



S.A.No.505 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.505 of 2015

S.Kasthuri

... Appellant

Vs.

1.S.Varadharajan

2.S.Narayanan

3.Dhanalakshmi

4.S.Srinivasan

5.S.Muthu

6.S.Ranjith

.. Respondents

[R5 & R6 are impleaded vide order
dt. 11.8.2022 made in CMP.No.13188/2022]

PRAYER: Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 09.07.2014 passed in A.S.No.376 of 2013 on the file of the XVIII Additional City Civil Court, Chennai whereby reversing the judgment and decree dated 02.07.2013 passed in O.S.No.6 of 2011 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Parthasarathy

For R1 and R2 : Mr.M.Krishnamurthy

For R3 : Mr.I.David Singh



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For R4 : No appearance

For R5 & R6 : Notice served through paper publication

J U D G M E N T

The present second appeal arises out of the judgment and decree of the Court of the XVIII Additional City Civil Judge, Chennai in A.S.No.376 of 2013 dated 09.07.2014 reversing the judgement and decree of the Court of the XVI Assistant City Civil Judge, Chennai in O.S.No.6 of 2011 dated 02.07.2013.

2. The plaintiff is the appellant before me. For the sake of convenience, the parties are referred to as per their rank in the suit.

3. It is the case of the plaintiff that she and the defendants 1 to 4 were born to Sundarajulu and Susheelamma. Sundarajulu and Susheelamma had totally 6 children. They are:

- (i) Kasthuri (Plaintiff)
- (ii) Dhanalakshmi (3rd respondent/defendant)
- (iii) S.Varadharajan (1st respondent/defendant)
- (iv) S.Srinivasan (4th respondent/defendant)
- (v) S.Narayanan (2nd respondent/defendant)
- (vi) Saraswathi



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3. According to the plaintiff, the suit property was purchased by her mother on 29.09.1983 from one Kumaraswamy. Susheelamma died on 06.06.1993 and the father Sundarajulu died on 31.12.1994 leaving behind their children to be the legal representatives. Since, Tmt.Susheelamma died intestate and therefore she is entitled to 1/5th share.

4. Defendants 2 to 4 entered appearance through counsel on service of summon and they pleaded that the 2nd defendant was working as a coolie with the Southern Railways from the age of 12 and that he had earned money and performed the marriage of his sisters. According to him, Sundarajulu was jobless and it was the 2nd defendant who out of his own income purchased the property. He would state that the mother had executed a registered power of attorney in favour of the 2nd defendant and also had executed a stamped receipt conveying the title only to the sons and not to the daughters.

5. On these pleadings, the parties went to trial. The learned trial Judge framed the following issues for consideration:



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1. Whether the plaintiff is entitled to get 1/5th share in the suit schedule property?
2. Whether the plaintiff is entitled to get permanent injunction against the defendants?
3. To what relief?

4. On the side of the plaintiff, she examined herself as P.W.1 and marked Exs.A.1 to A9. On the side of the defendants, the 2nd defendant examined himself as D.W1 and marked Exs.B.1 & B.2. The other defendants viz., 1st and 3rd defendants remained *exparte*. On consideration of the evidence let in by the parties, the learned trial Judge granted the decree for partition.

5. Aggrieved by the same, a regular appeal was preferred before the learned XVIII Additional City Civil Judge at Chennai, in and by, on his judgment dated 09.07.2014 he allowed the appeal and dismissed the suit. The ground on which the appeal was allowed was that the plaintiff was married in the year 1978 but the Hindu Succession Act came into force in 1989 and therefore she not being a coparcener is not entitled for a share. Against this reversing judgment, the present second appeal has come up before this Court.



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6. On 03.07.2015 this Court admitted the case on the following substantial questions of law:

- (i) Whether the Power of Attorney is valid or not after death of the execution?
- (ii) Whether the property was purchased by the respondents in favour of their mother without any proof is valid or not?
- (iii) Whether oral evidence of the respondents has to be taken into account to purchase the property out of their own income without any proof is valid or not?

7. I heard Mr.S.Parthasarathy for the appellant, Mr.M.Krishnamurthy for respondents 1 and 2 and Mr.I.David Singh for the 3rd respondent.

8. The relationship between the parties is not in dispute. The appellant and the respondents 1 to 4 are siblings. Respondents 5 and 6 are the children born to the deceased sister Saraswathi and one, Subramani. Further, it is not in dispute that the property stands in the name of the mother Susheelamma and that Susheelamma had died intestate.



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9. According to Mr.M.Krishnamurthy, she had given power of attorney in favour of her son Varadharajan and also had executed a stamped receipt conveying the title only to the sons and not to the daughters. A power of attorney cannot be kept alive after the death of the principal. Therefore the power of attorney does not help 2nd and 4th defendants. Insofar as the receipt is concerned, it is an unregistered document and therefore it cannot confer title.

10. The property belonged to Susheelamma, on her death all her legal heirs will be entitled to a share. As per Section 15 of the Hindu Succession Act where a Hindu female dies, the property has to be divided equally among all the surviving legal heirs. Therefore the plaintiff, defendants 1 to 4 and respondents 5 and 6 together, each will be entitled to a share of 1/6th share in the suit schedule mentioned property.

11. The finding of the learned Appellate Judge that the amendment to the Hindu Succession Act came into effect in 1989 and the appellant was married in the year 1978 and therefore she is not entitled to a share, is completely perverse. A coparcener traced the right only through the



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male legal heir. There cannot be a coparcener through a female during the relevant time the judgment was rendered by the lower appellate Court.

Instead of treating the property as the self acquired property of Susheelamma and thereby granting a decree, the lower appellate Court misdirected itself treating that the property of Susheelamma as a coparcener property. To reiterate, there cannot be a coparcener through a female and it can be traced only through a male.

12. The defences raised by Mr.M.Krishnamurthy failing and since all the legal heirs of the deceased Susheelamma having been brought on record, I am left with no other option than to allow the appeal and decree the suit. Consequently, the judgment and decree of the learned XVIII Additional City Civil Judge in A.S.No.376 of 2013 dated 09.07.2014 is set aside. O.S.No.6 of 2011 for a partition will stand decreed declaring the plaintiff will be entitled to 1/6th share in the property. Each of the legal heirs of the Susheelamma viz., Dhanalakshmi, Saraswathi, Vardharajan, Narayanan and Srinivasan will be entitled to 1/6th share.

13. Insofar as the partition deed that has been entered between the defendants 2 to 4, the plaintiff is entitled to ignore the same as she is not



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a party to the said document. She having a share in the property of her mother and she not having been made a party to the partition deed, she can ignore the present suit for partition.

14. The argument of Mr.M.Krishnamurthy that the property is a very small extent and therefore incapable of division will be certainly taken into consideration by the trial Court at the time of passing a final decree. It is always open to the person in occupation to seek for a right under Sections 2 and 3 of the Partition Act and seek the right to purchase the share of the other sharers.

15. In fine, the Second Appeal is allowed. The suit is decreed as prayed for. Considering to the parties are close relatives, I am not ordering costs.

18.03.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes / No

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To
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- 1.The XVIII Additional City Civil Court,
Chennai.
- 2.The XVI Assistant City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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