



SA. No.115 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. Nos. 115 of 2007
& MP Nos. 1 & 2 of 2008, 1 and 2 of 2010

P.Savithir

... Appellant

Vs.

1.P.Nataraj

2.P.Thangaraj

3.P.Sarojini (died)

R4 deleted vide orders of court dated 23.07.2015 made in MP.1/15 in SA No. 115 of 2007

4.P.Puspa

5.P.Kokila (Minor) Rep. by P.Pushpa (Mother)

D/o late P.Palanisamy

R4 and R5 brought on record as lrs of the deceased R3 order of court dated 22.12.2011 made in MP.1/11 in S.A No. 115 of 2007.

...Respondents

PRAYER : This second appeal has been filed under Section 100 of CPC to allow this second appeal set aside the judgment and decree of the Principal District Court, Coimbatore, in A.S No. 99 of 2005 dated 25th November 2005 partly modified the judgment and decree of First Additional Sub



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Court, Coimbatore, in OS No. 313 of 2000 dated 31.03.2005.

For Appellant : Mr.P.Saravana Sowmiyan

For R1 & R2 : Mr. C.Prakasam

For R5 : Mr.G.Sugadar Rajaguru

R4 deleted

R3 died

JUDGMENT

The appellant herein filed the suit in OS No. 313 of 2000, for relief of partition claiming 1/4 share in the entire suit property and stating that entire suit property is belongs to Ponnusamy @ Ponnann Chettiar, who died intestate on 07.11.1993 leaving behind the plaintiff, defendants and one Palanisamy as legal heirs. Thereafter, the said Palanisamy died leaving behind Pushpa and his daughter Gokila as his legal heirs and the said legal heirs filed the suit in OS No. 278 of 1997 before the District Munsif Court, Mettupalayam for partition, which was entered into compromise between the then parties namely Pushpa and the present plaintiff and the defendants. According to the said compromise decree, the suit properties were allotted to the plaintiff and the defendants and enjoyed by them jointly. The



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defendants refused to part with due share of the plaintiff in the suit properties, in which, the plaintiff is entitled to 1/4 share as per the said compromise decree. Hence, the plaintiff claiming 1/4 share in the suit properties. Hence, the case.

2. The defendants claiming that item No.3 of the suit properties was allotted to the deceased Ponnusamy @ Ponnai Chettiar as per the partition deed dated 11.05.1938. The other items of the suit properties were purchased from the nucleus of joint family properties through registered sale deed dated 09.04.1954, 16.07.1975, 04.06.1982, 09.02.1984. A sum of Rs.90,000/- was given to the plaintiff/Pushpa in the suit in OS No. 278 of 1996 in lieu of her relinquishment of her right in the suit properties and the compromise decree was passed accordingly, and the suit properties were allotted to the plaintiff and the defendants commonly, without specifying the shares. Therefore, the plaintiff is not entitled to seek 1/4 share in the ancestral properties.

3. Considering the oral and documentary evidence the Trial Court held that as per compromise held between the plaintiff and the defendants/ legal heirs of the Ponnusamy in OS No. 278 of 1996 all the properties of the family was allotted to the plaintiff and the defendants (totally four persons)



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and there is no mentioning about the nature of the property. As per the compromise decree, A and B schedule properties were totally allotted to the four defendants in suit property. Therefore, the plaintiff is being the one of the signatory of the said compromise, who is entitle to have equal share along with other defendants. Accordingly, the plaintiff is entitle for 1/4 share in the suit property based upon the compromise decree and granted 1/4 share in the suit property. Challenging the said findings, the defendants filed the appeal in AS No. 99 of 2005 before the first appellate Court, which independently analysed the oral and documentary evidence held that findings given by the Trial Court is not acceptable one for the reason that the terms of compromise decree in respect of A and B scheduled properties, in A and E do not spell out any share that was specifically allotted to the plaintiff that is being the position the plaintiff's claim of 1/4 share in the suit properties cannot be acceptable as per the Section 6 of Hindu Succession Act, as properties are jointly family property of the deceased Ponnusamy. Accordingly, the Court granted 1/12 share in the suit properties to the plaintiff. Thereby, modified the findings of the Trial Court.



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4. The learned counsel for the appellant/plaintiff submitted that the first appellate Court has failed to appreciate the compromise decree entered between the parties which was recorded by the Court below in OS No. 278 of 1996 and as on date, compromise decree is in force but it was erroneously interpreted by the first appellate Court that the suit properties are joint family properties in which the plaintiff is entitle only 1/12 share in the suit property, which is liable to be set aside.

