



A.S.No.390 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.No.390 of 2015

Kaveriyammal

..Appellant

Versus

1.Chinnamuthu @ Chinnapaiyan
2.Shanmugam
3.Jayavel
4.Prakashmani

.. Respondents

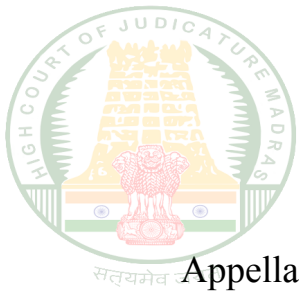
Appeal Suit is filed under Section 96 of C.P.C, against the judgment and decree dated 25.11.2014 passed in O.S. No. 26 of 2011 on the file of the learned Principal District Judge, Dharmapuri,

For Appellant	:	Mr. R. Thirugnanam
For Respondents	:	No appearance

J U D G M E N T

This Appeal Suit had been filed seeking to set aside the judgment and decree dated 25.11.2014 passed in O.S. No. 26 of 2011 on the file of the learned Principal District Judge, Dharmapuri.

2. The suit in O.S. No. 26 of 2011 was filed by the
<https://www.mhc.tn.gov.in/judis>

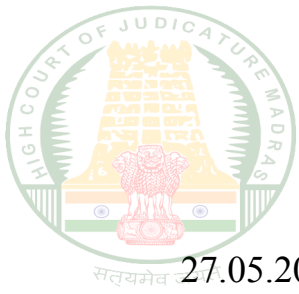


A.S.No.390 of 2015

WEB COPY

Appellant/Plaintiff for the relief of partition by contending that she is the daughter of the first Defendant and the 2nd Defendant is her brother and the 3rd Defendant is her stepbrother. The fourth Defendant in the suit is the purchaser of the suit property. According to the Plaintiff, the family properties are indivisible so far and as a daughter, she is having every right to seek for partition of the family properties. The Defendants 1 and 2 have not given proper accounts of the income derived from the properties whenever it was demanded by the Plaintiff. Even the demand for partition has not been acceded to and therefore, on 15.07.2011, a Panchayat was convened in the presence of elders in the Village. However, the Defendants 1 and 2 refused to give a share to the Plaintiff. Therefore, in order to assert her right for partition, she has filed the suit.

3. The first Defendant, who is the father of the Plaintiff, resisted the suit by stating that even at the time of marriage of the Plaintiff with one Shanmugam, apart from usual *seervarisai* the land bearing Patta No.1594 measuring 3 cents was settled in favour of the Plaintiff, which she suppressed in the plaint. Further, even on 27.05.2004, there was a partition effected between the Defendants 1 to 3 and it was also registered as document No. 792 of 2004. The Plaintiff, without questioning the partition deed dated



A.S.No.390 of 2015

WEB COPY

27.05.2004 has filed the present suit for partition after 7 years of the family partition. Further, in order to settle the family debts, a sale deed dated 14.07.2010 was executed. Therefore, the first Defendant/father contended that already a settlement deed has been executed in favour of the Plaintiff besides that the family properties have been partitioned even in the year 2004. Above all, it was stated that on 22.03.2010, a portion of the family property was settled in favour of the Plaintiff, which she had suppressed while filing the suit. Accordingly, the first Defendant prayed for dismissal of the suit.

4. During trial in the suit, the Plaintiff examined herself as P.W-1. Her mother was examined as P.W-2. One Munusamy was examined as P.W-3. Ex.A-1 to Ex.A-9 were marked as documents on the side of the Plaintiff. On behalf of the Defendants, the first Defendant/father of the Plaintiff examined himself as D.W-1. One Mariappan was examined as D.W-2. On the side of the Defendants, copy of the registered partition deed dated 27.05.2004 executed between Defendants 1 to 3 was marked as Ex.B-1. The copy of the registered settlement deed dated 22.03.2010, executed in favour of the Plaintiff by the first Defendant was marked as Ex.B-2. Ex.B-3 is the pass book. Ex.B-4 is the proceedings under the Kalaignar Housing Loan Scheme. Ex.B-5 is the Kist receipt.



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5. After conclusion of the trial, on appreciation of evidence, the learned Principal District Judge, Dharmapuri, by judgment dated 25.11.2014, dismissed the suit for partition on the ground that the Plaintiff got married in the year 1998 and therefore, as per Act 1 of 1990, she is not entitled for partition in the family properties. That apart, it was held by the trial Court that the suit property was already partitioned and a portion thereof was also sold to the fourth Defendant to settle the debt incurred by the family. While so, it was held that the Plaintiff is not entitled for partition of the suit properties and dismissed the suit in O.S. No. 26 of 2011, on 25.11.2014. Aggrieved by the same, the Plaintiff is on Appeal.

