



A.S.No.472 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.08.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 472 of 2019
and
C.M.P. No. 13334 of 2019

D. Mohana Krishnan

.. Appellant

Versus

1. Chitra
2. Prema

.. Respondents

Appeal Suit filed under Section 96 of Code of Civil Procedure to set aside the judgment and decree dated 23.01.2019 passed in O.S. No. 10 of 2016 on the file of the learned III Additional District Court, Vellore at Thirupattur.

For Appellant : Mr. T. Dhanyakumar
For Respondents : Mr. S. Sadasharam

JUDGMENT

The Appeal Suit arises out of the judgment and decree of the learned III Additional District Court, Vellore at Thirupattur, dated 23.01.2019 passed in O.S. No. 10 of 2016.



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2. The Appellant is the 2nd Defendant in the suit. The Plaintiff is the sister of the Appellant and she filed the suit in O.S. No. 10 of 2016 on the file of the III Additional District Judge, Vellore @ Tirupattur for partition and separate possession of Plaintiff's 1/3rd share in the suit properties.

3. According to the Plaintiff, the suit schedule mentioned properties are the self acquired properties of Duraisamy, father of the Appellant and the Respondents herein. The said Duraisamy has got the 1st item of the suit property through a registered partition deed dated 27.5.1979 in which the said Duraisamy was allotted 'C' Schedule. The certified copy of the partition deed was marked as Ex.A-1. The 2nd item of the suit property was purchased by Gowriammal, who is the mother of the Appellant and the Respondents herein. The 2nd item of the suit property was registered as document No.213/1982 dated 03.07.1982 and the same was marked as Ex.A-2. The said Gowriammal had constructed a house in the said property and she was in possession and enjoyment of the said property. On 22.11.2008, the said Gowriammal died intestate, leaving behind her husband and her children i.e., the Appellant and the Respondents herein. The Appellant and the Respondents have executed a registered settlement deed in favour of their father Duraisamy on 20.05.2009, since then, the property was in possession and enjoyment of the said



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Duraisamy. The father of the Appellant, Duraisamy also died intestate on 03.07.2010, leaving behind the Appellant and the Respondents as his legal heirs. Thereafter, the Appellant and the Respondents are in joint possession and enjoyment of the suit properties. After trial, the learned III Additional District Judge, Vellore @ Tirupattur had decreed the suit by granting preliminary decree for partition in the 2nd item of the suit property. Aggrieved by the same, the present appeal suit is preferred by the 2nd Defendant in the suit.

4. Earlier, when the appeal suit was taken up for hearing, the learned Counsel for the Appellant sought time to enable the parties to amicably settle the second item of the suit property/house site by stating that the Appellant intended to purchase it. Therefore, the parties were directed to appear before the Tamil Nadu Mediation and Conciliation Centre, for amicable settlement. Subsequently, it was stated that an amicable settlement did not fructify. Therefore, the Appeal Suit has been posted before this Court for disposal on merits.

5. The learned Counsel appearing for the Appellant submitted that the learned III Additional District Judge, Vellore at Thirupattur failed to note



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that the suit properties are joint family properties and as such after the death of the father, only the son i.e., the Appellant is entitled to all the suit properties by way of survivorship. Further, the Appellant also contributed substantially to the family and for development of the property. The learned trial Judge failed to note that the settlement deed (Ex.A-3) was not acted upon and it was also not intended to be acted upon as Ex.A-3 is a sham and nominal document. The learned trial Judge failed to note that by way of family arrangement, both the sisters agreed to release their rights in favour of the Appellant, regarding the 2nd item of the suit property. The 1st defendant married prior to the amendment in the Indian Succession Act, 2005, which confers a right to female heirs a right in the joint family properties. Thus, it is submitted that the second item of the suit property was purchased from and out of the income of the joint family properties in which the mother has no independent right or source of income to purchase and construct building. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment and decree of the learned III Additional District Judge, Vellore at Thirupattur dated 23.01.2019.

