



SA.No.1012 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1012 of 2008
and M.P.No.1 of 2008

Meenakshi

... Appellant

- Vs -

1.Kannammal (died)

2.Loganathan

3.Velumani

... Respondents

(Respondents 2 and 3 were brought on record as LR's of
sole respondent vide order dated 17.04.2023 in
C.M.P.Nos.10891, 10887, 10882 & 10885 of 2021)

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.11.2007 in A.S.No.49 of 2007 passed by the learned Principal Sub Judge, Gobichettipalayam, reversing the judgment and decree dated 16.02.2007 in O.S.No.506 of 2004 passed by the learned District Munsif, Gobichettipalayam.

For appellant : Ms.A.Nilaphar
for Mrs.R.Meenal

For respondents 2 & 3 : Mr.P.Dinesh Kumar
for Ms.P.T.Ramadevi



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J U D G M E N T

The plaintiff is the appellant herein and the defendant is the respondent herein. After the demise of the sole respondent, her legal heirs were impleaded as the respondents 2 and 3.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to the instant Second Appeal, are as follows:

3. The suit property originally belonged to one Maruthachalam, who had two wives. The first wife is the plaintiff and the second wife is the defendant. According to the plaintiff, on 10.07.1990, the said Maruthachalam executed a Will giving life estate to the plaintiff and the defendant. As per the Will, the plaintiff and the defendant are equally entitled to reside in the suit property till their lifetime. It was the further submission of the plaintiff that by virtue of the judgment in O.S.No.385 of 1991, she is entitled to have life interest over the suit property. It was the further contention of the plaintiff that when her possession was disturbed, she instituted another suit in



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O.S.No.245 of 1995, wherein, she was directed to file the instant suit. Hence, she has come up with the suit for partition to divide the suit property into two equal shares and allot one such share in her favour.

4. The said suit was resisted by the defendant by contending that the Will executed by Maruthachalam was held to be valid and binding in O.S.No.385 of 1991. Further, the defendant had admitted about the filing of the suits in O.S.No.385 of 1991 and O.S.No.245 of 1995 and she had also pleaded that the suits are bad for non-joinder of necessary parties and also the suit has not been properly valued. Hence, she prayed to dismiss the suit.

5. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as P.W.1 and two documents were marked as Exs.A1 and A2. On behalf of the defendant, the defendant was examined as D.W.1 and one more witness *viz.*, Kandasamy was examined as D.W.2 and two documents were marked as Exs.B1 and B2.

6. The Trial Court, after having considered the oral and



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documentary evidence, has found that the suit has been properly valued and decreed the suit as prayed for.

7. Aggrieved by the same, the defendant preferred an appeal. The First Appellate Court, on re-appreciation of the evidence, has found that the plaintiff has not proved her right over the suit property and ultimately, found that she is not entitled to seek a relief for partition. The First Appellate Court has also found that the valuation of the suit is perfectly in order and ultimately, allowed the appeal and thereby, dismissed the suit. Not satisfied with the judgment of the First Appellate Court, the plaintiff has approached this Court by way of this Second Appeal.

8. This Court, at the time of admission on 06.08.2010, formulated the following substantial questions of law:

“1. Whether the law the lower appellate court was right in dismissin the suit when the respondent had admitted to the appellant's right of residence in the suit property in the prior suits?

2. Whether in law the lower appellate court was right



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in failing to see that the non-examination of the respondent was fatal to her defence?”

9. The learned counsel appearing on behalf of the appellant/plaintiff would submit that the First Appellate Court ought not to have held that the Will dated 10.07.1990 has not been proved, when the defendant has admitted the truth and validity of the said Will. It is also contended by the learned counsel for the appellant/plaintiff that in O.S.No.385 of 1991, the right of residence of the plaintiff was upheld.

10. The learned counsel for the appellant/plaintiff would further vehemently contend that the instant suit for partition is maintainable in view of the finding recorded in O.S.No.245 of 1995. Apart from the above contention, first time, though, neither pleaded in the plaint nor raised in the grounds of appeal, the learned counsel for the appellant would submit that the life interest given to the plaintiff through the Will would enlarge into an absolute right. Therefore, contended that on that score also, the plaintiff is entitled to have partition. In support of his contention, the learned counsel relied upon the following rulings:



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1. ***Jupudy Pardha Sarathy vs. Pentapati Rama Krishna and others*** reported in (2016) 2 SCC 56;
2. ***Ramadhar Shrivasa vs. Bhagwandas*** reported in (2005) 13 SCC 1.