6. The learned Counsel for the Appellant would contend that the trial Court erred in dismissing the suit without even considering the points raised in the plaint as well as in the oral and documentary evidence of the witnesses examined on the side of the Plaintiff. The trial Court erred in holding that the Appellant is not entitled to claim partition in view of Act 1 of 1990 and failed to note that there are no materials placed by the Respondents in this Appeal to arrive at such a conclusion. The plea of the Respondents that the marriage of the Appellant herein was performed on 19.08.1988 is not supported by any



A.S.No.390 of 2015

WEB COPY

material document and in such circumstances, the trial Court erred in holding that the Appellant was given in marriage on 19.08.1988. The trial Court did not consider that only after the written statement filed by the first Defendant, she has knowledge about the partition that had taken place on 27.05.2004 and therefore, in the interest of justice, even in the absence of a prayer for declaration, the trial Court ought to have declared the partition effected on 27.05.2004 and allotted a share to the Plaintiff. A partition of family properties can only be effected among the family members, while so, ignoring the Plaintiff while effecting the partition on 27.05.2004 is invalid. The trial Court failed to note that the 3rd Respondent was born to the first Respondent through his 2nd wife, when the first marriage is subsisting. Therefore, the 3rd Respondent cannot claim any share or given any share by the first Respondent ignoring the Plaintiff, who is the legitimate daughter born through the wedlock with his first wife. Since the alleged partition deed dated 27.05.2004 is not legal and valid in law, it is to be presumed that there was no partition in the family as of 20.12.2004. When the third Defendant, an illegitimate son was allotted a share in the partition deed, the refusal of the trial Court to allot a share to the Plaintiff, who is the legitimate daughter born to the first Defendant, is arbitrary and untenable in law. In such circumstance, the trial Court ought to have declared the partition deed dated 27.05.2004 as not valid



A.S.No.390 of 2015

in law, decreed the suit as prayed. Instead, the trial Court dismissed the suit and therefore, the judgment of the trial Court is perverse in law and it is liable to be set aside.

7. After arguments were made by the learned Counsel for the Appellant, the case was repeatedly adjourned to hear the learned Counsel for the Respondents and notices were also sent. However, the Respondents/Defendants in O.S. No. 26 of 2011 did not appear before this Court either in person or through Counsel. Finally, on 11.01.2023, the case was “Reserved for Judgment”, with a direction to the Respondents to file written submission, if any. In spite of such directions, no written submission was filed on behalf of the Respondents. Therefore, this Appeal is disposed of by perusing the plaint averments in O.S.No.26 of 2011 filed by the Appellant herein as Plaintiff, the written statement filed by the first Defendant/father of the Plaintiff in O.S.No.26 of 2011 and upon perusal of the judgment of the trial Court.

Point for consideration:

Whether the judgment and decree dated 25.11.2004 in O.S.No.26 of 2011 passed by the learned Principal District Judge, Dharmapuri, is to be set aside as perverse in light of Act 30 of 2005?



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8. Perused the evidence of P.W-1 to P.W-3 adduced on the side of the Plaintiff and the documents under Ex.A-1 to Ex.A-9, the evidence of the first Defendant as D.W-1, one Mariappan as D.W-2, the documents under Ex.B-1 to B-5 and the judgment of the learned Principal District Judge, Dharmapuri, dated 25.11.2014.

9. On perusal of the judgment of the learned Principal District Judge, Dharmapuri, it is found that on the basis of the pleadings in the plaint and written statement, the learned Judge had raised the following issues:

(1) Whether the Plaintiff is entitled to get 1/3rd share over the suit properties as per Act 1 of 1990 of the Hindu Succession Act?

(2) Whether the first Defendant had executed a Settlement Deed in favour of the Plaintiff dated 22.03.2010. If it is true, whether the Plaintiff is not entitled to get decree for partition?

(3) Is it true to say that Defendants 1 and 3 had already partitioned the suit properties by way of a partition deed dated 27.05.2004?

(4) To what relief the Plaintiff is entitled to?

10. The learned Trial Judge had framed the following additional



A.S.No.390 of 2015

issues, which are follows:-

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(1) Is it true that the first Defendant divorced his first wife Mangammal through customary divorce and married Muniyammal and the son through the 2nd wife Muniyammal, the 3rd Defendant is entitled to an equal share.

