



O.S.A.No.70 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CfORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Mr. JUSTICE P.DHANABAL

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1.R.Rani

2.K.Ramani (Died)

3.P.Varadhaammal (Died)

4.B.Rukmani

5.N.Vadivammbal

6.R.Devika

7.B.Revathi

8.K.Selvaraj

*[Appellants 6 to 8 brought on record as legal heirs of the deceased
2nd appellant vide order dt.28.3.22 in Crl.M.P.No.4305 of 2022]*

9.S.Malathi

10.B.Girija

*[Appellants 9 & 10 brought on record as legal heirs of the deceased
3rd appellant vide order dt.28.3.22 in Crl.M.P.No.4302 of 2022]*

P.Rajesh (deceased) – son of deceased P.Varadhammal (A3)

11.R.Deepa

12.R.Karthikeyan (Minor)

Represented by Natural Guardian and mother R.Deepa

13.R.Loshmi (Minor)

Represented by Natural Guardian and mother R.Deepa

*[P.Rajesh (deceased) – Legal heir of deceased 3rd appellant P.Varadhammal
Appellants 11 to 13 brought on record as LR's of the pre-deceased P.Rajesh
(son of the deceased 3rd appellant P.Varadhammal) vide order of Court
dated 12.03.2024 made in CMP No.27127 of 2023 in OSA No.70 of 2018)]*

.. Appellants

Vs.

1.A.Velu



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2.K.Karthikeyan

3.V.Meera

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent, against the judgement and decree dated 23.06.2017 passed in C.S.No.159 of 2013.

For Appellants : Mr.V.V.Giridhar

For Respondents : Ms.R.V.Rukmani

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

This original side appeal is directed against the judgment and decree of the learned Single Judge dated 23.06.2017 passed in C.S.No.159 of 2013. The appellants are the plaintiffs in the suit in C.S.No.159 of 2013 filed by them for partition of 1/7th share to each of the plaintiffs and for consequential reliefs.

2.Brief facts that are necessary for the disposal of this appeal are as under:

2.1.It is the case of the plaintiffs that the suit property belonged to their parents Adhimulam and Jagadambal. Adhimulam died in 1972 and Jagadambal



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died in 1983.

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2.2.It is admitted that the said Jagadambal is the second wife of Adhimulam and Adhimulam had a son by name Gopal through his first wife. The plaintiffs are the daughters of Adhimulam and Jagadambal. The 1st defendant is the son of Adhimulam; the 2nd defendant is the son of one Kanniappan, who is the other son of Adhimulam; the 3rd defendant is the wife of 1st defendant. It is pleaded by the plaintiffs that the suit A-Schedule property belonged to Jagadambal. As regards suit 'B' and 'C' Schedule properties, it is stated that they are the properties of Adhimulam. There was a partition between 1st defendant and father of 2nd defendant in 1998. 1st defendant executed two settlement deeds in favour of 3rd defendant. Therefore, the plaintiffs prayed for declaration to declare the partition and settlement deeds as null and void.

2.3.The defendants in their written statement specifically contended that Jagadambal was a joint owner of suit A-Schedule. A specific plea was raised in the written statement that the suit is bad for non-joinder of necessary party viz., the son of Adimulam through his first wife. It is also admitted by the defendants that the son born through father's first wife obtained specific



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properties from his father and hence, he had relinquished his rights in all the other properties of his father.

3.The trial Court framed the following issues :

- i. *Whether the suit properties are joint family properties ?*
- ii. *Whether the plaintiffs are entitled to 1/7th share each in the suit schedule properties?*
- iii. *Whether the partition deed dated 02.03.1998 is valid ?*
- iv. *Whether the settlement deed dated 02.03.2000 and 30.03.2000 are valid and binding on the plaintiffs ?*
- v. *Whether the court fees paid is correct ?*
- vi. *Whether the suit is bad for non-joinder of 2nd defendant ?*
- vii. *Whether the suit is bad for non-joinder of necessary parties ?*
- viii. *To what other reliefs, the parties are entitled to ?*

4.The 4th plaintiff was examined as P.W.1 and the 1st defendant examined himself as D.W.1. Though the plaintiffs marked documents Exs.A1 to A9, no document was marked on the side of the defendants.

5.Referring to the partition deed effected under Ex.A1 and other documents viz., Exs.A2 and A3, the learned Single Judge accepted the case of the plaintiffs. Since the said Gopal had left his family long back and the legal heirs of Gopal were not on record in any of the documents, the learned Single



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Judge held that the suit is not bad for non-joinder of the legal heirs of the deceased Gopal, who is the son of Adhimulam through his first wife. The finding is mainly based on the contention of the defendants that the said Gopal was settled with some properties and that therefore, the said Gopal is not entitled to any share in the suit properties. This Court is not inclined to go further, as there is no serious dispute and hence, the learned Judge may be right in holding that the suit is not bad for non-joinder of the said Gopal or the legal heirs of the deceased Gopal.

