



Second Appeal No.290 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.290 of 2015

- 1 Dhanalakshmi
 - 2 Durairaj
 - 3 Singaravelu
 - 4 Chinnarasu
- Appellants

-Vs-

- 1 Saroja
W/o Late Balasubramani Both At 18
Nookalamman Kol St Uthiramerur
Kancheerpuram Dist
 - 2 Vinayagamoorthy
S/o T. K. Balasubramani
- Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 29.11.2011 made in A.S.No.51 of 2011 on the file of the learned Subordinate Judge at Kancheerpuram reversing the judgment and decree dated 18.11.2010 made in O.S.No.101/2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur.

For Appellants : Mr.N.Kumar Rajan

For Respondents : Ms.R.Poornima



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J U D G M E N T

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The present Second Appeal arises out of the judgment and decree of the Court of the Subordinate Judge at Kanchipuram in A.S.No.51 of 2011 in partly reversing the judgment and decree of the Court of the District Munsif-cum-Judicial Magistrate at Uthiramerur in O.S.No.101 of 2006 dated 18.11.2010.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. O.S.No.101 of 2006 was presented for declaration and injunction with respect to 'A' schedule mentioned property and for partition of 'B' schedule mentioned property.

3. The case of the plaintiffs is that there was one Balasubramania Mudaliar who passed away on 23.08.2001. The said Balasubramania Mudaliar was twice married. He married Saroja for the first time, who is the first plaintiff and through her, he begot Vinayagamoorthy, who is the second plaintiff. Balasubramania Mudaliar married the first defendant, for the second time and through her he had the second defendant Durairaj, the third defendant Singaravelu and the fourth defendant Chinnaraj.



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4. The case of the plaintiffs is that the 'A' schedule mentioned properties are ancestral properties and therefore, the illegitimate children born through the second marriage are not entitled to a share in the ancestral properties. Insofar as the 'B' Schedule mentioned properties are concerned, both the plaintiffs as well as the defendants agreed that they are the self acquisitions of the Late Balasubramania Mudaliar and therefore each of them will be entitled to 1/5th share. Hence, the dispute only relates to the 'A' schedule mentioned properties.

5. On being served with summons, the first defendant filed a written statement. According to him, he conceded that the suit 'B' schedule mentioned properties are self acquired properties of Balasubramania Mudaliar, T.K.Varadhappa Mudaliar and Sivanandha Mudaliar, the father and uncle of the second plaintiff and defendants 2 to 4. Therefore, they pleaded that the said properties cannot be treated as ancestral properties. They also pleaded that, on 12.03.1961 the mother of Balasubramania Mudaliar viz., Tmt.Jagadhambal along with her sons Sivanandha Mudaliar, Varadhappa Mudaliar and Balasubramania Mudaliar partitioned the property. In the said partition, Varadhappa Mudaliar took the 'A' schedule property and the other three took the 'B' schedule properties in common.



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6. Subsequently, there was a partition deed entered into between Balasubramania Mudaliar and his brother Sivanandha Mudaliar on 27.06.1979, under which the 'B' schedule properties to the said deed were allotted to Balasubramania Mudaliar and 'A' schedule properties were allotted to Sivanandha Mudaliar. Therefore, they pleaded that they are the self acquisitions of Balasubramania Mudaliar and hence they had equal share of the same.

7. The learned trial Judge held that the plaint, 'A' schedule property consists of two items viz., landed property and house property. The landed property consists of S.No.242/2, 244 and 259 of Vedapalayam Village, and the second item of the property is the house site in S.No.878/228 and 878/208 to an extent of 5 1/2 cents. The trial Court held that S.Nos.242/2 and 244 are ancestral properties and therefore the plaintiffs are entitled for a declaration. However, in respect of S.No.259 and the second item viz., the house site, it granted a preliminary decree for partition holding them to be self acquisitions of Balasubramania Mudaliar.

8. Both the parties took the matter on appeal. The appeal filed by the plaintiffs was numbered as A.S.No.51 of 2011 and the appeal filed by the defendants was numbered as A.S.No.74 of 2012. The first appellate Judge



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allowed A.S.No.51 of 2011 on the basis of Exs.B2 and B7 and held the properties to be ancestral in nature. Insofar as the disallowed portion, the first appeal that was preferred by the defendants was dismissed, against which no further appeal had been preferred.

9. Against the judgment and decree in A.S.No.51 of 2011, the defendants have filed this appeal before me. This Second Appeal was admitted on the following substantial questions of law:

- (a) Whether the Appellate Court have misconstrued the sale deeds / Exs.B5 and B7 even though that property belongs to Late Balasubramani with his self acquired property from his income?
- (b) Whether the appellate Court was correct in law that the above said sale deeds / Exs.B5 and B7 specially treated as ancestral property?

10. Heard Mr.N.Kumar Rajan for the appellants and Ms.Poornima for the respondents.

11. It was the argument of the appellants that the properties are self acquired properties of Balasubramania Mudaliar and therefore the Court below, while rightly dismissing the suit with respect to S.Nos.259, 878/228 and 878/208, ought to have held both 'A' and 'B' schedule as the self acquisitions of Balasubramania Mudaliar, as a perusal of Exs.B2 and B7 do not reflect the suit



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schedule mentioned properties.