(2) Whether the suit is barred for non-joinder of property in S.No.492/1C.

11. While discussing Issue No.1, the learned Trial Judge had stated that the plaint is silent about the date of marriage of the Plaintiff. Only if the date of the marriage is given, the Court will be able to appreciate the facts clearly and apply the law. As per Act 1 of 1990, the female heirs those who had not been married till the date of coming into force of the Act 1 of 1990 alone are entitled to claim partition in the co-parcenary property. For reasons best known to the Plaintiff, the Plaintiff had not stated the date of marriage in the plaint. The affidavit filed by the Plaintiff is also silent and the examination-in-chief is also silent regarding the date of marriage of the Plaintiff. While so, the first Defendant, who is the father of the Plaintiff, had clearly stated in the written statement that the Plaintiff was married on 19.08.1988. After the marriage, in the course of the matrimonial life, the Plaintiff gave birth to four children. They are Deepa, Sakthi, Tamil, and Viji. The eldest of the daughters,



A.S.No.390 of 2015

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Deepa, is 23 years old on the date of filing the written statement by the first Defendant. It was also observed by the learned Trial Judge that the Plaintiff had not filed any document regarding the date of birth of her children. In the course of the cross-examination of the Plaintiff she had stated that her marriage was performed in the year 1990. The mother of the Plaintiff, Mangamal, who was examined as P.W-2, also, in her affidavit as examination-in-chief of P.W.2, had not mentioned the date of marriage of the Plaintiff. The father of the Plaintiff/first Defendant as D.W-1, had clearly stated in his affidavit filed as examination-in-chief of D.W-1, that the date of marriage of the Plaintiff was 19.08.1988. The eldest daughter born to the Plaintiff, Deepa was 26 years old on the date of trial. The Plaintiff had not disputed the age of her daughter, Deepa. Therefore, on assessment of the evidence of the Plaintiff, as P.W-1, the Plaintiff's mother as P.W-2 and the father of the Plaintiff as D.W-1, the learned Trial Judge had arrived at the conclusion that the date of marriage as mentioned by the father of the Plaintiff as D.W-1, is the correct date. Thus, she was married prior to the coming into force of Act 1 of 1990. Therefore, she is not entitled to the relief of partition. Such a finding of the learned Trial Judge, in the opinion of this Court, needs no interference. When the Plaintiff was given in marriage before the Act 1 of 1990 was brought into force besides that the Plaintiff was also given some property by way of settlement by D.W-1,



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after nearly forty years of marriage, she is not entitled to seek for partition of the properties from her father. It is also to be mentioned that the Plaintiff has filed the suit and she owe a duty to mention the date on which she married. In this case, the date of marriage of the Plaintiff was disclosed only by the first Defendant/father but even that was also denied by the Plaintiff. If it is so, the burden is on the Plaintiff to produce documentary evidence or at least wedding invitation or any other allied document to show the date of her marriage. When the Plaintiff failed to do so, the trial Court is legally right in accepting the date of marriage mentioned by the first Defendant and holding that the Plaintiff was given in marriage prior to the coming into force of Act 1 of 1990 and therefore, she is estopped from making any claim for partition.

12. While dealing with Issue No. 2, the learned Judge arrived at the conclusion that there was a partition deed dated 27.05.2004 among the Defendants 1 to 3 in which a share was allotted to the first Defendant. The first Defendant also stated that in order to settle the debt incurred by the family, there was a necessity to sell his share to the fourth Defendant through a registered sale deed dated 14.07.2010. In view of such sale, a portion of the share of the suit property was sold to the third party purchaser/fourth Defendant. Even such sale was made for family necessity, while so, the



A.S.No.390 of 2015

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Plaintiff has no right to question the same. The learned Trial Judge while discussing Issue No.2 observed that the Plaintiff in her evidence has stated that she was not aware of the sale deed dated 14.07.2010 until the filing of the written statement by the first Defendant. Further, the Plaintiff also suppressed the settlement of a piece of property in her favour by the first Defendant at the time of her marriage. Therefore, it was held that the Plaintiff has approached the Court by suppressing the material evidence. Accordingly, the trial Court held issue No.2 also against the Plaintiff holding that the Plaintiff is not entitled to seek for a partition. Similarly, Issue No.3 was also answered against the Plaintiff, based on the registered partition deed dated 27.05.2004, marked as Ex.B-1. The Plaintiff, soon after coming to know about the registered partition deed, did not take steps to amend the plaint for seeking a prayer to challenge the registered partition deed. Furthermore, the suit was filed in the year 2011, after 7 years of the registered partition deed. When the Plaintiff did not take any steps to amend the plaint and she only sought for a partition simplicitor, the trial Court cannot be expected to mould the relief and grant a preliminary decree for partition in favour of the Plaintiff.

