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S.A.No.209 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.03.2024	Judgment Pronounced on 15.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.209 of 2018
and C.M.P.No.5383 of 2018

1.Karuppusamy

2.Valliammai

..Appellants

Vs.

1.Sellammal

2.Jayaprakash

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 07.08.2015 made in A.S.No.24 of 2014 on the file of the III Additional District & Sessions Court, Cuddalore, confirming the judgment and decree dated 07.01.2014 passed in O.S.No.6 of 2010 on the file of the Additional Sub Court, Vridhachalam.

For Appellants : Mr.T.Sezhian

For Respondents

For R1 : Mr.R.Muralidharan

For R2 : Given up



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 07.08.2015 made in A.S.No.24 of 2014 on the file of the III Additional District & Sessions Court, Cuddalore, confirming the judgment and decree dated 07.01.2014 passed in O.S.No.6 of 2010 on the file of the Additional Sub Court, Vridhachalam.

2.The 1st and 2nd defendants, in a suit for partition, are the appellants herein, having suffered concurrently before the Courts below.

3.The parties are described as per their litigating status before the Trial Court.

4.The plaintiff is the sister of the defendants. The suit properties, according to the plaintiff, belonged to the father Ganapathy Padayatchi, who died intestate and being a daughter, the plaintiff claimed 1/3rd share in the suit properties. The plaintiff also stated that the 1st defendant, without having any separate right in the suit properties, in order to defeat the plaintiff's right and colluding with the 2nd defendant, executed a Settlement Deed in favour



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of the 3rd defendant, his son. The plaintiff caused a lawyer's notice on 14.10.2009, to which, the 1st defendant sent a reply on 02.12.2009, stating that the plaintiff's share has stood ousted and she was not entitled to any claim for partition. Therefore, the plaintiff constrained to institute the suit.

5.The 1st defendant filed a written statement stating that the plaintiff was married even in the year 1967, well before the Tamil Nadu Act I of 1990 came into force and therefore, she was not entitled to any share in the joint family properties. The 1st defendant also stated that by the plaintiff's own contention the plaintiff's right was ousted and the defendants have acquired title.

6.The 1st defendant also filed an additional written statement where it was contended that the properties are ancestral properties of the father and therefore, the plaintiff was not entitled to any right, especially, after the Settlement Deed executed by the 1st defendant in favour of the 3rd defendant, his son, on 25.06.2007.



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7.The Trial Court decreed the suit and granted a preliminary decree from 1/3rd share in favour of the plaintiff. The defendants 1 and 2 preferred a First Appeal and the First Appellate Court also confirmed the findings of the Trial Court and dismissed the appeal, as against which, the present Second Appeal has been preferred by the defendants 1 and 2.

8.The above Second Appeal was admitted on 19.03.2018 on the three following substantial questions of law:

a.Whether in law that the Courts are right in failing to see that the first appellant had excluded the first respondent from the suit properties and that she had been ousted of her rights in the properties?

b.Whether in law that the Courts are right in failing to see that neither the Hindu Succession Act as amended by the Tamil Nadu Act I of 1990 nor the amendment to the Central Act would entitle an equal 1/3rd share to the first respondent?

c.Whether in law that the Courts are right in overlooking that if at all the first respondent would get only a 1/6th share, (1/3rd share of her father's 1/2 share)?

9.I have heard Mr.T.Sezhian, learned counsel for the appellants and



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Mr.R.Muralidharan, learned counsel for the 1st respondent.

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10.Mr.T.Sezhian, learned counsel for the appellants would submit that the Court below have concurrently erred in granting a decree as prayed for when admittedly the plaintiff was married prior to the coming into force of the Tamil Nadu Act I of 1990. Further, according to him, the father died even in the year 1990, the plaintiff never sought to make a claim until the 1st defendant executed a Settlement Deed in favour of the 3rd defendant on 25.06.2007. Therefore, the plaintiff was disentitled to claim the relief of partition, having acquiesced herself of the absolute enjoyment of the suit properties by the 1st defendant.

11.The learned counsel would also take me through the oral evidence of P.W.1, where P.W.1 has admitted to the knowledge of the execution of Settlement Deed even on the date of Settlement Deed in June 2007. Therefore, the learned counsel for the appellant contended that having fully acquiesced in the exercise of absolute right and enjoyment by the 1st defendant, the suit for partition was merely speculative and liable to be dismissed.

12.Per contra, Mr.R.Muralidharan, learned counsel for the 1st



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respondent would state that the Courts below have rightly assessed the oral and documentary evidence and granted a preliminary decree in favour of the plaintiff. He would also place reliance on the decision of the Hon'ble Supreme Court in *Prakash & Others Vs. Phulavati & Others*, reported in **2016-2-L.W. 865** regarding the opening of succession and entitlement of the daughter to be treated as coparcener and also dealing with the effect of the Central Act being amended by Act No.39 of 2005. The counsel for the 1st respondent therefore prayed for dismissal of the Second Appeal.

13.I have carefully considered the rival submissions advanced by the learned counsel on either side. The relationship between the parties is admitted. The only legal contention, that is canvassed in the Second Appeal, is that the plaintiff was married prior to the Tamil Nadu Amendment Act, 1990 coming into force and therefore, she was not entitled to any right in the ancestral properties as she would not become a coparcener. That apart, it is contended that the fact that the plaintiff was aware of the Settlement Deed in 2007 itself and did not choose to approach the Court until 2010, would surely establish that the plaintiff had acquiesced herself to the absolute enjoyment of the suit property to her entitlements and therefore, the claim for



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partition was not maintainable.

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14.With regard to the first submission, in view of the larger Bench dictum of the Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma* reported in *(2020) 9 SCC 1*, the legal position is now settled that either after the death of the father or when the father is alive, a daughter, at birth, would become entitled to be treated as a coparcener in ancestral properties. Therefore, the Courts below have not committed any error in this regard and the findings of the Courts below do not warrant any interference.

15.With regard to the admission of the plaintiff during the course of cross-examination that she was aware of the Settlement Deed being executed by her brother/nephew even at the time of execution of Settlement Deed in June 2007, I do not find that mere knowledge of the execution of the Settlement Deed in any way takes away the right of the plaintiff which has stood vested, even on her birth. In any event, the suit has been filed within a period of three years from the date of the said Settlement Deed and being a suit for partition, I do not find that the admission of the plaintiff regarding the Settlement Deed standing in the way of her claiming partition of the suit



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properties. I do not find any material irregularity or perversity in the findings arrived at by the Courts below and the substantial questions of law are answered against the appellants.

16.In the result, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The III Additional District & Sessions Court, Cuddalore
- 2.The Additional Sub Court, Vridhachalam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in

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and C.M.P.No.5383 of 2018

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