same and the plaintiffs issued a lawyer notice on 12.06.1995 for which the first defendant/appellant issued a reply.

5. The plaintiffs earlier filed a suit in OS No.75 of 1997 before the Principal Sub Court, Chengalpattu for claiming partition of 2/8th share and that the case was transferred to the District Munsiff Court on the point of pecuniary jurisdiction and renumbered as OS No.358 of 2004. The suit was dismissed on 12.12.2006 after trial. During the pendency of the suit, Hindu Succession Act was amended and the amendment came into force. While the amendment was brought to the notice of the District Munsiff Court, Chengalpattu, the suit was dismissed without considering the change of law providing right of property to the amendment. In view of the amendment in Hindu Succession Act, the plaintiffs filed a fresh suit in OS No.220 of 2010 and it was decreed in their favour.



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6. The first defendant/appellant denied the plaint averments by stating that the suit schedule property was purchased by the sale of gold chain of 5 sovereigns presented to him by his maternal uncle R.Elayaperumal on 01.07.1955 when the first defendant joined in St. Joseph's High School.

7. The defendants have stated that plaintiffs' mother did not contribute any amount and she had no means to purchase the suit schedule property. Thus the property was purchased for the benefits of the first defendant alone. The first defendant joined Southern Railway in September 1962 and retired as a Railway Guard receiving a monthly salary of more than Rs.17,000/- per month. He mortgaged the property and subsequently, it was discharged.

8. The first defendant/appellant states that the observation of the Appellate Court in AS No.43 of 2007 will not confer any right on the



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plaintiffs/respondents to institute a fresh suit for partition. The plaintiffs/respondents have not filed any Second Appeal, challenging the order passed in AS No.43 of 2007. Therefore, the fresh suit instituted is liable to be dismissed as it is barred under the provisions of Section 10 of the Code of Civil Procedure.

9. The Trial Court based on the pleadings by the parties, framed the following issues:-

- (1) Whether the suit is barred by the principles of res judicata ?
- (2) Whether the plaintiffs are entitled for 2/8th share in the suit properties ?
- (3) Whether the plaintiffs are entitled for rendition of accounts ?
- (4) Whether the suit is hit by Section 10 CPC ?
- (5) Whether the suit has not been valued property for the purpose of Court Fee ?
- (6) To what relief the plaintiffs entitled ?



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10. With reference to the findings of the Trial Court, the learned counsel for the appellants mainly contended that the amendment came into force cannot be applied in respect of the present case. Since the suit was dismissed and the decree passed in the suit was confirmed in the Appeal Suit, the appellant, instead of filing the Second Appeal, has filed fresh suit, which is not maintainable is the one ground raised.

11. The other ground raised is that the amendment came into force during the pendency of the civil suit and therefore, the amendment cannot be given a retrospective effect, so as to confer the right on the plaintiffs.

12. The abovesaid grounds raised on behalf of the appellant are disputed by the learned counsel appearing on behalf of the respondents by stating that the partition was not effected prior to the amendment. Mere pendency of the suit is not a bar for seeking partition based on the amended provisions of the Hindu Succession Act amendment came into force with effect from 09.09.2005.



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13. As per the Amended Act 39 of 2005 of the Hindu Succession Act, equal right has been conferred to women in the property by way of succession. The said amendment has been brought to the notice of the District Munsiff Court, Chengalpattu at the time of arguments and the District Munsiff Court without considering the amendment, dismissed the suit and therefore, the plaintiffs preferred an appeal and the Appellate Court made an observation that as per the amendment, the plaintiffs can claim right in the property. Thus, the plaintiffs have instituted a fresh suit. Since the amendment has given a cause of action for the purpose of instituting a fresh suit to claim property right.

14. The suit was dismissed initially only on the ground that the plaintiffs-women are not entitled to claim property right in the dwelling house. When equal right has been conferred on the women claiming the share even in the dwelling house, there is no impediment for the plaintiffs for institution of a fresh suit based on the amendment in the Hindu Succession



Act, which was enforced.

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15. There is no dispute in respect of the relationship between the parties and further, there is no dispute that the property was purchased by the deceased Rajamani Ammal along with her son, who is the first defendant in the suit.

16. That being the factum, the amendment provides right on the plaintiffs to claim share in respect of the dwelling house. More-so on account of Section 23 of the Hindu Succession Act, this Court do not find any infirmity in respect of the findings made by the Trial Court granting the relief in the suit.

17. Factually, there is no dispute with reference to the relationship between the parties and in respect of dwelling house, the Trial Court considered Section 23 of the Hindu Succession Act along with the amendment and granted the relief in favour of the plaintiffs and passed preliminary decree for partition of the plaintiffs' 2/8th share in the suit



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mentioned property. The plaintiffs are permitted to workout their mesne profits under Order XX, Rule 12 of the Code of Civil Procedure.

18. In view of the facts and circumstances, this Court do not find any perversity or infirmity. The amended Hindu Succession Act confers right on the women for claiming equal right of property, more specifically, in the present case, the dwelling house and thus the present Appeal Suit deserves no merit consideration.

19. Accordingly, the judgment and decree dated 08.12.2016 passed by the learned Principal District Judge, Kanchipuram District in OS No.220 of 2010 stands confirmed and consequently, the present Appeal Suit No.124 of 2017 is dismissed. . However, there shall be no order as to costs.

14-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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The Principal District Judge,
Kancheepuram District at Chengalpattu.



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S.M.SUBRAMANIAM, J.

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