



S.A.No.562 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.562 of 2022

Vijayalakshmi

... Appellant

Vs.

1. Radhakrishnan

2. Thiyagarajan

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.03.2022 passed in A.S. No.1 of 2019, on the file of the Principal District and Sessions Court, Ariyalur, upholding the decree and judgment dated 02.11.2018 passed in O.S.No.201 of 2014, on the file of the Sub Court, Ariyalur.

For Appellant : Mr.A.Muthu kumar

For R1 : Mr.V.Raghavan

For R2 : Mr.S.Kamadevan

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.



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2. The plaintiff filed the suit in O.S.No.201 of 2014, on the file of the Sub Court, Ariyalur, for partition of the suit properties into three equal shares and to allot one such share to her.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The suit properties are the ancestral properties of Govindasamy, the grandfather of the plaintiff and the defendants. Ramasamy, the father of the plaintiff and the defendants, is the only son of Govindasamy. Govindasamy died intestate on 13.04.1994 and his wife Chellammal predeceased him. The plaintiff's mother wanted to give the plaintiff in marriage to her brother's son Chidambaram. However, the plaintiff's father Ramasamy did not accept this and after the death of her mother, her husband's family (maternal uncle) took her to their house



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and gave her in marriage to the said Chidambaram. Neither the defendants nor her father gave any streedhana properties. However, they promised the plaintiff that they would be giving a share in their ancestral properties. During 2007, they refused to give the plaintiff any share in the ancestral properties. Hence the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. The suit properties are the properties of late Govindasamy, the grandfather of the plaintiff and the defendants. Govindasamy died on 13.04.1994 leaving behind his only son Ramasamy as his legal heir.
- ii. During the lifetime of Govindasamy, the suit properties were partitioned among Ramasamy and the defendants through a registered partition deed dated 13.05.1988 (Ex.B1). Since the suit properties were already been partitioned, the plaintiff cannot claim any share in the suit properties.



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6. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether there is a partition in respect of the suit properties during 1988 ?*
- ii. Whether the plaintiff is entitled to 1/3 share in A and B schedule properties ?*
- iii. To what other relief, the plaintiff is entitled ?"*

7. In the trial Court, the plaintiff examined herself and marked Ex.A1 to Ex.A3. The defendants examined themselves and marked Ex.B1 to Ex.B8.

8. The learned trial court judge after analysing the oral and documentary evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 02.11.2018, on the following grounds:

- i. The plaintiff admitted that she got married in the year 1985.
- ii. There was a partition between the father of the plaintiff and the



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defendants through a registered partition deed dated 13.05.1988 (Ex.B1).

iii. The plaintiff did not deny the signature of her father late Ramasamy on Ex.B1.

iv. Since the plaintiff got married in the year 1985 and subsequently the partition deed was executed between the plaintiff's father and the defendants in the year 1988, the plaintiff cannot claim any right under the Tamil Nadu Act 1/1990 or under amendment to Section 6 of the Hindu Succession Act.

9. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.1 of 2019, on the file of the Principal District and Sessions Court, Ariyalur. The learned Principal District and Sessions Judge, Ariyalur, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide her decree and judgment dated 16.03.2022, as against which the present second appeal is filed.



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10. At the time of admission the following substantial questions of law were framed :

“a. Whether the Courts below failed to note Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession Amendment Act, 2005 in short Act 2005. The daughter of the coparcener (appellant) shall by birth become coparcener in her own right in the same manner as a son and therefore the Courts below erred in dismissing the suit filed by the appellant / plaintiff for partition?

b. Whether the Courts below failed to note that the intention of the amended Section 6 of the Act 2005 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming partition of the coparcenary property ?

c. Whether the Courts below is correct in law in failing to note that Ex.B1-Partition Deed dated 13.05.1988 is sham and nominal document, which has not been acted upon and therefore, the plaintiff is entitled to a 1/3rd share ?”