6.The trial Court came to the conclusion that all the suit properties are joint family properties. It is pertinent to mention that there is no evidence adduced or document produced by the defendants to show the character of suit property, whether it is the ancestral or the self-acquired property of the father. Despite plaintiffs have pleaded that the suit A-Schedule property belonged to their father and mother jointly, in evidence, P.W.1 would state that their father purchased the A-Schedule property in the name of her mother Jagadambal. However, no other document has been produced to suggest that the property was purchased in the name of Jagadambal. Since P.W.1 herself admits that the suit A-Schedule property is an ancestral property, after referring to the evidence of P.W.1, the trial Court proceeded on the footing that the plaintiff



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herself has stated in her cross-examination that the suit A-Schedule property is an ancestral property.

7.It is to be noted that, in this case, that the defendants can succeed in establishing the suit properties as ancestral to deny the share to the plaintiffs, only if the properties are held to be the coparcenary properties of father and sons. Even if the father had inherited the property from his father as a Class-I heir, though the property would be called as ancestral property, daughters of father Adhimulam are also entitled to a share in the property of Adhimulam, if the father Adhimulam died after 1956. The word “ancestral” may only denote that the property had been derived from an ancestor. Therefore, all the properties which are inherited from an ancestor need not be a joint family coparcenary property. In this case, the defendants have not come forward to disclose the source of title so as to determine the character of suit properties.

8.Both parties have consciously agreed that the father Adhimulam died intestate in the year 1972 leaving behind his wife Jagadambal, the plaintiffs, the 1st defendant, and the father of 2nd defendant as legal heirs. Assuming for a moment all the properties are joint family properties, the female heirs are entitled to have equal share along with the sons atleast in respect of the father's



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1/3rd share in the joint family properties. Therefore, each plaintiff will get 1/8th

share in the 1/3rd share in all the joint family properties, even if all the properties are joint family properties of Adhimulam and his two sons. This aspect was totally ignored by the learned Judge while dismissing the suit for partition. Though the defendants relied upon the partition deed which is marked as Ex.A1 in respect of suit A-Schedule property, the said partition deed is not valid and binding on the plaintiffs who have definite share in the suit A-Schedule property. The settlement deeds under Ex.A2 and A3 in respect of suit B and C-Schedule properties were executed by the 1st defendant in favour of 3rd defendant. It is contended by the 1st defendant that there was a partition arrangement between 1st defendant and father of 2nd defendant. During evidence, the 1st defendant admitted that the properties were divided only through a koor chit. The said koor chit is not produced or no evidence let in to prove a partition under a koor chit. When the plaintiffs are not made parties to any partition deed, the same is not binding on the plaintiffs. Therefore, the plaintiffs cannot be denied their due share in suit A, B and C-Schedule properties. In the absence of any specific plea as to how the property has been characterised as ancestral, this Court is unable to hold that the entire properties are coparcenary properties so as to deprive the legitimate share of the plaintiffs who are the daughters of Adhimulam. Even if the plaintiffs failed to prove that



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suit A-Schedule property was purchased in the name of their mother, the suit for partition cannot be dismissed. When there is no partition in respect of suit B and C-Schedule properties and the partition deed under Ex.A1 is not binding on the plaintiffs, and the document is not valid as against the plaintiffs who are entitled to a definite share, this Court cannot ignore the right of plaintiffs to get a share, in view of the amendment introduced to Hindu Succession Act in 2005. The Hon'ble Supreme Court, while interpreting whether the amendment is prospective or retrospective, in *Vineeta Sharma v. Rakesh Sharma and others* reported in (2020) 5 CTC 302, held that amendment is prospective. However, it is also held that the daughters are entitled to share irrespective of date of death of father and irrespective of the birth of a daughter before or after amendment. The trial Court ought to have considered the issue whether the suit properties are ancestral, not on the basis of self-serving recitals in the documents but on the basis of facts that can be deduced from the evidence, both oral and documentary. Since the trial Court failed to consider the relevant aspects of the case, this Court is of the view that the matter has to be remitted to the trial Court for considering the factual and legal issues, taking note of the difference between “ancestral property” and “coparcenary property” and the judgment of the Hon'ble Supreme Court in *Vineeta Sharma's case (supra)*.



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9.As a result, this Original Side Appeal is allowed and the judgment and decree of the trial Court, dated 23.06.2017, in C.S.No.159 of 2013, is set aside, and the matter is remitted to the trial Court for fresh disposal.

10.The trial Court is directed to frame the following issues :

- i. *Whether the suit A-Schedule property is the joint family property or the separate property of Adhimulam ?*
- ii. *Whether suit B and C-Schedule properties are the joint family properties or separate properties of Adhimulam ?*
- iii. *Whether the plaintiffs are entitled to get equal share by virtue of Hindu Succession (Amendment) Act, 2005 ?*

11.Since this Court has indicated the scope of remand by framing specific issues, the parties are now permitted to produce oral and documentary evidence confined to the issues. Depends upon the decision of the trial Court as to the character of the suit properties (A, B and C-Schedules), the trial Court may decide the quantum of share in favour of plaintiffs, keeping in mind the judgment of Hon'ble Supreme Court in *Vineeta Sharma's case (supra)*. No costs.

[S.S.S.R.,J.] [P.D.B.,J.]

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