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12. Ms.Poornima, learned counsel for the respondents would submit that the acquisition with respect to the items were subsequent to Ex.B2, but the same are reflected in Ex.B7. A careful perusal of Ex.B7 shows the suit 'A' schedule items are found in the partition deed between Sivanandha Mudaliar and Balasubramania Mudaliar. If the properties were self acquisitions as pleaded by Mr.N.Kumar Rajan, learned counsel for the appellants then obviously Sivanandha Mudaliar would not have a share in the property.

13. In order to verify whether the items are found in the 'B' schedule to Ex.B4, I went through the original records. At page 4 of Ex.B4 the following items were allotted to Balasubramania Mudaliar.

B டீயூல் T.K.பாலசுப்ரமணிய முதலியார் அடைய வேண்டியவை
சொத்து மதிப்பு ரூபாய் 843.50 செங்கற்பட்டு டிஸ்ட்ரிக்ட்
உத்திரமேரூர் சப்டிஸ்ட்ரிக்ட் 241 எண் வேடபாளையம் கிராமத்தில்

நஞ்சை (அ) புஞ்சை	சர்வே எண்	பரப்பு	தீர்வை	கவரன்மெண்ட்	கூடுதல் வரி	ஜக்பந்தி
	143.1	0/33	1/90	0/86	0/86	143.1 0.82 ல் பொதுவில் பாதி
	242/2	0/77	3/56	1/60	1/60	
	244	0/80	3/70	1/67	1/67	



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நஞ்சை (அ) பஞ்சை	சர்வே எண்	பரப்பு	தீர்வை	கவரன்மெண்ட்	கூடுதல் வரி	ஜக்பந்தி
	259	0/64	2/96	1/33	1/33	
	136.1A	0.06	0.35	0.16	0.16	136.1Aல் சிவானந்தம் பாக நிலத்திற்கு (வ) ரோட்டுக்கு (கி) முத்துசாமி நிலத்திற்கு (தெ) (மே) மத்தியில் 006

14. This makes it clear that the ancestral properties of Sivanandha Mudaliar and Balasubramania Mudaliar which came to their hands by virtue of Ex.B2 were divided under Ex.B4. Therefore, I have to conclude that the properties are ancestral in nature.

15. Whether children from void and voidable marriages have a share in the ancestral properties has been settled by the judgment of the Supreme Court in **Revannasiddappa and Another -vs- Mallikarjun and Others (CDJ 2023 SC 805)** equivalent to **2023 (10) SCC 1**. The reference was settled as follows:

" 54. We now formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of



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- whether (i) such a child is born before or after the commencement of Amending Act 1976;*
- (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment; (ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;*
- (iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable PART K 56 marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;*
- (iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the*



ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;

- (v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;*
- (vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception PART K 57 to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or*



intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the PART K 58 coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a



deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

- (x) *The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above."*

16. Applying this judgment to the facts of the present case, as the 'A' Schedule mentioned properties are the ancestral properties of Balasubramania Mudaliar, they had to be first divided between Balasubramania Mudaliar and his son Vinayagamoorthy. Therefore, each of them will be entitled to 1/2 share. Iin



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the 1/2 share which is vested due to the notional partition between Vinayagamoorthy and Balasubramania Mudaliar, all the legal heirs of Balasubramania Mudaliar will be entitled to equal share. Therefore, insofar as the 'A' Schedule property is concerned, in all the items the second plaintiff will be entitled to 1/2 share. The 1/2 share that goes to Balasubramania Mudaliar will be divided amongst his five legal heirs viz., the first plaintiff, the second plaintiff and defendants 2 to 4.

17. In other words, each of the parties will be entitled to 1/10th share in the properties, which are allotted to Balasubramania Mudaliar in the 'A' schedule. The second plaintiff being the co-parcener along with Balasubramania Mudaliar will retain the 1/2 share that he had already obtained by notional partition between him and his father at the time of his death. Insofar as 'B' schedule properties, being self acquired properties all the parties will be entitled to 1/5th share.

18. In fine, the Second Appeal is allowed in the following terms.

- (a) Insofar as the 'A' schedule property is concerned, the second plaintiff will be entitled to 1/2 plus 1/10th share. The first plaintiff and defendants 2 to 4 will each be entitled to 1/10th share.
- (b) Insofar as the 'B' schedule property is concerned, each of the



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plaintiffs will be entitled to 1/5th share and each of the defendants will be entitled to 1/5th share.

18. The judgment and decree of the learned Subordinate Judge, Kancheepuram in A.S.No.51 of 2011 dated 29.11.2011 and the judgment of the decree of the learned District Munsif-cum-Judicial Magistrate at Uthiramerur in O.S.No.101 of 2006 dated 19.1.2010 is partly modified. The suit insofar as it seeks for declaration and injunction with respect to 'A' schedule property will stand dismissed. A decree for partition is granted for both 'A' and 'B' schedule properties in the above terms. The parties being close relatives, this Court is not inclined to impose costs.

01.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Subordinate Judge, Kancheepuram
- 2.The District-Munsif-cum-Judicial Magistrate, Uthiramerur.



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V.LAKSHMINARAYANAN, J.

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