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A.S.No.31 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2023

PRONOUNCED ON : 03.01.2024

CORAM

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

A.S.No.31 of 2011
and M.P.No.1 of 2011

Sivagami

...Appellant

Vs.

1. Nagammal
2. Arthanari
3. K.Sivaprakasam
4. K.Murugesan
5. S.Jagannathan
6. Dr.Rathinavel
7. Muthumanickam (Died)
8. J.Maragathamani
9. Malliga
10. Anandhan
11. Rathipriya

(Respondents 9 to 11 brought on record as legal representatives of the deceased seventh respondent viz., Muthumanickam vide order dated 03.03.2021 made in C.M.P.No. 3989 of 2022 in A.S.No.543 of 2006)

...Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., against the Judgment and Decree dated 29.04.2010, made in O.S.No.108 of 2005 on the file of the learned Additional District Judge, Fast Track Court No.II at Salem – insofar as it is against the appellant herein.



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For Appellant : Mr.T.Murugamanickam
Senior Counsel
For Ms.Zeenath Begum

For Respondents
For R1 to R6 &
R8 to R11 : Mr.R.Venkatesan
R7 : Died

JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 29.04.2010, made in O.S.No.108 of 2005 by the learned Additional District Judge, Fast Track Court No.II at Salem, thereby partly decreed the suit for partition.

2. The appellant is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The suit is filed for partition. The case of the plaintiff is that the plaintiff, the first defendant and their brother viz., Kuppusamy Mudaliar, born to one K.A.Annamalai Mudaliar. The suit properties were purchased by their father. After his demise, the plaintiff's brother was managing the suit property and also gave assurance to give her share in the suit property. However, after demise of her brother, his legal heirs



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viz., the defendants 2 to 9 refused to allot her share in the suit properties.

Hence the suit for partition claiming 1/3rd share in the suit property.

4. Resisting same, the defendants filed written statement stating that there was an oral partition in the year 1970 between the father and son viz., K.A.Annamalai Mudaliar and Kuppusamy Mudaliar. In pursuant to the oral partition, the father had taken cash for his share and the entire suit properties were allotted to his only son viz., Kuppusamy Mudaliar. After demise of the said Kuppusamy Mudaliar, the defendants 2 to 7 are in possession and enjoyment of the suit property. Insofar as the property item No.5 is concerned, it is a self acquired property and it doesn't belong to the joint family property. Item No.6 to 9 are concerned, they are not in existence.

5. On the basis of the pleading, the trial Court framed the following issues :-

- (i) Whether the properties are joint family property?*
- (ii) Whether the properties were not divided?*
- (iii) Suit is maintainable or not?*
- (iv) What is the share of the plaintiff?*



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(v) *Cost and other relief?*

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6. On the side of the plaintiff, she examined P.W.1 & P.W.2 and marked documents in Ex.A.1 to Ex.A.19. On the side of the defendants, they examined D.W.1 and D.W.2 and marked documents in Ex.B.1 to Ex.B.14. On considering the oral and documentary evidences, the trial Court partly decreed the suit and allotted 1/6th share in respect of the suit properties in item Nos.1 to 4 alone and dismissed the relief upon the partition in respect of the item Nos.5 to 11. Aggrieved by the same, the plaintiff preferred this appeal suit before this Court.

7. The learned Senior Counsel appearing for the appellant submitted that the suit properties are the ancestral joint family properties. The entire properties were purchased by her father out of the income derived from his business. After demise of her father, as per Section 8 of the Hindu Succession Act, his legal heirs viz., the plaintiff, the first defendants, her brother Kuppusamy Mudaliar and her mother are entitled to have 1/4 share. After demise of her mother, in the remaining properties, she is entitled to have 1/3 share. When the suit properties are self-acquired properties, there is no question of partition between the



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plaintiff's father and his son Kuppusamy Mudaliar, since he could not have pre-existing right to claim partition during their father's life time.

The defendants are also failed to prove that there was an oral partition between the plaintiff's father and her brother. Even assuming that there was oral partition, no revenue records were mutated as per the oral partition and no change of patta in favour of Kuppusamy Mudaliar. When the plaintiff is entitled to have share in the suit properties in item Nos. 1 to 4, she is also entitled to have share in other items of the suit properties.

8. Per contra, the learned counsel appearing for the respondents submitted that trial Court rightly decreed the suit in respect of the item Nos.1 to 4 are concerned and dismissed the suit in respect of other items are concerned, since the item Nos.5,6, 8 and 9 are not in existence. Insofar as the item No.7 is concerned viz., rice mill is a self acquired property as such, the plaintiff is not entitled for any share. The plaintiff also failed to produce any document to show that she is also in join possession and enjoyment of the suit property.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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10. The only point for consideration in this appeal suit is that whether the plaintiff is entitled to have share in respect of the suit properties in item Nos.5 to 11.

11. The specific case of the plaintiff is that the suit properties were self acquired by the plaintiff's father viz., Annamalai Mudaliar. He gave birth to the plaintiff, first defendant and one Kuppusamy Mudaliar. While he was alive, he entered into oral partition with Kuppusamy Mudaliar and divided their join family properties, wherein the suit schedule properties were allotted to the share of the Kuppusamy Mudaliar. The said Annamalai Mudaliar had taken cash as his share.

12. There are 11 items in the suit schedule properties in which the trial Court allowed for partition in respect the suit properties in item Nos. 1 to 4. Insofar as the suit properties in item Nos.5,6,8,9 are concerned, those properties are not in existence and as such there is no question of partition. Insofar as the item Nos. 10 and 11 are concerned, they were not included in the plaint originally. When the case was posted for arguments, they were included by way of amendment. However, the



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plaintiff failed to prove that the suit schedule property belonged to Annamalai Mudaliar. The Village Administrative Officer was examined as P.W.2. He also failed to depose anything about item Nos.10 & 11 of the suit properties. Therefore, except the suit properties in item Nos. 1 to 4, the plaintiff is not entitled to have any share in respect of other items of the suit properties. This Court finds no infirmity or illegality in the Judgement and decree passed by the trial Court and the point is answered against the plaintiff.

13. In the result, the Appeal Suit stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.01.2024

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



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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Additional District Judge,
Fast Track Court No.II,
Salem.

Judgment in
A.S.No.31 of 2011
and M.P.No.1 of 2011

03.01.2024