



S.A.No.1155 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1155 of 2013

and

M.P.No.1 of 2013

1.Duraisamy @ Rakiyana Gounder

2.Subramani @ Appachiappan

3.Moorthy @ Karuppanasamy

.. Appellants

Vs.

1.V.Yasodha

2.V.M.Gopalakrishnan

3.Vempusamy

4.Periyammal (Died)

5.Pongiyammal (Died)

6.Lakshmi

7.Palanisamy

.. Respondents



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Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 11.02.2013 made in A.S.No.100 of 2012 on the file of the District Judge, Erode, confirming the judgment and decree, dated 06.06.2012 made in O.S.No.159 of 2012 on the file of the Principal Subordinate Judge, Erode.

For Appellants : Mr.R.Babu

For Respondents : M/s.S.Yogalakshmi
for Mr.M.Guruprasad

JUDGMENT

The defendants 4 to 6 in O.S.No.159 of 2002 on the file of the learned Principal Subordinate Judge at Erode are the appellants before me. They lost before the learned Principal District Judge at Erode in A.S.No.100 of 2012 and against the concurrent finding, the present Second Appeal has been presented before this Court.

2. O.S.No.159 of 2002 is a suit for partition. There is no dispute that the ancestors of the party was one Chinnappa Gounder. Chinnappa Gounder had two daughters and one son namely, Periyammal, Pongiyammal and Vempusamy. Periyammal had one daughter by name Samiyathal and her legal representatives are Subramani @ Appachiappan and Moorthy @ Karuppanasamy. Pongiyammal had one daughter and one son namely,



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Lakshmi and Palanisamy. Vempusamy had one daughter by name V.Yasodha, who is the 1st plaintiff and one son by name V.M.Gopalakrishnan, who is the 2nd plaintiff.

3. Insofar as the Item Nos.2 to 6 are concerned, the learned counsel for the appellants has no issues. The entire dispute is only with respect to the 1st item of the suit schedule mentioned property. This property has been cursed one litigation after another. The first of the litigation started when Chinnappa Gounder alienated the property by way of a sale deed, dated 09.10.1975 in favour of Rakkiyana Gounder, who is the husband of Samiyathal and the grandson-in-law of Chinnappa Gounder and Nallappa Gounder, who is the son-in-law of Chinnappa Gounder and the husband of Pongiyammal. This constrained Vempusamy to institute a suit in O.S.No.899 of 1975 on the file of the District Munsif Court at Erode.

4. This suit was presented for declaration of title and to avoid the aforesaid sale deed executed by Chinnappa Gounder in favour of his 2nd son-in-law and grandson-in-law. This suit was transferred and renumbered as O.S.No.392 of 1977 on the file of the learned Subordinate Judge at



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Erode. The transfer was constrained because Chinnappa Gounder filed another suit in O.S.No.286 of 1976 for the purpose of partition and for separate possession.

5. Both the suits were tried together by the learned Subordinate Judge. He rendered a common judgment, whereunder, the sale, dated 09.10.1975 was made by Chinnappa Gounder in favour of his son-in-law and grandson-in-law were set aside and were held to be share and nominal and not conferring any title to the respective parties. The Court also came to the conclusion that Vempusamy Gounder is entitled for a partition of half share of the properties.

6. In this proceeding, an appeal was preferred against the said decrees but it was not prosecuted. Therefore, Vempusamy Gounder initiated final decree proceedings. Pending final decree proceedings, wisdom dawned on Chinnappa Gounder and he settled his undivided half share in favour of his son. Thereby, Vempusamy Gounder became the absolute owner of the property.



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7. It is pertinent to point out in this suit that the sisters were also the parties. If this concluded the title of Vempusamy Gounder as the owner of the property, Periyammal did not keep quiet. She went fishing in troubled water. She instituted an other suit for partition in O.S.No.1463 of 1992 on the file of the District Munsif Court at Erode. Curiously, she did not make V.Yasodha or V.M.Gopalakrishnan as the parties to the suit. This suit ended in a *ex parte* preliminary decree. An application to set aside the decree was taken out by Vempusamy and it was dismissed. The revision confirmed and the Special Leave Petition, therefrom, was also dismissed.

8. On account of the proceedings initiated in 1992, Periyammal was emboldened to argue two points before the Trial Court :

(1) This was the property, which she inherited from her husband whose father had purchased the property in the year 1924.

(2) The suit in O.S.No.1463 of 1992 operates as *res judicata*.

9. The Trial Court as well as the Lower Appellate Court rejected her plea and against the concurrent finding, the present Second Appeal.



