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A.S.No.151 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2023

Pronounced on : .04.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.No.151 of 2017

and

C.M.P.Nos.12781 of 2022 and 6738 of 2017

D.Saroja, wife of late Doraisamy Naidu (died) ...1st defendant

Ravi ... Appellant/2nd defendant

Versus

1.S.Padmavathi (Died)

2.S.Radha

3.K.Vijaya ... Respondents 1 to 3 /

Plaintiffs 1 to 3

4.P.Srinivasan

5.S.Pushpalatha

6.S.Sripriya ... Respondents 4 to 6

[RR4 to 6 brought on record as

Legal Representatives of

the deceased 1st respondent

viz., (S.Padmavathi) vide

Court order dated 30/06/2022

made in C.M.P.Nos.5732 to 5734

of 2018 in A.S.No.15 of 2017(MDJ & SMJ.)]

PRAYER : Appeal filed under Section 96 of Civil Procedure Code

against the Judgment and Decree dated 01.12.2016 made in O.S.No.67



A.S.No.151 of 2017

of 2013 on the file of Principal District Court, Kancheepuram at Chengalpattu.

For Appellant : Mr.R.Thiagarajan
For Respondents : M/s.Perumbulavil Radhakrishnan
[R1 to R3]
Mr.P.Paul Selvam
[for R4 to R6]

JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)

All the three daughters of Duraisamy Naidu and Saroja Duraisamy have laid a suit for partition and separate possession against their mother Tmt.Saroja Duraisamy and only brother Thiru.Ravi Duraisamy herein.

2. In the plaint, it has been contended that the settlement deed executed by the said Thiru.Duraisamy Naidu in favour of Thiru.Ravi Duraisamy on 14.11.2005 in respect of suit properties be declared as null and void. By virtue of a judgment and decree passed in O.S.No.425 of 2007 by the District Munsif Court, Chengalpattu. The suit properties are the ancestral properties of Mr.Duraisamy Naidu, as they were got from their father Venkatachala Naidu. The brother of the plaintiffs herein namely Ravi Duraisamy along with his mother have contended that the suit properties are not ancestral properties of Tvl.Duraisamy Naidu and



A.S.No.151 of 2017

item Nos.1 and 2 of the suit properties were purchased by the brother of Duraisamy Naidu namely Audikesavalu Naidu and other two items belonged to Duraisamy Naidu. Duraisamy Naidu and his brothers got their share under registered partition deed. Duraisamy Naidu executed a settlement deed in favour of his son Ravi for the remaining properties. Exparte decree in O.S.No.425 of 2007 was passed without disclosing the fact of death of Duraisamy Naidu.

3. Before the trial Court, the 3rd plaintiff K.Vijaya has examined herself as PW1 and marked Exs.A1 to A7. Ex.A7 is the certified copy of the sale deed dated 24.07.2006 executed by Duraisamy Naidu, Saroja Duraisamy Naidu along with their four children, in favour of Tvl.Rajagopalan, Power Agent of Hareesh Vasanji.

4. Whereas, on behalf of the defendants 1 and 2, the 2nd defendant has examined himself as DW1 and Exs.B1 to B6 have been marked. Ex.A1 and Ex.B6 are one and the same document namely copy of settlement deed executed by Duraisamy Naidu in favour of his son Ravi Duraisamy Naidu.

5. The following issues were framed by the trial Court:

3/14



A.S.No.151 of 2017

i) Whether the Plaintiffs father V.Duraisamy Naidu

has no right to execute a Settlement Deed dated 14.11.2005 in favour of the second defendant?

ii) Whether the said V.Duraisamy Naidu was the absolute owner of the suit property?

iii) Whether the suit property is the ancestral property of Plaintiffs?

iv) Whether the Plaintiffs are entitled to get 18/25th share in the suit property?

v) Whether the second defendant is liable to render accounts in respect of the suit property from April onwards?

vi) To what relief the plaintiffs entitled to?

6. Upon consideration of the available evidence on record, the trial Court passed a preliminary decree for partition for the plaintiffs 3/4 share in the suit properties. The plaintiffs were given liberty to invoke Order 26 Rule 9 CPC for mesne profits. Challenging the same, the son of Duraisamy Naidu, namely Ravi Duraisamy has preferred this appeal.

