



SA.No.98 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CMP.No.98 of 2023

Valli

..Appellant

Vs.

1.P.Thangavel
2.P.Easwaran
3.Kamala
4.Unnamalai
5.Manickam

..Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 09.04.2010 made in A.S.No.35 of 2009 on the file of the Additional District Judge, Salem, (Fast Track Court No.2, Salem), confirming the Judgment and Decree dated 30.04.2009 made in O.S.No.162 of 2002 on the file of the Additional Sub-Judge, Salem.

For Appellant : Mrs.Sasikala Ramadoss

For Respondents

For R4 : Mr.P.Sesubalan Raja

JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 09.04.2010 passed in A.S.No.35 of 2009 on the file of the Additional



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District Judge, Salem, (Fast Track Court No.2, Salem) confirming the judgment and decree dated 30.04.2009 passed in O.S.No.162 of 2002 on the file of the Additional Sub-Judge, Salem, thereby dismissing the suit filed for partition.

2. The appellant is the plaintiff and the respondents are the defendants in the suit filed for partition.

3. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

4. The case of the appellant is that the suit properties belong to the appellant and the respondents and that they have been in joint possession and enjoyment of the same. The suit properties are ancestral in nature and it had been allotted to Palani Gounder and his family members by a registered Partition Deed dated 07.03.1966. Thereafter, the suit property was in common and joint possession and enjoyment of the plaintiff and the defendants 1 to 5. The 4th defendant is the father of the plaintiff and defendants 1, 2, 3 and the 5th respondent is the wife of the 4th defendant. The plaintiff got married in the year 1995. The defendants 1, 2 and 4 assured the plaintiff that they will allot her, her appropriate share in the ancestral joint family property. Though the plaintiff



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made demands for partition, the defendants 1, 2 and 4 have delayed to allot her share and they also sold a portion of the ancestral joint family property to the 6th defendant. The plaintiff is not a party to the sale. Therefore, she caused legal notice and filed a suit for partition claiming her share in the joint family property.

5. Resisting the same, the defendants filed their written statement stating that the plaintiff has no right to question the Sale Deed. After notice dated 24.09.2001, demanding partition was issued, there was a Panchayat in which the plaintiff expressed sorry and promised that she would not proceed further and therefore, the defendants did not send any reply. Hence, the plaintiff is not entitled to any share in the suit property. The 4th defendant had two sons, the defendants 1 and 2 and two daughters, the 3rd defendant and the plaintiff were born through the first wife namely the 5th defendant. The plaintiff got married on 25.08.1985 and out of their wedlock the plaintiff gave birth to a female child on 07.06.1986 and the child died immediately after birth. Thereafter, she got married to one Saminathan and she lived with him for about six months. Then she left him and she living with Sankar. At that stage, she demanded her share from the suit property. The suit properties were already partitioned orally and according to their respective share, they are paying taxes for the suit properties.



The Hindu Succession Amendment Act does not apply to the plaintiff. The defendants have been in a separate possession and enjoyment of their respective share in the suit properties, since the partition. The defendants 3 and 5 have no manner of right in the suit properties and as such, they are unnecessary parties to the suit. The 4th defendant had already executed a registered Will dated 24.04.2002 in favour of his two sons namely the defendants 1 and 2. Therefore, the plaintiff is not entitled for any share and prayed for dismissal of the suit.

6. On the basis of the pleadings, the Trial Court framed the following issues;

- “ 1. Whether the plaintiff can claim a share by way of birth as per the amendment Act in 1989?*
- 2. Whether plaintiff entitled to partition and separate possession as prayed for?*
- 3. To what other relief is she entitled to?”*

7. During trial, the plaintiff had examined P.Ws.1 to 3 and Exs.A1 to A6 were marked and on the side of the defendants they had examined D.Ws.1 to 6 and Exs.B1 to B14 were marked.

8. Based on the oral and documentary evidence, the trial Court dismissed the suit. Aggrieved by the same, the appellant filed an appeal suit and the same



was also dismissed confirming the judgment and decree passed by the trial Court. Hence, the second appeal.

9. The appellant raised the following substantial questions of law in this second appeal;

“1. Whether both the Courts are right in taking the view that the plaintiff has no right since she got married prior to the commencement of Hindu Succession (Tamil Nadu Amendment Act, 1989)?

2. Whether the lower appellate Court right in holding that the appellant is not entitled to claim share even as per Section 6 of Hindu Succession Amendment Act 39 of 2005?

3. Whether both the Courts below are right in taking the view that the plaintiff has admitted the oral partition between the defendants 1, 2 and their father?

4. Whether the lower appellate Court is right in rejecting the claim of the appellant for partition of 1/5 share, after having come to the conclusion that she is the legitimate daughter of Mr. Palani Gounder?



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5. Whether the lower appellate Court is right in holding that the Will was executed by the appellant's father in a sound and disposition of mind? ”

10. The learned counsel for the appellant would submit that the suit was filed only on the ground that the appellant got married in the year 1985 and as such Hindu Succession Amendment Act would not apply. The appellant got married in the year 1985 therefore she shall get share in the suit schedule property.

11. It is the further case of the plaintiff that the suit property is an ancestral property of Hindu joint family comprising herself and the defendants 1 to 5 and the same was allotted to her father/4th defendant as per Partition Deed; since then they were in possession and enjoyment of the suit property and the plaintiff got married in the year 1985 and therefore, she is entitled to have 1/5th in the suit schedule property.

12. Admittedly, the appellant got married in the year 1985 therefore, she is not entitled to claim any share in the suit property as per Section 29(A) of Hindu Succession Act. She further admitted that the appellant and the first defendant were born to 4th defendant and 5th defendant. 5th defendant is the



second wife of the fourth defendant. The plaintiff further deposed that her mother was the legally wedded wife of 4th defendant and the 4th defendant married her father about 47 years ago, after demise of his first wife. However, all had deposed that the 5th defendant is not a legally wedded wife and the 4th defendant had illicit intimacy with 5th defendant that too when the first wife Chinnathayee was very much alive.

13. That apart, the 4th defendant had executed a Will, which was marked as Ex.P4, in which he categorically made a specific reference about the plaintiff stating that her own daughter Valli was given married to one Saravanan about 16 ½ of years ago and their marriage was performed on 25.08.1985. Therefore, the plaintiff, being the legitimate daughter, has no right to claim her share in the ancestral property. That apart, already the suit properties had been orally partitioned between defendants 1, 2 and 4. Therefore, the appellant is not entitled to claim any share even as per Section 6 of Hindu Succession Act, since already the partition has taken place prior to 20.12.2004. The 6th defendant is the purchaser of a portion of the suit property under Ex.B9 and B10 from defendants 1 to 3. Therefore, both the Courts below rightly dismissed the suit filed by the appellant for partition and this Court finds no infirmity or illegality in the order passed by the Courts below and no substantial question of



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law involved in this second appeal.

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14. Accordingly, the second appeal stands dismissed. There shall be no order as to costs.

16.02.2023

Speaking/Non-speaking order

Neutral Citation Yes/No

Index : Yes/No

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To

1.The Additional District Judge,
(Fast Track Court No.2),
Salem.

2.The Additional Sub-Judge,
Salem.

G.K.ILANTHIRAIYAN.J,



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