



A.S.No. 684 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 684 of 2017
and
C.M.P. No. 21713 of 2017

1 N.Devi,
W/o. late M.Nataraj

2 N.Sridhar
S/o. late M.Nataraj

3 N.Poornima,
D/o. late M.Nataraj

.. Appellants

Vs

Rangammal (died)

2. K.Manickam

(2nd respondent and appellants 2 and 3,
who are already on record, are legal
heirs of deceased 1st respondent and
memo recorded vide order of court
dated 01.03.2023 made in A.S.No.684
of 2017)

... Respondents



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PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 and 2 of Civil Procedure Code, praying to set aside the judgment and decree dated 26.07.2017 made in O.S.No.491 of 2011 on the file of III Addl. District and Sessions Judge, Coimbatore.

For Appellants : Mr.M.V.Venkateseshan

For Respondent : No appearance

JUDGEMENT

The appellants herein are the defendants in the suit in O.S.No.491 of 2011, on the file of III Addl. District and Sessions Judge, Coimbatore. Challenging the decree granted in favour of plaintiff by the trial judge in a suit filed by the respondents/plaintiffs seeking for the relief of partition claiming 3/4th share in the suit property, the present appeal suit has been filed.

2. For the sake of convenience, parties are referred as per the ranking in the suit.



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3. The case of plaintiffs is that the property measuring an extent of 4.01 ½ acres comprised in S.F.No.424/2F, situated at Sirumugai village, Avinashi taluk was purchased by one Thimmappa Gowder vide sale deed dated 09.08.1928 and he died 25 years ago leaving behind his wife Rangakkal and six sons. All of them have entered into a registered partition deed on 26.07.1975 with regard to the family properties left behind by Thimmappa Gowder and properties now belong to Rangakkal, thereby the suit property was allotted to Murugaiah Gowder as 'D' schedule in the said partition deed, which is described as suit property herein. After the said partition, the said Murugaiah Gowder enjoyed the property as absolute owner and he had one son Nataraj and a daughter Manickam. On his death, his son and daughter along with his wife viz., the 1st plaintiff M.Rangammal enjoyed the property jointly. However, son of Murugaiah Gowder, M.Nataraj also died leaving behind the defendants as his legal heirs. Therefore, the 2nd plaintiff as well as his deceased brother and her mother, each are entitled to 1/3rd share in the property. In the revenue records, their names also mutuated, however, the plaintiffs



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have requested for amicable division of the property, but the defendants declined for division of the property. Hence, daughter and wife of Murugaiah Gowder, the plaintiffs have filed a suit against the legal heirs of deceased M.Nataraj.

4. The defendants admit the relationship, but denied the property belongs to original owner Thimmappa Gowder and his wife Rangakkal by self acquisition and they claimed that the properties are co-parcener property of Murugaiah Gowder and his son M.Nataraj, who in turn entitled for half share in the property by birth and after the death of Murugaiah Gowder, his share also devolves upon the defendants as well as 1st plaintiffs, thereby she is having excess share, however they have totally denied 2nd plaintiff's claim over the suit property stating that she got married long back and she was given with sufficient shridhana property. So, she is not entitled to claim share in the property. Further, they content that as per the panchayat held on 27.02.2006 with regard to maintenance for the 1st plaintiff, they agreed to give a sum of Rs.15,000/- per year towards food and for her shelter allotted the eastern side of



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house, thereby she has also relinquished her share. Based on that, the defendants are claiming absolute share in the property.

5. Before the trial court, both parties adduced their evidence as well as marked documents Ex.A1 to A7 and Ex.B1 to B5 and with regard to the alleged panchayat, independent witnesses D.W.2 to 4 were examined on the side of defendants. The trial judge framed three issues, out of which, two issues framed as to whether the suit property is a joint family property of Murugaiah Gowder and M.Nataraj and whether the plaintiffs are entitled 1/4th share in the property. By relying the evidence on record, the trial judge concludes that there is no evidence on the side of defendants to establish that there was an ancestral nucleus to purchase the property by Thimmappa Gowder and the partition deed Ex.A2 dated 26.06.1975 was entered between Thimmappa Gowder and his sons and wife Rangakkal. With regard to the properties, it was acquired by his father Thimmappa Gowder and mother Rangakkal were enjoyed jointly. Thereafter, they decided to divide the properties as per their convenience and they were in joint enjoyment. Thus, the property devolves upon one



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of the son Murugaiah Gowder, who is father of 2nd plaintiff is not an ancestral property, on the other hand, the suit property was in joint possession, thereby, they denied plaintiffs claim of co-parcener property and also contended that only for maintenance, the panchayat was held and not for the properties, thereby the trial judge decreed the suit in favour of plaintiffs granting 3/4th share in the suit property. Aggrieved over the said findings, the defendants preferred this appeal.

6. During the pendency of appeal proceedings, grandmother of defendants and mother of 2nd plaintiff was died. Admittedly, the 2nd plaintiff and the legal heirs of predeceased son are her legal heirs, who were already on record. So, son and daughter of deceased Murugaiah Gowder are the legal heirs and they are claiming share in the property.