5. This Court admitted the appeal with the following substantial questions of law:

i. Whether the Courts below were right in concluding the nature of properties contrary to Ex.A2 which is a compromise document in O.S No. 278 of 1996 dated 17.06.1999 wherein all the parties namely plaintiff and defendants, are signatories of family arrangement?

ii. Whether the Courts below erred in concluding that all the suit properties are ancestral properties disregarding section 93 of Evidence Act 1892 and stating that no oral evidence or statement should be admitted contrary to the express terms of contract in this case, when the nature of the suit properties are recorded in compromise decree passed in O.S 278 of 1996 dated 17.06.1999 marked as Ex.A2 which was ignored as to the



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ancestral or self acquired suit properties ?

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iii. Whether the first appellate Court was right in construing the compromise decree in O.S No. 278 of 1996 dated 17.06.1999, Ex.A2, as not confirming 1/4th share when the recitals and terms show that all the properties commonly belonged to all four parties namely plaintiff and defendants in the present suit O.S No. 313 of 2000 with exclusive rights by reversing the conclusion of the trial court?

iv. Whether the lower appellate Court failed to apply Section 8 of Hindu Succession Act, 1956, with reference to the self acquired properties of plaintiff's father as per the compromise decree dated 17.06.1999, but applied section 6 of the Hindu Succession Act for the self acquired properties in schedule 'B' which are same properties described as items 3 to 7 in the present suit O.S No. 313/2000?

6. Further the learned counsel for the appellant submitted that there was compromise entered between the plaintiff and defendants, wherein, the plaintiff and the defendants 1 and 3 were signed, all the properties were joint family properties. Accordingly, all the four signatories, plaintiff and his mother and two brothers equally entitle for 1/4 share in the suit properties,



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hence, the plaintiff rightly approached the Court claiming 1/4 share in the suit properties but the first appellate Court erroneously held that as per the Section 6 of Hindu Succession Act, the plaintiff is entitle for only 1/12 share by ignoring the compromise decree as such is erroneous and liable to be set aside.

7. By way of reply, the learned counsel for the respondents/defendants submitted that though there was a compromise, the nature of the properties as well as share of the plaintiff was not specifically mentioned therein. The defendants 2 and 3 are entitle to claim that properties as ancestral properties. Accordingly, first appellate court rightly applied the Section 5 of Hindu Succession Act. Hence, he prays to dismiss this petition.

8. The parties admitted their relationship. The plaintiff is being the daughter of the first defendant, sister of the second and third defendants filed the suit for partition claiming 1/4 share in the suit property based on the compromise decree passed in O.S No. 278 of 1996. Admittedly, the plaintiff and the defendants are legal heirs of Ponnusamy, who died intestate. The Palanisamy is deceased son of Ponnusamy, whose legal heirs



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filed OS No. 278 of 1996 claiming share in family properties against defendants/ wife and two sons of Ponnusamy, in that suit there was compromise entered between the parties. Accordingly, legal heirs of the predeceased Palanisamy received amount and thereby all the legal heirs including present plaintiff and two sons/defendants 2 and 3, wife of Ponnusamy/ first defendant equally entitle to common share in the properties. Thereafter, the plaintiff filed the suit for partition claiming 1/4 share based on the compromise decree. Even in the said compromise, nature of the property was not denoted, as some of the properties were purchased by Ponnusamy and some are ancestral properties were allotted to him by way of partition, summing up all the properties they denoted as A& B in compromise decree. All were denoted as common properties in suit OS No. 278 of 1996 therefore the defendants signed in the compromise decree, hence, they have no right to challenge the same and some of the properties are ancestral. As rightly pointed by the counsel for the plaintiff, the said compromise decree has not been set side by the any Court of law. As per the recitals of the compromise, all the properties are common property. Therefore, having signed in the said compromise, now the plaintiff and defendants 2 and 3 are not entitle to challenge the same. But the first



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appellate Court held that the suit properties are ancestral in nature. Even assuming that it is a ancestral properties the plaintiff is being the daughter of the Ponnusamy, is entitle for equal share in the suit properties. Therefore, the findings given by the first appellate Court is liable to be set aside. Accordingly, questions of law are answered.

9. During the pendency of the appeal the first defendant/wife of Ponnusamy died intestate leaving behind the plaintiff and the defendants 2 and 3 as legal heirs. Therefore, first defendant share is devolves upon the plaintiff and the defendants 2 and 3. Accordingly, plaintiff/appellant is entitle for 5/16 share, respondents 1 and 2 entitle for each 5/16 share and predeceased son is entitle for 1/16 share in the suit properties. Accordingly, share of the parties are modified and preliminary decree is passed.

10. In the result, the second appeal is allowed. No Cost. Consequentially, pending petition(s), if any, is/are closed.

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T.V.THAMILSELVI,J.

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To

1.The Section Officer,
V.R Section.

2. The First Additional Sub Court, Coimbatore

3. The Principal District Court, Coimbatore

A. Nos. 115 of 2007
& MP Nos. 1 & 2 of 2008, 1 and 2 of 2010

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