



S.A.No.1056 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1056 of 2022

and

C.M.P.No.22682 of 2022

1. Sidappa

2. Sivaprakash

3. Mahadevamma

....

Appellants

Vs

Dhanlakshmi

....

Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 06.08.2021 passed in A.S.No.17 of 2020 on the file of Additional District Court, Hosur, partly modified the Judgment and Decree dated 29.01.2020 passed in O.S.No.128 of 2009 on the file of the Additional Subordinate Court, Hosur.

For Appellant : Mrs.R.Poornima

For Respondent : Mr.K.Venkateswaran

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 06.08.2021 passed in A.S.No.17 of 2020 on the file of Additional District Court, Hosur, thereby partly modifying the Judgment



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and Decree dated 29.01.2020 passed in O.S.No.128 of 2009 on the file of

the Additional Subordinate Court, Hosur, thereby decreeing the suit.

2. The respondent filed a suit for partition in respect of the suit schedule properties item 1 and 2. According to the respondent, the 1st item of the suit schedule property, belongs to the respondent and the appellants herein, being ancestral property of their father. The 2nd item of the suit schedule property belongs to Hindu Religious and Endowment Board and their father became a tenant of the said property. The 1st and 2nd appellants are brothers and the 3rd appellant is the mother of the respondent herein. Their father died on 26.02.2004. Other children are not having any right over the suit properties, however, they died even before the attainment of majority. After the demise of their father, the appellants and the respondent are jointly enjoying the suit properties. Therefore, the respondent is having 1/4th share in the suit properties.

3. The appellants filed a written statement and resisted the suit on the ground that the suit properties are not joint family properties. During life time of their father, he had executed a Will, wherein the respondent was allotted a house property and the 1st item of the suit



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schedule property is allotted in favour of the appellants herein. Their father had three daughters and one son, who died without marrying. The 3rd appellant, being mother of the children, succeeded the right of the deceased children in the ancestral property. Therefore, the 3rd appellant executed a registered Will in favour of the 1st and 2nd appellants herein and bequeathed her right in their favour. Hence, the respondent is not entitled for any share.

4. On the basis of the pleadings, the Trial Court framed the following issues :-

- (i) Is it true that the suit properties are the joint family properties of the plaintiff and the defendants as claimed ?
- (ii) Is the plaintiff entitled to get relief of partition of the suit properties as claimed ? If so to what share ?
- (iii) To what other reliefs the parties are entitled to ?
- (iv) Whether the 3rd defendant succeeded the shares of her deceased children ?
- (v) Whether the plaintiff is entitled to get permanent injunction as prayed for ?

5. On the side of the respondent, she had examined P.Ws.1 to 3 and marked Exs.A1 to A7. On the side of the appellants, they had examined D.Ws.1 to 4 and marked Exs.B1 to B3. On considering the oral and documentary evidences adduced by the respective parties and the



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submission made by the learned counsel, the trial Court decreed the suit and the respondent was allotted 1/4th share in respect of both the suit schedule properties. Aggrieved by the same, the appellants preferred an appeal in A.S.No.17 of 2020 before the Additional District Judge, Krishnagiri and the same was partly allowed and set aside the decree passed by the Trial Court in respect of the 2nd item of the suit schedule property. Aggrieved by the same, the present second appeal.

6. The learned counsel for the appellants has raised the following substantial questions of law:

- a) Whether the Courts below ought to have seen that the plaintiffs have failed to establish the nature of suit properties ?
- b) In the absence of proof to show that the suit properties are ancestral property are the Courts below right in decreeing the suit ?
- c) Whether the Courts below ought not to have appreciated the case in a truncated manner ?
- d) Whether the Courts below are right in overlooking the crucial aspect of non joinder of necessary parties to the suit ?

7. Heard, Mrs.R.Poornima, the learned counsel appearing



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for the appellants and Mr.K.Venkateswaran, learned counsel appearing for the respondent and perused the materials available on record.

8. The learned counsel appearing for the appellants would submit that the 1st item of the suit schedule property is an ancestral property and as such, the deceased children also had shares in the property. After their demise, their share devolved upon their mother i.e., the 3rd appellant herein. Therefore, she bequeathed the property in favour of the appellants 1 and 2 herein and as such, the respondent is not entitled for any share over the property. The 3rd appellant categorically deposed that the respondent was already given property through Will executed by her father and except the 1st item of the suit schedule property, no other properties were available for the appellants 1 and 2 herein.

9. A perusal of the records reveals that the 1st schedule mentioned property was acquired by father of the respondent. Therefore, it is self-acquired property and other deceased children are not entitled for any share. Therefore, the appellants failed to prove that the father had any ancestral property. Though, the respondent admitted that the suit property was purchased by their father, it belong to highways department and any



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time she would be evicted. Therefore, she is entitled for her share in respect of the 1st item of the suit schedule property and the First Appellate Court rightly decreed the suit in respect of the 1st suit schedule property.

10. As such the Courts below have analyzed the evidences, both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

11. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 06.08.2021 passed in A.S.No.17 of 2020 on the file of Additional District Court, Hosur, thereby partly modified the Judgment and Decree dated 29.01.2020 passed in O.S.No.128 of 2009 on the file of the Additional Subordinate Court, Hosur, is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Lpp
To



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1.The Additional District Judge, Hosur.

2.The Additional Subordinate Judge, Hosur.



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