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S.A.No.129 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.129 of 2017

A.Selvamani

...Appellant

Vs.

1.Manickam Ammal

2.Pushpavalli

3.Dhanam

4.Padma

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 07.04.2015 made in A.S.No.3 of 2013 on the file of Principal District Judge, Salem confirming the judgment and decree dated 23.07.2012 made in O.S.No.124 of 2007 on the file of II Additional Sub-Ordinate Judge, Salem.

For Appellant : M/s.Muthumani Doraisami

For Respondent 1&2 :Mr.T.M.Hariharan

For Respondent 3&4 : Mr.T.S.Vijaya Raghavan



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JUDGMENT

The plaintiff in the suit is the appellant. She filed a suit for partition claiming 3/12 share in the suit properties against the respondents. The suit was partly decreed in respect of “D” schedule properties in Ex.A1, Partition Deed dated 25.04.1966. The suit was dismissed in respect of “C” schedule properties in Ex.A1, Partition Deed. Aggrieved by the same, the appellant/plaintiff preferred an appeal. The First Appellate Court also affirmed the findings of the Trial Court. Hence, the appellant has come before this Court by way of this second appeal.

2. According to the appellant/plaintiff, the suit properties originally belonged to Marimuthu Padayachi and his brothers. The said Marimuthu Padayachi had two sons namely Kuppusamy and Narayanan. The appellant/plaintiff is the daughter-in-law of said Narayanan and her husband Subramaniam died on 06.12.1992. There was a partition in the family in the year 1966. Under the partition deed dated 25.04.1966, the “D” schedule properties were allotted to the said Narayanan and “C” schedule properties were allotted to Kuppusamy. It was averred by the appellant that Kuppusamy



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died 20 years back and his wife Sivabakkiam also died in the year 1990 without any issues. Therefore, the properties allotted to the Kuppusamy devolved on his brother Narayanan's family and the properties allotted to Kuppusamy were enjoyed along with the properties allotted to Narayanan. The husband of appellant/plaintiff namely Subramaniam died on 06.12.1992. Thereafter, the appellant demanded partition of her share in the joint family. As the respondents were not willing to go for partition, she was constrained to file a suit for partition in O.S.No.124 of 2007 on the file of II Additional Sub-Ordinate Judge, Salem.

3. The respondents herein filed written statement and claimed that the property allotted to Kuppusamy was enjoyed by him till his death. Thereafter, it devolved on his wife Sivabakkiam and she enjoyed the same till her death on 07.06.1993. It was also claimed by the respondents that during the lifetime of Sivabakkiam, she executed a Will in favour of 6th defendant namely Yuvaraj and hence, the appellant/plaintiff was not entitled to any share in the suit property.

4. Before the Trial Court, the appellant/plaintiff was examined as P.W.1



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and 5 documents were marked on her side as Ex.A1 to Ex.A5. The 4th respondent herein/5th defendant was examined as D.W.1 and one Sepperumal Padayachi was examined as D.W.2 and 14 documents were marked on behalf of the respondents as Ex.B1 to Ex.B14.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that appellant/plaintiff was entitled to 3/12 share in the properties allotted to Narayanan namely “D” schedule in Ex.A1, Partition Deed. As far as properties allotted to the share of Kuppusamy under “C” schedule to the partition deed, the suit was dismissed on the ground that the appellant failed to prove after the death of Kuppusamy and Sivabakkiam, the property was enjoyed as a joint family property by Narayanan's sons. Aggrieved by the dismissal of the suit in respect of property covered by “C” schedule to the partition deed, the appellant preferred an appeal in A.S.No.3 of 2013 on the file of the Principal District Court, Salem. The First Appellate Court affirmed the findings of the Trial Court. Challenging the said judgment and decree, the appellant is before this Court by way of second appeal.