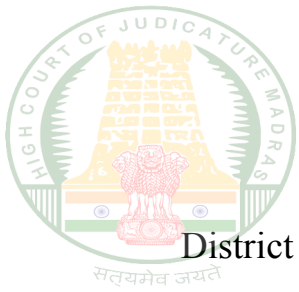
6. Per contra, the learned Counsel for the Respondents invited attention of this Court to the issues framed in this case and submitted that there is no dispute over the 1st item of the suit property which was allotted to the



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father of the Appellant and the Respondents. It is the contention of the

Plaintiff that the 2nd item of the suit property i.e, the house site was purchased by the mother and the same was not claimed by the Appellant. The learned Counsel for the Respondents invited the attention of this Court to the discussion of evidence, wherein the learned III Additional District Judge, Vellore at Thirupattur had relied upon the evidence of the 2nd Defendant i.e., D.W-1. D.W-1 himself in the witness box deposed that he was in the detention prison in Australia from 2000 to 2007. Therefore, the claim made by the D.W-1 that he contributed to the construction of the house site of the Plaintiff is false and liable to be rejected. The 2nd Defendant as D.W-1 in his cross-examination also admitted that in the Panchayat, oral partition was suggested in which the 2nd item of the suit property situated at Chennai should be given to the 2nd defendant but it was not acceptable to the sisters (Plaintiff and the first Defendant). In the light of the above, the learned III Additional District Judge, Vellore at Thirupattur had answered the issues 1 to 5 in favour of the Plaintiff and thereby granted preliminary decree for partition declaring that the Plaintiff is entitled to 1/3rd share in the suit properties in the light of the amendment to Hindu Succession Act, 2005. Therefore, the learned Counsel for the Respondents submitted that there is no ground to interfere with the well reasoned judgment and decree of the learned III Additional



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District Judge, Vellore at Thirupattur dated 23.01.2019.

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i) Whether the suit properties are the joint family properties and as such after the death of the father, the 2nd defendant is the only son and who is entitled to all the properties by way of survivorship?

ii) Whether the claim of the Appellant that the 1st Defendant in the suit having been married prior to the amendment in Hindu Succession Act, 2005 is not entitled to claim partition?

iii) Whether the grant of preliminary decree of partition in favour of the Plaintiff and the 1st Defendant by the learned III Additional District Judge, Vellore at Thirupattur is perverse as per the Hindu Succession Act and it is to be set aside?

7. Heard the learned Counsel appearing on either side and perused the records.

8. On consideration of the rival submissions and on perusal of the judgment of the learned III Additional District Judge, Vellore at Thirupattur it is found that the claim made by the 2nd Defendant is that he is the only son of Duraisamy and Gowriammal and after the death of the father he alone is entitled to the properties by way of survivorship. This submission of the second defendant is liable to be rejected. As per the amendments made to The



Hindu Succession Act, 2005, the female heirs are also treated as co-parceners

in the joint family properties. In fact, the learned III Additional District Judge, Vellore at Thirupattur had framed the following issues :

"1. Whether the suit properties are the joint family properties of the Plaintiff and defendants as alleged by the Plaintiff?

2. Whether the Plaintiff and 1st Defendant agreed to release their right in the suit 2nd item in favour of the 2nd defendant as alleged in the written statement?

3. Whether the Plaintiff is having 1/3rd share in the suit properties?

4. Whether the Plaintiff is entitled to the relief of partition and separate possession as prayed for?

5. To what other relief?"

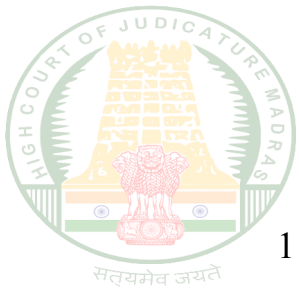
9. The said issues were answered in the discussion of the judgment and decree in O.S. No. 10 of 2016 dated 23.01.2019 against the second defendant herein. The claim of the 2nd Defendant in the written statement is that at the time of marriage of the Plaintiff as well as the 1st Defendant, 75 sovereigns of gold jewels were gifted to them. Therefore, in the oral partition, in the presence of Panchayathars, the 2nd Defendant sought to release their shares in the 2nd Item of the property. In order to establish the aforesaid averments, the 2nd defendant had not provided any acceptable proof during trial and also in his cross-examination as D.W-1. He had admitted that from



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2000-2007, he was under detention prison in Australia. Therefore, he could not have contributed to the construction of the house put up by the Plaintiff in her property, for which the house warming ceremony invitation card was marked as Ex.A-4 during trial. Therefore, the claim made by the Appellant/2nd defendant seeking to dismiss the suit filed by the daughters for partition was rightly rejected by the learned III Additional District Judge, Vellore @ Tirupattur as the Appellant had not provided any acceptable proof regarding gifting of 75 sovereigns of gold jewels to the Plaintiff and the first defendant and also for the contribution for construction put up by the Plaintiff in her property.