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11. Heard Mr.A.Muthu kumar, learned counsel for the appellant, Mr.V.Raghavan, learned counsel for the first respondent and Mr.S.Kamadevan learned counsel for the second respondent.

12. Mr.A.Muthu kumar, learned counsel appearing for the appellant contended that the partition deed dated 13.05.1988 (Ex.B1) cannot be sustained for the simple reason that Govindasamy was not made as a party in the said partition deed. He also drew the attention of this court to the reply notice dated 26.08.2013 (Ex.A2) wherein there is no specific averment with regard to the family arrangement in the family of Govindasamy and Ramasamy. However, in the written statement filed by the second defendant there is a pleading that there was a family arrangement between Govindasamy and Ramasamy and that Ramasamy was the sole surviving coparcener. This pleading in the written statement is only an after thought and the defendants have not proved that there was a family arrangement between Govindasamy and Ramasamy. He therefore would contend that both the Courts below had concurrently



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13. Per contra Mr.V.Raghavan, learned counsel appearing for the first respondent and Mr.S.Kamadevan learned counsel appearing for the second respondent contended that both the courts below have properly analysed the evidence on record and had held that the plaintiff cannot claim any share in the suit properties and therefore, there is no reason for this court to interfere with the concurrent findings recorded by both the courts below.

14. The plaintiff, Vijayalakshmi has filed the suit against her own brothers Radhakrishnan and Thiyagarajan seeking 1/3 share in the suit properties. The main contention of the plaintiff is that the suit properties are the ancestral properties of her family and that since she is also one of the coparceners she is entitled to a share in the suit properties. In the written statement, it is specifically contended by the defendants that there was a family arrangement between Govindasamy and Ramasamy in which the suit properties were given to late Ramasamy,



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who was the only son of late Govindasamy and that Govindasamy's wife predeceased him. Subsequently, there was a partition between the defendants and their father Ramasamy through a registered partition deed, dated 13.05.1988 (Ex.B1) in respect of the entire suit properties. They had therefore, categorically contended that the plaintiff is not entitled to get any share in the suit properties.

15. The execution of the partition deed dated 13.05.1988 (Ex.B1) is not disputed by the plaintiff. In fact, she had admitted the signature of her father in Ex.B1. Govindasamy died on 13.04.1994 i.e. six years after the execution of the partition deed between his own son Ramasamy and the defendants. He did not raise any objection during his life time in respect of the ancestral properties even though he is one of the coparceners.

16. The learned counsel for the plaintiff mainly contended that when Govindasamy is not shown as a party in the partition deed, the partition deed cannot be given effect to. This argument cannot be



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sustained for the simple reason that Govindasamy did not raise any objection during his life time. It is not in dispute that the plaintiff was given in marriage during the year 1985. In the decision of the Hon'ble Supreme Court in *Vineeta Sharma vs Rakesh Sharma* reported in **(2020) 9 SCC** it has been held that the effect of the amendment under the Hindu Succession Act on 09.09.2005 is that a daughter is made a coparcener, with effect from the date of amendment and that the coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. In the instant case, the partition deed was executed as early as 1988 and the plaintiff was also given in marriage in the year 1985. Therefore, she cannot claim any right either under Tamil Nadu Act 1/1990 or under the amended Hindu Succession Act 6 of 2005.

17. Both the Courts below had gone into these aspects and had concurrently held that the plaintiff is not entitled to get any share in the suit properties. The observations made by both the Courts below are based on the evidence and facts and by no stretch of imagination they can



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be termed as perverse. Therefore, the substantial questions of law are answered against the appellant.

18. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 16.03.2022 passed in A.S. No.1 of 2019, on the file of the Principal District and Sessions Court, Ariyalur, and the decree and judgment dated 02.11.2018 passed in O.S.No.201 of 2014, on the file of the Sub Court, Ariyalur, are upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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To

1. The Principal District and Sessions Court, Ariyalur.
2. The Sub Court, Ariyalur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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