7. The parties are referred to in the same ranking as they are arrayed before the trial Court.

4/14



A.S.No.151 of 2017

8. The learned counsel appearing for the appellant/2nd defendant would submit that though the plaintiffs had filed the suit claiming 18/25 share, as their mother Saroja Duraisamy died, each plaintiff was granted 1/4 shares. The suit in O.S.No.425 of 2007 filed by the plaintiffs herein for declaration of a settlement deed dated 14.11.2005 as null and void and for permanent injunction was decreed exparte on 08.12.2010. After contest, the same was decreed on 22.10.2021. Denying the relief of permanent injunction, A.S.No.2 of 2022 was filed and the same is pending.

9. C.M.P.No.12781/22 has been filed by the appellant herein under Order 41 Rule 27 to receive the unregistered partition deed dated 14.04.1967 which was entered into between the appellant's father and his brother as additional evidence in the appeal, wherein, in the affidavit, it is stated that the said partition deed was now only traced out and the said document was not available at the time of trial.

10. The learned counsel for the appellant has made reliance on the following decisions:

(i) ***Hardeo Rai v. Sakuntala Devi and others*** reported in (2008)

7 SCC 46.

5/14



A.S.No.151 of 2017

(ii) **Booraswami v. Rajakannan and others** reported in **91 LW**

WEB COPY 156.

(iii) **Vineeta Sharma v. Rakesh Sharma and others** reported in
(2020) 9 SCC 1.

11. The learned counsel appearing for the respondents/plaintiffs would argue that Ex.A7, namely sale deed executed by Tvl.Duraisamy Naidu, Saroja Duraisamy along with their four children would indicate the fact that the properties are ancestral properties. He would also refer to the evidence of Ravi Duraisamy recorded in O.S.No.425 of 2007 on 04.03.2021 wherein the partition deed dated 14.04.1967 was filed along with the petition, was sought to be marked through the present appellant Ravi Duraisamy. As it was objected by the plaintiffs' side by stating that without payment of relevant stamp duty, the said document was not permitted to be marked. The trial Court after due consideration has held that the plaintiffs are entitled for 3/4 share of the property is well considered order and need not be interfered with. To buttress his arguments, the learned counsel for the respondents relied upon the decision of this Court in **Ramasami Pillai v. Amarajothi** reported in **CDJ 2012 MHC 284.**



A.S.No.151 of 2017

WEB COPY

12. Under Order 41 Rule 27 CPC, if a party wants to file a document then necessarily law expects him to give acceptable reason as to why the document was not produced before the trial Court. If the petitioner has to succeed he has to explain the reason in clear terms. In the petition, the reason for not producing the said documents before the trial Court is that the document was not available during the trial and partition deed dated 14.04.1967 was traced out. Apparently, the reasons mentioned thereon are not convincing. Hence, we are not inclined to receive the document enclosed along with the petition.

13. The following points for consideration arisen as mentioned herein under:

(i) Whether the trial Court was not correct in granting 3/4 share for the plaintiffs 1 to 3 ?

(ii) Whether this appeal is to be allowed or not?

14. The dispute is between the sisters on the one side and brother on the other side. The documents relied upon by both sides are not in dispute. With regard to the nature of suit properties, the plaintiffs have stated that the suit properties are ancestral properties. Whereas, the 2nd defendant's contention is that his father obtained the suit properties

7/14



A.S.No.151 of 2017

through partition from his family members and the properties are his separate properties. It is not in dispute that the suit properties were obtained through a partition by late Duraisamy Naidu. The said stand of the 2nd defendant herein is shattered as he is also one of the signatory to the sale deed dated 24.07.2006, wherein Duraisamy Naidu, Saroja Duraisamy along with their four children have sold out the property in favour of Rajagopalan, Power Agent of Mr.Hareesh Vasanji.

15. As regards the nature of properties, the plaintiffs have stated that the properties are ancestral properties of their father late Duraisamy Naidu which was got from his father Venkatachala Naidu. To prove the said factum, Ex.A1 settlement Deed dated 14.11.2005, executed by late Duraisamy Naidu in favour of his son Ravi Duraisamy, wherein, it has been stated that he got the property from the ancestral properties of his father and after his death, the property was devolved upon the sons, whereas the defendants have stated in their written statement that the suit properties are not the ancestral properties of late Duraisamy Naidu. It is the further contention of the defendants that the plaintiffs' father Duraisamy Naidu and his brothers divided their shares under a unregistered partition deed. Therefore, it is made clear that the properties were devolved upon the sons of Venkatachala Naidu, after

8/14



A.S.No.151 of 2017

his death. Therefore, it is made very clear that the properties are ancestral properties.