13. With respect to issue No.4, the learned Trial Judge, on assessment of evidence had stated that the Hindu Succession Act has been amended as per



A.S.No.390 of 2015

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Section 6(5) of Act 30 of 2005, which states that female heirs are also coparceners of the joint Hindu family and they are entitled to partition. As per Section 6(5) of the Act 30 of 2005, it is stated that nothing contained in the Section shall apply to a partition which had been effected before the 20th December, 2004 and an explanation for the purpose of this section. “Partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or a partition effected by a decree of a Court. In the light of the said Act, the partition deed was marked as Ex.B-1 in this case. In the course of the trial, the first Defendant in his evidence had deposed that the partition deed had come into existence on 27.05.2004, prior to the date mentioned in Act 30 of 2005. Therefore, the Plaintiff is not entitled to partition. As per Act 30 of 2005, the Plaintiff is not entitled to seek relief of partition. Issue No.4 is answered against the Plaintiff. This Court, does not find any infirmity in the observations made by the Trial Court to decide the issue No.4.

14. While discussing additional Issue No.1, the learned Trial Judge had observed that in the course of the evidence of D.W-2, Mariappan, regarding the divorce of the first wife Mangamal, the mother of the Plaintiff, D.W-2, Mariappan deposed that the first wife Mangamal did not have a



A.S.No.390 of 2015

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harmonious relationship with him and therefore, as per the prevailing customary practice of the community to which the Defendants belonged, a panchayat was convened by the Village elders during which the first Defendant divorced the mother of the Plaintiff, Mangamal. In the course of cross-examination of D.W.2, he had stated that Mangamal had preferred a maintenance case before the learned Judicial Magistrate at Krishnagiri. In the course of the pendency of the maintenance case before the learned Judicial Magistrate at Krishnagiri, there was an amicable settlement between the first wife, Mangamal and first Defendant, by which the first Defendant took Mangamal along with him and they lived as husband and wife for ten years. The fact that the details of the maintenance case, whether maintenance was ordered or not are not made known. Whether the learned Judicial Magistrate, Krishnagiri had recorded such a settlement or not is not made available before the trial Court as neither the Plaintiff nor the Defendants marked such documents during trial. Therefore, the Court is unable to arrive at the conclusion that Mangamal, the first wife of first Defendant was divorced in a customary manner as per the customs prevailing in the caste to which the Plaintiff and the Defendants belonged. Therefore, Additional Issue No.1 regarding the claim of divorce of the first wife in a customary manner was rejected by the learned Trial Judge. It was also observed in the course of the



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discussion of Additional Issue No.1 by the learned Trial Judge that the first Defendant as D.W-1, in the course of his cross-examination denied that he and his 2nd wife are living under the same roof as husband and wife. While so, the burden to prove that the first Defendant/father contracted a second marriage is on the Plaintiff, which she did not prove.

15. With respect to additional Issue No.2, for not including the property under S.No.492/1C, even though the Defendants raised the issue of non-joinder of the property under S.No.492/1C, the Plaintiff had not taken steps to include the property. In the course of the trial, the Plaintiff was not cross-examined regarding the property in S.No.492/1C, which is in her possession. Since the Defendants had not cross examined the Plaintiff regarding the property in S.No.492/1C, the Trial Court was unable to arrive at the conclusion that the Plaintiff had filed the suit seeking partition of the properties except the property in S.No.492/1C. The claim of the Defendants that the Plaintiff had filed the suit for partial partition is not maintainable and it was rejected by the learned Trial Judge. Therefore, Additional Issue No.2 was answered against the Defendants.

16. On perusal of the Judgment of the trial Court and the observations



A.S.No.390 of 2015

WEB COPY

made therein in the light of written statement this Court is of the view that the Plaintiff has come forward with the plaint by suppressing the settlement of the land measuring 3 cents in her favour at the time of her marriage. Further, the suit property was partitioned even in the year 2004 and subsequently, during the year 2010, a portion thereof was sold in favour of the fourth Defendant for family necessity. In such circumstances, the claim of the Plaintiff for passing a preliminary decree is untenable. Furthermore, the Plaintiff was given in marriage even before the coming into force of the Act 1 of 1990 conferring certain benefits to female heirs. In the present case, the Plaintiff was given in marriage before the coming into force of the Act 1 of 1990. The trial Judge, by taking note of all the above, has rightly dismissed the suit filed by the Plaintiff for partition. The learned Trial Judge appreciated the pleadings and the evidence of the Plaintiff in proper perspective.