7. Originally, the property belongs to Thimmappa Gowder and Rangammal is an admitted fact and they had six sons. Out of them, one of son is Murugaiah Gowder and he had one daughter and son M.Nataraj. Daughter is the 2nd plaintiff. The legal heirs of deceased



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M.Nataraj are the defendants herein and his wife is the 1st defendant.

Those are admitted facts. After the death of Thimmappa Gowder, his wife and his six sons entered into partition on 26.07.1975 in respect of properties of both Thimmappa Gowder and Rangakkal. In that partition, the suit property described as 'D' schedule was allotted to the share of Murugaiah Gowder are also admitted facts.

8. According to plaintiffs, the said Thimmappa Gowder has originally purchased the properties in the year of 1928 and the said sale deed was marked as Ex.A1 and the same was partitioned along with other properties through a partition deed in the year of 1975, which is marked as Ex.A2. Thus, two documents are admitted by both parties. Now, based on Ex.A1 document, plaintiffs content that the suit property is a self-acquired property of Thimmappa Gowder and after his demise, it was jointly enjoyed by his wife and his sons. Thereafter, it was partitioned, in which the suit property was allotted to 2nd plaintiff's father Murugaiah Gowder and after his demise, his son, daughter along with his wife are entitled to 1/3rd share in the property.



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9. Legal heirs of deceased M.Nataraj viz., defendants contended that the suit property is not a self-acquired property of Thimmappa Gowder, on the other hand, the suit property along with other properties are ancestral property by birth. So, M.Nataraj as a co-parcener, is entitled for half share in the suit property and his father Murugaiah Gowder having half share in the property. Hence, half share belong to Murugaiah Gowder devolved upon his legal heirs, but the 2nd plaintiff was already got married with all shridhana property, thereby she relinquished her claim. His wife (1st plaintiff) was also given maintenance and shelter as per panchayat, thereby she also relinquished her entire share. So, in entirety, the defendants claimed absolute right over the entire property.

10. The point is to be decided whether the suit property is forming part of ancestral property or it is a self-acquired property of Thimmappa Gowder and the same was jointly enjoyed by other sharers.

11. On perusal of sale deed Ex.A1, in the year of 1928 Thimmappa Gowder had purchased the property of 4.01 ½ acres comprised in Survey



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No.313/2 by self-acquisition. There is no mentioning with regard to the source of income derived from the ancestral nucleus to purchase the suit property. The defendants have also not adduced any independent witness to show that there was ancestral nucleus to purchase the suit property in the year of 1928. When the defendants failed to prove the ancestral nucleus, it is a settled proposition, the property has been acquired the character of self-acquisition. Therefore, Ex.A1, the property purchased by Thimmappa Gowder is deemed as a self-acquired property. In the year of 1975, legal heirs of Thimmappa Gowder entered into partition through Ex.A2 reveals that his sons along with Thimmappa Gowder's wife enjoyed the properties jointly and they decided to divide the property. Even in that document, there is no mentioning about the ancestral nucleus. Furthermore, the mother's property also included in the partition. Based on the partition, one of the son Murugaiah Gowder was allotted with 'D' schedule property and now Murugaiah Gowder and his legal heirs, wife and daughter filed the suit for partition.



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12. As discussed above, the property allotted to Murugaiah Gowder is not ancestral property and it is self-acquired property of his father, which was divided by Murugaiah Gowder and his brother. So, after the partition, the suit properties were jointly enjoyed by Murugaiah Gowder along with his son and he died intestate. Thereafter, the suit property devolved upon legal heirs of deceased Murugaiah Gowder. Therefore, his wife, son and daughter, each are entitled 1/4th share and now mother also died. So, the 2nd plaintiff and deceased brother Nataraj equally entitled for half share in the suit property, thereby the 2nd plaintiff is entitled half share in the property and the legal heirs of M.Nataraj viz., all the three defendants are entitled for his half share. Therefore, the findings of the trial judge that there was no ancestral nucleus and the properties are jointly enjoyed by all the co-sharers are well-reasoned while deciding the issue Nos.1 and 2, which needs no interference by this court. Furthermore, as per the panchayatar's evidence, mother was given maintenance as well as shelter in the home, which would not take away her right over the property. Therefore, after her demise, her share devolves upon her son and daughter alone. To that effect, the observation



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made by the trial judge is valid one, which needs no interference of this court. Further, the death of mother viz., 1st plaintiff, the shares are getting altered, thereby 2nd plaintiff is entitled for half share and all the defendants are entitled remaining half share in the suit property ($\frac{1}{2} \times 3$, each defendants $\frac{1}{6}$). Accordingly, this Appeal suit is dismissed as no merit and the suit is decreed. The 2nd plaintiff is allotted with half share in the suit property by way of preliminary decree. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

III Addl. District Judge,
Coimbatore.



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T.V.THAMILSELVI, J.

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