11. Per contra, the learned counsel for the respondents/legal heirs of the defendant would contend that, with regard to Section 14(1) of the Hindu Succession Act, 1956, there is no such pleading or grounds of appeal and hence, such arguments could not be made first time at the second appeal stage. The learned counsel would further contend that even otherwise, such contention is fallacious in view of conferring of life interest by virtue of testamentary succession. The learned counsel would also contend that though the plaintiff has come forward with the suit based upon the Will, she has not at all submitted such Will before the Trial Court. Therefore, when such material documents have not been filed before the Court, there is no ground to interfere with the judgment of the First Appellate Court. Hence prayed to dismiss this appeal.

12. I have given my anxious consideration to the submissions made



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on both sides.

13. The main contention put forth by the learned counsel for the appellant/plaintiff is based upon the Will dated 10.7.1990. It is the contention of the plaintiff that by virtue of the Will dated 10.7.1990, her life interest has been established. It is the further contention of the plaintiff that such life interest bloomed into an absolute right. But curiously, the plaintiff did not file the Will before this court. However, the learned counsel would submit that such Will has been proved in the previous proceedings. In this regard, the learned counsel for the appellant/plaintiff relied upon Ex.A1 and Ex.A2. On perusal of Exs.A1 and A2, this Court could not find any substance and semblance about the Will dated 10.7.1990.

14. Notwithstanding such peculiar circumstances, the learned counsel by relying upon Section 14(1) of the Hindu Succession Act, 1956, would submit that the right of life interest has enlarged into an absolute right.



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15. In this regard, the learned counsel relied upon the ***Jupudy Pardha Sarathy***'s case (cited supra). But, the above ruling deals about Section 14(1) of the Hindu Succession Act, 1956, to follow the ratio of the above judgement, apparently, there are no pleadings in the plaint as well as there is no evidence available before this Court. According to the plaint pleading, she only stated that she got life interest over the suit property. As a matter of fact, nowhere in the plaint, she has stated about the enlargement of such right into an absolute right. Apart from that, even to see the interpretation of such Will, neither such Will has been produced before the Court nor steps have been taken to prove such Will by examining one attestor as contemplated u/s 68 of Indian Evidence Act. Therefore, in such circumstances, the reliance of above ruling cannot be made applicable to the present facts of the case.

16. However, the learned counsel for the respondents/defendant would rely upon the case of ***Ranvir Dewan vs. Rashmi Khanna and another*** reported in ***(2018) 12 SCC 1***. The above precedent relied upon the earlier Supreme Court Judgment reported in ***(2006) 8 SCC 75 [Sadhu Singh vs Gurdwara Sahib Narike]*** wherein it was held that invocation of Section



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14(1) of the Hindu Succession Act, 1956, in the case of testamentary disposition, taking effect after the Hindu Succession Act would make Sections 30 and 14(2) of Hindu Succession Act, become redundant or otiose. Here, no Will has been produced before this Court. Even according to the stand taken by the plaintiff, only through the Will, she has got life interest, whereas, such Will has not been produced and that even the said testamentary succession will not come within the scope of Section 14(1) of the Hindu Succession Act, 1956, for enlargement of her right to become absolute.

17. Therefore, this Court is of the firm view that there is no ground to interfere with the ultimate finding of the First Appellate Court in dismissing the suit. But, this Court arrived such finding on a different reason. In view of the above discussion all the substantial questions of law are answered in favour of respondents. Further, this Court is of the firm view that there are no merits in the instant Second Appeal.

18. In the result, this second appeal is dismissed by confirming the judgment and decree of the First Appellate Court. Consequently, connected



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miscellaneous petition is closed. There shall be no order as to costs.

17.04.2024

Internet: Yes/No

Index : yes/No

Speaking Order/Non-speaking order

Neutral Citation Case: Yes/No

apd

To

1. The Principal Sub Judge, Gobichettipalayam.
2. The District Munsif, Gobichettipalayam.
3. The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN, J

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