17. To invoke Act 30 of 2005, as per Section 6(5) of Act 30 of 2005, if there was a partition prior to 20th December, 2004, then the benefit of Act 30 of 2005 is not applicable to the cases seeking partition filed by female heirs against the joint family co-parcenary property. In this case, the father of the Plaintiff is alive. He had executed a settlement deed to the Plaintiff settling 3 cents of land at the time of her marriage in the year 1988. Further, the



A.S.No.390 of 2015

WEB COPY

remaining property was divided through a registered partition deed dated 27.05.2004 among the Defendants 1 to 3. Out of the portion allotted to the first Defendant in the partition dated 27.05.2004, the first Defendant executed a sale deed dated 14.07.2010 in favour of the fourth Defendant to settle the family debts. Under those circumstances, the father had set the law into motion by executing the partition deed dated 27.05.2004 among the surviving heirs and the Plaintiff was specifically excluded for the reason that even in the year 1988, at the time of her marriage, land measuring 3 cents was settled to her.

18. In the course of the argument, the learned Counsel for the Appellant relied on the decision in the case of ***Rosammal Issetheenammal Fernandez Vs. Joosa Mariyan Fernandez and Others*** reported in (2000) 7 ***SCC 189***. In that case, the father is alleged to have executed a settlement deed when he was ill and bedridden. Therefore, the claim of a settlement deed was rejected as it was not proved as per Section 68 of the Indian Evidence Act. Whereas in this case, the father of the Plaintiff was alive on the date of partition on 27.05.2004 and subsequently he sold a portion of the property allotted as his share to the third party purchaser/fourth Defendant on 14.07.2010. Further, during trial, the father himself deposed. Therefore, the Court concluded that the partition effected on 27.05.2004 is prior to coming



A.S.No.390 of 2015

into force of Act 30 of 2005. Therefore, even the partition deed dated 27.05.2004 is not perverse. In any event, the Plaintiff did not challenge the partition deed dated 27.05.2004 and therefore also, the relief of partition sought for by her is not maintainable.

19. As per the reported decision of the Hon'ble Supreme Court in the case of *Veenitha Sharma vs. Rakesh Sharma and others [(2020) 9 SCC 1]* Hindu woman is entitled to share in the property equal to that of male member. Here in this case, the facts before the trial Court is different. The father is alleged to have denied the share of the daughter by entering into a partition deed with brother of the Plaintiff and also with the half-brother of the Plaintiff – the son born through the second wife thereby denying the share to the Plaintiff. The father as Defendant No.1 in the written statement had claimed that he had settled his share in favour of the Plaintiff even at the time of her marriage during 1988. Therefore, the trial Judge on appreciation of evidence rightly dismissed the suit for partition filed by the daughter of the first Defendant. However, it is made clear that the Plaintiff is entitled to seek relief for possession of the property in the light of Ex.B-2 settlement deed executed by the father of the Plaintiff /first Defendant in her favour. If she had not been granted possession of the property, she can seek to enforce Ex.B-2, Settlement



A.S.No.390 of 2015

Deed in her favour through appropriate proceedings in a manner known to law.

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In the result, the **Appeal Suit is dismissed.** The judgment and decree dated 25.11.2014 in O.S. No. 26 of 2011 on the file of the Principal District Judge, Dharmapuri, is confirmed. No costs.

.04.2024

cda

Index : Yes/No

Speaking/Non-speaking order

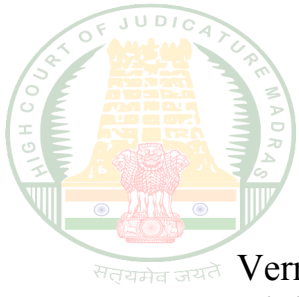
Neutral Citation : Yes/No

To

1. The Principal District Judge,
Dharmapuri.

2. The Section Officer,

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A.S.No.390 of 2015

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A.S.No.390 of 2015

SATHI KUMAR SUKUMARA KURUP, J

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Judgment made in
A.S.No.390 of 2015

29.04.2024