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6. At the time of admission of Second Appeal, this Court formulated the following substantial question of law;

“1. Whether the Courts below are right in dismissing the suit in so far as “C” schedule properties mentioned in Exhibit.A1, Partition Deed when after execution of the partition deed dated 25.04.1966, the parties namely Kuppusamy died 20 years back and his wife Sivabakkiam also died in 1990 without issues?

2. Whether the Courts below are right in dismissing the suit in so far as “C” schedule properties mentioned in Exhibit.A1, Partition Deed, when the alleged Will dated 10.10.1992 has not been proved in accordance with the provisions of the Indian Evidence Act?

3. Have not the Courts below committed an error of law in making reliance upon Ex.B1 notwithstanding the rigour of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act, 1872?”

7. The learned counsel for the appellant submitted that Kuppusamy died 20 years back and his wife Sivabakkiam also died in the year 1990 without



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issues. In such circumstances, as a class II heir of Kuppusamy, the husband of appellant/plaintiff is entitled to equal share along with his siblings on death of Sivabakkiyam in the year 1990. The learned counsel further submitted that the Will projected by the respondents was disbelieved by both the Courts below on the ground that the attester, who was examined as D.W.2 failed to appear for cross-examination. In such circumstances, on death of Sivabakkiyam, the properties allotted to Kuppusamy will devolve on his class II heirs as per Section 15 of Hindu Succession Act. Hence, the Courts below grossly committed error in negating claim of the appellant in respect of properties of Kuppusamy.

8. The learned counsel for the respondent submitted that on the date of death of Sivabakkiyam, the appellant's husband Subramaniam was not alive and hence the properties of Kuppusamy will go to other siblings of Subramaniam on death of Sivabakkiam. The appellant, being a wife of deceased brother's son, is not entitled to claim any share as a class II heir of Kuppusamy. The learned counsel also brought to the attention of this Court the death certificate of Sivabakkiam which was marked as Ex.B11.



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9. A perusal of the said document would suggest that Sivabakkiyam died on 08.06.1993. It is admitted by the appellant in her pleading itself that her husband Subramaniam died on 06.12.1992 well prior to the death of Sivabakkiyam. Hence, on death of Sivabakkiyam on 08.06.1993 by operation of Section 15 of Hindu Succession Act, the properties of Sivabakkiyam will devolve upon the heirs of her husband Kuppusamy. The order of succession among class II heirs as mentioned in Schedule to Hindu Succession Act, reads as follows:-

CLASS II

I. Father

II. (1) Son's daughter's son (2) Son's daughter's daughter, (3) brother (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father ; mother's mother.

IX. Mother's brother; mother's sister."



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10. Admittedly, the heirs of Kuppusamy mentioned in entries 1, 2 and 3 of class II heirs, as per Schedule to Hindu Succession Act were not alive on 08.06.1993. On the date of death of Sivabakkiyam only the 1st defendant namely Jayaraman who happens to be the brother's son of Kuppusamy and 3rd defendant namely Pushpavalli who happens to be the brother's daughter of Kuppusamy were alive. Another son of Narayanan namely appellant's husband Subramaniam died even prior to Sivabakkiyam. In such circumstances, the plaintiff cannot be treated as an heir of Kuppusamy by virtue of entry 4 to class II of Hindu Succession Act on 08.06.1993. Therefore, the plaintiff is not entitled to lay any claim over the properties allotted to Kuppusamy in the partition deed marked as Ex.A1.

11. In view of the discussions made earlier, the substantial questions of law formulated at the time of admission are answered against the appellant/plaintiff.

12. In a nutshell, the second appeal stands dismissed.

a) by affirming the judgment and decree dated 07.04.2015 made in



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A.S.No.3 of 2013 on the file of Principal District Judge, Salem confirming the judgment and decree dated 23.07.2012 made in O.S.No.124 of 2007 on the file of learned II Additional Sub-Ordinate Judge, Salem.

b) In view of the above facts and circumstances of the case, there will be no order as to costs.

02.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The learned Principal District Judge, Salem.
2. The learned II Additional Sub-Ordinate Judge, Salem.



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S.SOUNTHAR, J.

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