10. The claim made by the 2nd Defendant is that for the construction in the 2nd item of the plaint described property his mother had sufficiently and adequately contributed. The said contention was rejected by the learned III Additional District Judge, Vellore @ Tirupattur in the light of the amendment to Section.6 of the Hindu Succession Act, 2005 in which right is conferred to the daughters to claim partition in the joint family properties and they have to be treated as co-parceners. Therefore, the claim of the 2nd defendant was rightly rejected in the light of the Hindu Succession Act (amended Act), 2005.



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11. The Civil Courts exercising discretion cannot ignore the rights granted to the women of this Country by the enactment passed by the Parliament amending the Hindu Succession Act, thereby the daughters were recognised as co-parceners in the joint family property. The Act was passed by the parliament is to be taken judicial notice by the Judges of this Country. Under those circumstances, the claim of the Plaintiff is found acceptable. The contention put forth by the 2nd Defendant in the written statement is hit by Section 6 of the Hindu Succession Act (amended Act), 2005 which cannot be entertained by this Court. Further, on appreciation of facts, the learned III Additional District Judge, Vellore @ Tirupattur had drawn adverse inference against the 2nd Defendant as he was in detention in Australia between 2000-2007. During this period, the marriage of the sisters would have taken place and the construction of the house in the 2nd item of the suit property could have been carried out. Therefore, the claim of the 2nd Defendant that he contributed for the construction of the house in the 2nd item of the suit property was rightly rejected by the learned III Additional District Judge, Vellore @ Tirupattur.

12. The learned Trial Judge on appreciation of the entire evidence, had granted relief of partition to the Plaintiff as sought by her. The granting of



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the preliminary decree for partition in favour of the Plaintiff, cannot be treated as perverse. The judgment of the learned III Additional District Judge, Vellore @ Tirupattur is well reasoned judgment in the light of the Hindu Succession Act, (Amended Act) 2005 which conferred a right to the daughters to be treated as co-parceners in the joint family properties.

13. The claim of the Appellant is that the father of the Plaintiff and the defendants had purchased the property in the name of their mother but it was disputed by the learned Counsel for the Respondent stating that mother had enough resources to purchase house site in her own name. Be that as it is, the mother died on 22.11.2008 and the father of the Plaintiff and the defendants Duraisamy also died on 03.07.2010. When the parents died intestate, the properties can be automatically inherited by his heirs. The 1st item of the property stood in the name of father Duraisamy as per the partition deed dated 27.05.1979 (Ex.A-1) and the 2nd item of the property stood in the name of the mother of the Plaintiff (Ex.A-2). After the death of the mother of the Plaintiff and the Defendants, the Plaintiff and the Defendants have executed a settlement deed in favour of their father dated 20.05.2009 (Ex.A-3). Therefore, the properties belonged to the parents of the Plaintiff and the Defendants are to be treated as joint family properties as per the Hindu



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Succession Act, (amended Act) 2005.

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14. The suit was filed in the year 2016, much after the enactment of the Hindu Succession Act, (Amended Act) 2005. Therefore, the claim of the 2nd Defendant in the written statement is found contrary to the Hindu Succession (Amended) Act, 2005. The learned III Additional District Judge, Vellore @ Tirupattur rightly rejected the claim of the 2nd Defendant in the written statement seeking to dismiss the suit for partition filed by the Plaintiff. Therefore, the claim of the Plaintiff in the suit in O.S.No.10 of 2016 is found proper as per the Hindu Succession Act, 2005. The learned III Additional District Judge, Vellore @ Tirupattur had rightly decreed the suit by granting 1/3rd share to the Plaintiff, 1st and 2nd Defendants in the suit which is found well reasoned judgment as per the reported decision of the Honourable Supreme Court in the case of *Vineetha Sharma vs. Rakesh Sharma* reported in **(2020) 9 SCC 1**. The reasoning of the learned III Additional District Judge, Vellore @ Tirupattur is not found perverse in the light of the Hindu Succession (amended) Act, 2005. The grounds raised by the 2nd Defendant in O.S. No. 10 of 2016 is found not maintainable. In the light of the above discussion, the points for determination 1 to 3 are answered against the Appellant (2nd Defendant in O.S. No. 10 of 2016) and in favour of the



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Respondents 1 & 2.

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In the result, **the Appeal Suit lacks merit, therefore, it is dismissed.**

The judgment and decree dated 23.01.2019 passed in O.S. No. 10 of 2016 on the file of the learned III Additional District Court, Vellore at Thirupattur is confirmed. Consequently, connected miscellaneous petition is closed. No Costs.

20.08.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

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To :

1. The III Additional District Court,
Vellore at Thirupattur.
2. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment made in
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