IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.839 of 2017
and
CMP.No.20913 of 2017

V.Raman ...Appellant

Vs.

1.S.Rani

2.S.Kalamani

3.V.Ravi @ Lakshmanan ...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment dated 01.07.2017 passed in A.S.No.58 of 2015 by the learned Principal District Court, Coimbatore, by confirming the decree and judgment dated 13.04.2015 made in O.S.No.1550 of 2013 by the learned III Additional Sub Court, Coimbatore.

For Appellant : Mr.N.Manokaran
For Respondents : Mr.L.Murali

JUDGMENT

The first defendant in the suit is the appellant. The first respondent herein filed a suit for partition claiming 1/4th share in the suit property. The suit was decreed by the trial Court and first appeal filed by the present appellant was also dismissed. Aggrieved by the concurrent findings, he is before this Court.

2. According to the first respondent/plaintiff, the suit property originally belonged to paternal grand father of parties, one Nanja Boyan, by virtue of partition deed dated 12.09.1930. After death of Nanja Boyan, the suit property was succeeded by his only son Vellingiri viz., father of the parties herein. After the demise of Vellingiri, the property was managed by his wife Sarjoja, she died intestate on 20.06.2004, the first respondent claimed 1/4th share in the suit property as she and other parties to this appeal are children of the said Vellingiri.

3. The suit was resisted by the appellant on the ground that the first respondent herein and her another sister, second respondent relinquished their share in the suit property and agreed to receive a sum of Rs.1,00,000/- in a compromise talk in the presence of village elders. The appellant herein also claimed that the respondent herein are not in possession and enjoyment of the

suit property from the year 1983 and the suit property has been maintained by him, by spending a huge amount all along. Hence, on this ground he sought for dismissal of the suit.

4. Before the trial Court, the first respondent/plaintiff was examined as PW.1 and 15 documents were marked on her side as Ex.A1 to A15. The appellant was examined as DW1 and on his behalf two other witnesses were examined as D.W.3 and D.W.4. The second respondent herein was examined as D.W.2, on behalf of the appellant, 14 documents were marked as Ex.B1 to B14.

5. The trial Court on appreciating the oral and documentary evidence available on record came to the conclusion that the first respondent was entitled to decree for partition of her 1/4th share. Aggrieved by the same, the appellant herein preferred an Appeal in A.S. No.58 of 2015 on the file of the Principal District Court, Coimbatore. The first appellate Court also on re-appreciating the evidence came to the conclusion that there was no evidence available on record to substantiate the plea of oral relinquishment pleaded by the appellant. Therefore, the first appellate Court also concurred with the findings of the trial Court has dismissed the Appeal. Aggrieved by the same, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law vide order dated 27.09.2022.

> *"1.Have not the Courts below committed an error in treating the plaintiff as a coparcener under the Amended Act 39 of 2005 when the father of the parties to the suit died long before the amended Act came into force?*
>
> *2. Whether the claim of the plaintiff for 1/4th share as a coparcener is sustainable in law in view of Sec.6(1) of the Hindu Succession (Amendment) Act, 2005?*
>
> *3. Whether the Courts below are right in rejecting the plea of ouster claimed by the 1st defendant particularly when the 1st defendant has categorically established his exclusive possession and enjoyment of the suit property over and above the statutory period?*
>
> *4. Whether the judgment of the first appellate Court is vitiated for non-compliance of the mandate of Order 41 Rule 31 CPC?"*

7. Elaborating the substantial questions of law framed at the time of admission, the learned counsel appearing for the appellant submitted that father of the parties to the suit viz., Vellingiri died on 15.04.1983 well prior to coming into force of Hindu Succession Amendment Act, 2005 (Central Act 39/2005) and therefore, the Courts below ought not to have treated the first and second respondents, daughters of Vellingiri as coparceners along with their brothers. Learned counsel further submitted that the Courts below has not taken into consideration, the evidence of D.W.3 who talked about the compromise between the parties and oral relinquishment by the first

respondent.

8. As far as the contention raised by the learned counsel for the appellant that the respondents 1 and 2, daughters of Vellingiri cannot be treated as coparceners on par with their brothers cannot be accepted in the light of the law laid down by the Hon'ble Apex Court in ***Vineeta Sharma vs. Rakesh Sharma and Ors,*** reported in ***(2020) 9 SCC 1.*** The relevant observations made by the Hon'ble Apex Court in the said judgment reads as follows :

> ***"129.****Resultantly, we answer the reference as under:*
>
> *(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.*
>
> *(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*
>
> *(iii)* ***Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.(Emphasis Supplied)***
>
> *(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of*

coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected out rightly."

9. The reading of the above judgment makes it clear that the date of death of father is not relevant for the purpose of extending the benefit of amending Act to the daughters. Therefore, the first contention raised by the learned counsel for the appellant is rejected.

10. The second contention of the learned counsel for the appellant is that the appellant by examining D.W.3 proved the plea of oral relinquishment made in the written statement. The first appellate Court, on appreciation of evidence available on record had given a clear finding that absolutely there is no evidence available on record to prove the plea of oral relinquishment. I also perused the evidence of D.W.3 and nowhere in his evidence, he mentioned about the alleged oral relinquishment by the first respondent. In the proof affidavit filed by D.W.3, there is an insertion in paragraph C, as if he mediated between the plaintiffs and defendants regarding property dispute. But, he has nowhere mentioned anything regarding alleged oral relinquishment. Though appellant pleaded the oral relinquishment of shares by the respondents 1 and 2 as a defence in the suit, he failed to lead any acceptable evidence in support of his averment. In such circumstances, the said plea of the appellant also fails.

11. The learned counsel for the appellant made a last effort by submitting that from the date of death of Vellingiri, the appellant herein had been in exclusive possession of the property and therefore, the respondents are ousted from claiming any possession. It is settled law, possession of one of the co-sharer is not only for himself but it is also on behalf of the other co-sharer. Merely because, one of the co-sharer is in possession of the property, he

cannot claim he is in possession of property to the exclusion of other sharers. The plea of ouster should be specifically pleaded and meticulously proved by leading cogent evidence. In the case on hand, there is no evidence available on record to prove the hostile possession of the appellant and the ouster of respondent. In the said circumstances, the appellant has not made out any case to interfere with the conclusion reached by the Courts below that the first respondent was entitled to 1/4th share of the property.

12. The learned counsel for the appellant also submitted that the first Appellate Court has not framed proper points for consideration and therefore, violated the mandate under Order 41 Rule 31 of CPC. The main defence raised by the appellant is with regard to the oral relinquishment and ouster. The said points have been considered by the first appellate Court and a findings had been rendered. In such circumstances, the mandatory Rule under Order 41 Rule 31 of CPC is substantially complied. Therefore, the said contention of the learned counsel for the appellant is also rejected.

13. In view of the discussions made earlier, all the substantial questions of law framed at the time of admission are answered against this appellant and accordingly, the Second Appeal is dismissed.

14. In a nutshell, the Second Appeal is dismissed by confirming the Judgment and decree passed by the Courts below. There would be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2023

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

To

1.The III Additional Sub Judge,
Coimbatore.

2.The Principal District Judge,
Coimbatore.

S.SOUNTHAR, J.
rkp

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