16. The development of personal law applicable to Hindus has been refined from time to time, prompted by judicial precedence as well as by legislation, it has expanded the scope of its applicability. It is pertinent to note that after amendment to the Hindu Succession Act in the year 2005, it conferred equality of status to the daughters as co-parceners which has paved the way for inclusive application of law, by virtue of the amendment, the daughters of a co-parcener are included as co-parcener along with the sons and are recognised as co-parceners in their own right (Section 6 of Hindu Succession Act, 1956). It is relevant to extract the provisions of Section 6 of Hindu Succession Act, 1956.

"6.Devolution of interest in coparcenary property. -

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;



WEB COPY



A.S.No.151 of 2017

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcenar shall be deemed to include a reference to a daughter of a coparcenar:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

17. It is the plaintiffs' case that the settlement deed dated 14.11.2005 said to have been executed by father Duraisamy Naidu, in favour of his son Ravi Duraisamy, namely Ex.A1 and Ex.B6. The suit was filed by the daughters in O.S.No.425 of 2007 on the file District Munsif Court, Chengalpet. From the perusal of Ex.A3, dated 08.12.2010, namely xerox copy of the judgment passed in O.S.No.425 of 2007 as mentioned supra, exparte decree has been passed in favour of the plaintiffs herein. These details are found in the written statement also. The judgment was passed in O.S.No.67 of 2013, on 01.12.2016.



A.S.No.151 of 2017

On perusal of the written statement and the exhibits marked by the defendants, no document was referred to above the said details, therefore, till 2016, it has to be presumed that the exparte judgment and decree passed in the above said suit holds good. The above said suit was filed by the daughters against the father and brother for the relief of declaration that the settlement deed dated 14.11.2005 executed by the father in favour of 2nd defendant, the son in respect of the suit property is void and unforceable and binding on the plaintiffs and permanent injunction restraining the defendants from alienating or encumbering the suit properties, as mentioned supra, the suit was decreed in favour of the plaintiffs, namely the daughters.

18. As we are of the view that the properties are ancestral properties of Duraisamy Naidu, it follows that he has no absolute right to dispose the property as he wishes. In the above suit as per settlement deed namely Ex.A1 executed by Duraisamy Naidu was declared as not a valid document.

19. Further more, It is not in dispute that Duraisamy Naidu had three daughters and one son namely plaintiffs and the 2nd defendant herein. Saroja Duraisamy who was arrayed as 1st defendant in the suit died during pendency of the suit. Admittedly, Duraisamy Naidu died

11/14



A.S.No.151 of 2017

intestate on 31.03.2010 leaving behind his class-1 heirs namely plaintiffs and the defendants herein. Originally, in the plaint it is prayed that each plaintiffs are entitled for 18/25 share (each is entitled for 6/25 share). The amendment Act, 2005 came into effect on 09.09.2005. With regard to Hindu Joint Family property, the settled position is made very clear by the Hon'ble Supreme Court in **Vineeta Sharma v. Rakesh Sharma and others** reported in **(2020) 9 SCC 1**. Admittedly, there is no disposition or alienation or partition that had taken place before 20.12.2004. The Hon'ble Supreme Court had expressed the contrary views in **Prakash v. Phulavati (2016) 2 SCC 36** and **Mangammal v. T.B.Raju (2018) 15 SCC 662** case were over ruled by the Hon'ble Apex Court in Vineeta Sharma's case.

20. As mentioned supra, the rights of daughters as coparceners is envisaged in the new Section 6 of the Hindu Succession Act, 1956. Section 6 of Hindu Succession Act, 1956 confers the status of coparcener on the daughter. She is to be treated on par with the son. Based on the above said detailed discussions, we are of the firm view that the trial Court has rightly passed a preliminary decree granting 3/4



A.S.No.151 of 2017

shares for the daughters, which is a well considered finding needs no interference.

21. In the result, this appeal stands dismissed and the Judgment and Decree dated 01.12.2016 made in O.S.No.67 of 2013 on the file of Principal District Court, Kancheepuram at Chengalpattu is hereby confirmed. Consequently connected miscellaneous petitions are closed. Considering the relationship between parties, there is no order as to costs.

(S.V.N.J.) (R.K.M.J.)
25.04.2023

Index:Yes/No
Speaking/Non-Speaking Order
ssn

To
The Principal District Judge,
Kancheepuram at Chengalpattu.



WEB COPY



A.S.No.151 of 2017

S.VAIDYANATHAN, J.,
and
R.KALAIMATHI, J.,

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Pre-Delivery Judgment in
A.S.No.151 of 2017
and C.M.P.Nos.12781 of 2022
and 6738 of 2017

25.04.2023