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10. This Court did not admit this Second Appeal but ordered notice regarding admission on 13.11.2013.

11. Heard Mr.R.Babu, learned counsel appearing for the appellants and M/s.S.Yogalakshmi for Mr.M.Guruprasad, learned counsel appearing for the respondents.

12. Mr.R.Babu would argue that Periyammal had inherited the properties from her husband and therefore, the question of partition of those properties will not arise. He would very strongly rely upon Ex.B63, a sale deed, dated 21.05.1924 for the purpose of stating that Periyammal's father-in-law had purchased the property and therefore, it cannot be a subject matter of partition with respect to Chinnappa Gounder's family.

13. It is necessary to point out that on 14.05.1955, the property that Periyammal got from her husband Ramasamy Gounder was alienated in favour of Chinnappa Gounder under Ex.A42, by which, Chinnappa Gounder became the owner of the property. That is to say, the property which came



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to the hands of Periyammal and Samiyathal from the father of Ramasamy Gounder in 1924, was alienated in 1955. The property which came to the hands of Ramasamy Gounder stood alienated in favour of Chinnappa Gounder. Hence, the 1st objection of the learned counsel for the appellants does not stand for a moment's scrutiny.

14. Insofar as the plea that Vempusamy Gounder is not the owner of the property is concerned, it is pertinent to refer to two proceedings that had been initiated namely, O.S.Nos.392 of 1977 and 286 of 1976 on the file of the learned Subordinate Judge at Erode. The learned Subordinate Judge by a common judgment in both the suits under Ex.A41 has held that the suit schedule mentioned properties therein, which includes the suit schedule mentioned properties herein, are the common properties belonging to the family of Chinnappa Gounder and Vempusamy Gounder. Periyammal, Pongiyammal, Vempusamy Gounder and Samiyathal were all the parties to the suit and hence, the decrees passed therein is binding on them.

15. Though the decree was passed against Rakkiyana Gounder and Nallappa Gounder setting aside the sale and declaring that the deed, dated



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09.10.1975, is nominal and not binding on Vempusamy Gounder, none of them filed an appeal. It was only Chinnappa Gounder, who filed an appeal and which, he subsequently withdrew. After withdrawal, he settled the property in favour of his son and thereby, his son became the absolute owner of the properties. On account of these facts, the family consisting of Vempusamy, V.Yasodha and V.M.Gopalakrishnan became the absolute owners of Item No.1 of suit schedule mentioned property.

16. It is here that Mr.R.Babu would rely upon the judgment and decree in O.S.No.1463 of 1992 to state that Periyammal had already got a preliminary decree and therefore, this suit for partition is not maintainable. In this suit for partition neither V.Yasodha nor V.M.Gopalakrishnan were made parties. V.Yasodha by virtue of being unmarried in the year 1989 became a Coparcener in the family of Vempusamy and Gopalakrishnan. Therefore, she was entitled to be impleaded as a party to the suit. Having obtained the empty decree, the 2nd defendant cannot rely upon the same. Had the decree been passed after impleading Yasodha and Gopalakrishnan, then, the situation would have been different and the present suit for partition would have been barred by principles of *res judicata*.



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17. However, none of them having been made parties to the suit, the said decree will not operate and cannot operate as *res judicata*. The fundamental principle of *res judicata* is all the parties must have been heard and the issues must have been substantially decided between them. The very fact that V.Yasodha and V.M.Gopalakrishnan were not the parties to the suit, leads me to conclude the suit in O.S.No.1463 of 1992 is of no value for Periyammal.

18. By virtue of the judgment dated 14.07.1978 in O.S.Nos.286 of 1976 and 392 of 1977 and by virtue of the fact that Chinnasamy had executed a settlement deed transferring his undivided half share in favour of Vempusamy, Vempusamy become the owner of the property. Then, properties being ancestral in nature, he has to share the same with his children. Consequently, the judgments of the Courts below granting a decree for partition of 1/3rd share in favour of the present plaintiffs V.Yasodha and V.M.Gopalakrishnan cannot be found fault with.



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19. In fine, the Second Appeal is not admitted. It is dismissed. The judgment and decree of the Court of the learned Principal District Judge at Erode in A.S.No.100 of 2012, dated 11.02.2013 in confirming the judgment and decree of the learned Principal Subordinate Judge at Erode in O.S.No.159 of 2002, dated 06.06.2012 is confirmed. Consequently, connected Miscellaneous Petition is closed.

20. Considering the fact that the parties are close relatives, I am not inclined to impose any costs.

26.02.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

1.The District Judge,
Erode

2.The Principal Subordinate Judge,
Erode



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