



S.A.No.791 of 2019 and C.M.P. No.15791 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.791 of 2019

and

C.M.P. No.15791 of 2019

Murugesan

...Appellant

Vs.

1. Poongodi

2. Jayalakshmi

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.04.2019 passed in A.S. No.52 of 2015, on the file of the Principal Sub-Court, Coimbatore, upholding the decree and judgment dated 30.03.2015 passed in O.S.No.1922 of 2013, on the file of the I Additional District Munsif Court, Coimbatore.

For Appellant : Mr.G. Karthikeyan

For Respondents : No appearance



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JUDGMENT

The appellant is the defendant in the suit in O.S.No.1922/2013 on the file of the I Additional District Munsif Court, Coimbatore. The respondents/plaintiffs filed the said suit for partition of the suit properties into 3 equal shares and to allot two such shares to them.

2. 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 second appeal would also be indicated.

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

3.1. The first item of the suit property is the ancestral property belonging to the family of the plaintiffs and the defendant while the second item is the self acquired property of one Mahali, the father of the plaintiffs and the defendant.

3.2. On 01.03.2005 Mahali died. The plaintiffs and the



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defendant are in joint possession and enjoyment of the suit properties.

When the plaintiffs approached the defendant for partition of the suit properties, he evaded and therefore, the plaintiffs were forced to issue a legal notice dated 09.06.2008 (Ex.A3). The defendant received the notice and sent a reply dated 17.06.2008 (Ex.A4), which according to the plaintiffs, contained false allegations. They, therefore filed the suit for partition of the suit properties.

4. The suit was resisted by the defendant on the ground that the suit properties were already partitioned between him and his father on 15.02.2005 and that the plaintiffs were never in the enjoyment of the suit properties. He, therefore, prayed for dismissal of the suit.

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

i. "Whether the partition deed dated 15.02.2005 would bind the



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- ii. Whether the plaintiffs are entitled to a share as per Hindu Succession (Amendment) Act, 2005.*
- iii. Whether the plaintiffs are entitled for partition and separate possession of the suit properties?*
- iv. To what other relief the plaintiffs are entitled?"*

6. In the trial Court, the second plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A4. The defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B8.

7. The learned trial court judge, after analysing the oral/documentary evidence on record, decreed the suit in favour of the plaintiffs, vide his decree and judgment dated 30.03.2015, on the following grounds:-

- i. The partition deed dated 15.02.2005 has been created after the



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- ii. As per the amended Section 6 of the Hindu Succession Act, the plaintiffs are coparceners and they are also entitled to a share in the ancestral properties.
- iii. The second item of the suit property is the self acquired property of the father of the plaintiffs and the defendant, and after his death, the plaintiffs and defendant are each entitled for 1/3 share as per Section 8 of the Hindu Succession Act.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendant filed an appeal in A.S.No.52/2015, before the Principal Sub-Court, Coimbatore. The learned Principal Subordinate Judge, Coimbatore, upheld the findings recorded by the trial court, vide his decree and judgment dated 09.04.2019, as against which the present second appeal is filed.

9. Notice of motion was issued to the respondents and the



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case is posted for hearing today.

10. Heard Mr.G. Karthikeyan, learned counsel appearing for the appellants. There is no representation on behalf of the respondents.

11. The main contention of the appellant/defendant is that there was a partition between him and his father in respect of the suit properties and therefore, the plaintiffs are not entitled to get any share. The partition deed is dated 15.02.2005. The amendment to Section 6 of the Hindu Succession Act came into effect on 24.12.2004. On the date of the partition deed, i.e. 15.02.2005, the plaintiffs were coparceners and therefore they are entitled to get two shares in the first item of the suit properties. As far as the second item of the suit property is concerned, it is an admitted case of the plaintiffs and the defendant that it is the self acquired property of their father. The appellant/defendant's contention is that his father Mahali executed a settlement deed dated 15.02.2005 (Ex.B8) in respect of the second item of the suit property and therefore, the plaintiffs cannot claim any right in respect of the said property.



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However, the original settlement deed has not been filed by the defendant to substantiate his contention. Both the courts below, by a well reasoned order, had decreed the suit in favour of the plaintiffs and the observations of the first appellate court is extracted hereunder:

For that the plaintiff refers as per Hindu Succession Amendment Act 2005, as per Section 6 clearly says,

6(a)... By birth become a coparcener in her own right in the same manner as the son"

"6(1) Provided that nothing contained in this sub-section shall effect or invalidate any disposition or alienation including any partition or testamentary disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

"6(5) ... Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004"

but admittedly in this case the partition has been effected during the year 2005. Hence the partition deed invalid



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without adding a coparcener.

*Another plea raised by the learned counsel for the appellant is as per Section 6(3) only Hindu dies after commencement of Hindu Succession Act, 2005, for that he refers the decision **2008(4) CTC 374** but it is clearly established that the plaintiff and his father opens the partition on 15.02.2005, hence on 15.02.2005 itself the father alive the partition opens, hence the plaintiff as a coparcener. They are entitled for partition in ancestral property of 1st item of the property. Hence the decision referred by the learned counsel for the appellant is not relevant to the fact of the case in hand. Another ground raised by the appellant is Act 1/1990 will not be applied. Hence the plaintiff marriage before in the year 1989 now the Act 14/2005 applied. Hence it is not necessary to consider Act 1 of 1990 of Tamil Nadu Amendment Act but it is admitted the 2nd item of the suit property, the plaintiffs' father Mahali claim through his mother as property and he inherited as property is self acquired property, it is not denied by the defendant, hence after the death of the plaintiff's father Mahali automatically succession open each child have equal share in the father's property. The 2nd item of the property, the plaintiffs are entitled for partition. Hence it is clearly established by the plaintiffs that they are*



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entitled for items 1 and 2 of the suit properties. The trial court also after considering all those aspects clearly come to correct conclusion the plaintiffs are entitled for 2/3 shares in the items 1 and 2 of the suit properties as discussed above. Hence the decree and judgment of the trial court passed in the suit is decreed after observation of all legal norms. There is no valid reason to interfere with the order of the trial court. Hence the decree and judgment passed by the learned I Additional District Munsif of Coimbatore in O.S. No.1922/2013 dated 30.03.2015 shall be confirmed. The appeal has to be dismissed. Point No.3 is answered accordingly."

The above observations of the first appellate court cannot be found fault with. There is no substantial question of law involved in the present appeal and hence the Second Appeal stands dismissed.

12. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.



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ii. The decree and judgment dated 09.04.2019 passed in A.S. No.52 of 2015, on the file of the Principal Sub-Court, Coimbatore, and the decree and judgment dated 30.03.2015 passed in O.S.No.1922 of 2013, on the file of the I Additional District Munsif Court, Coimbatore, are upheld.

15.11.2024

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

To

1. The Principal Subordinate Judge, Coimbatore .
2. The I Additional District Munsif, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
bga

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