



S.A.No.827 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.827 of 2017
and
CMP. No.20455 of 2017

1.Kolandaivel
2.Sarasru alias Saraswathi
3.R.Madhavan
4.R.Gurusamy @ Gunasekaran
5.R.Arumugam
6.Saraswathi (Died)
7.Lakshmanan
8.Krishnamoorthy
9.Baby
10.Pongothai
(Appellants 7 to 10 are legal heirs
of the deceased A6 and brought on
record vide order dated 04.01.2024)

...Appellants

Vs.

M.Sundaram

...Respondent



S.A.No.827 of 2017

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree of the learned III Additional District Judge, Salem in A.S. No.93 of 2016 dated 20.06.2017 confirming the judgment and decree of the learned II Additional Subordinate Judge, Salem in O.S. No.323 of 2011 dated 29.03.2016.

For Appellants : Ms.J.Prithivi

For Respondent : Mr.S.Mukund,
Senior Counsel for
Mr.Sarvabhauman Associates

JUDGMENT

The defendants, aggrieved by the concurrent findings rendered by the trial Court as well as the First Appellate Court, in a suit for partition are the appellants before me.

2. The plaintiff sought for a relief of partition on the ground that the properties were joint family properties and therefore, the sons of the father viz., Marimuthu Gounder alone are entitled to a share under



Section 6 of the Hindu Succession Act, 1956.

WEB COPY

3. The said suit was resisted by the defendants by filing written statement stating that the plaintiff had relinquished his share in favour of his brothers and therefore, he was not entitled to any share. Pending the suit, the sister of the plaintiff viz., Saraswathi was impleaded as the 6th defendant in the suit and she has adopted the written statement filed by the defendants 1 to 5. The trial Court held that the 6th defendant was not entitled to any share under Section 6 Hindu Succession Act, 1956 and also rejected the plea of relinquishment as claimed by the defendants 1 to 5.

4. Aggrieved by the Judgment and Decree of the trial Court, the defendants preferred an Appeal in A.S. No.93 of 2016. The First Appellate Court, confirming the findings rendered by the trial Court, held that the property has to be divided only in terms of Section 6 of the Hindu Succession Act, 1956 and the 6th defendant, that is the daughter Saraswathi was married prior to the amendment Act in 2005, and therefore she was also not entitled to any share.



WEB COPY



S.A.No.827 of 2017

5. Aggrieved by the same, the present Second Appeal has been preferred at the instance of the defendants, moreso, the 6th defendant, sister of the plaintiff and the first defendant.

6. At the time of the admission of the above Second Appeal, the following substantial questions of law have been framed:-

"(i) Are the Courts below justified in decreeing the suit without allotting any share to the 6th defendant who is a Class-I legal heir as per Section 6 of the Hindu Succession Act?

(ii) Whether the Courts below have holding that the suit properties are ancestral properties especially when no evidence was produced by the plaintiff?

(c) Whether the Courts below are right in determining that item IV to item VIII of the suit properties are joint family properties under Ex.A-4 and Ex.A-5 are still in the name of Marimuthu Gounder?"

7. I have heard Ms.J.Prithivi, the learned counsel for the appellants and Mr.S.Mukund, the learned Senior Counsel for M/s.Sarvabhuman Associates, for the respondent.

8. The learned counsel for the appellants would concede that



insofar as the relinquishment of the share of the plaintiff as contended by the defendants, the defendants were not able to establish the same by producing sufficient oral satisfactory or documentary evidence. However, insofar as the share of the daughter of Marimuthu Gounder is concerned she would state that in view of the change in position of law following the pronouncement by the Hon'ble Supreme Court in the case of *Vineeta Sharma vs. Rakesh Sharma and Ors*, reported in **(2020) 9 SCC 1**, a daughter married prior to 2005 would also become entitled to a share in the co-parcenary property, even if the properties were ancestral in nature and irrespective of her date of marriage.

9. Insofar as Item Nos.1 to 3 are concerned, it is seen that the plaint proceeds on the footing that they were ancestral properties. However, as rightly contended by the learned counsel for the appellants, the partition deed upon which the plaintiff relies i.e., 26.09.1996, has not been filed before the Court below to establish the fact that the joint family properties were available at the hands of Marimuthu Gounder and therefore, the division will have to proceed



only under Section 8 of the Hindu Succession Act. Insofar as Item No.4 to 8, it is the specific case of the plaintiff that the properties are self acquired properties of the father and that the Patta also stood in the separate name of the father and not in joint names of the father and his sons. The Courts having found that all items of the properties were available for partition, ought not to have disallowed the share of the daughter. Admittedly, the daughter, being class I Legal Heir of Marimuthu Gounder and the relationship not being denied by any of the sons that is the brothers of the 6th defendant, the daughter would be entitled to an equal 1/4th share in the suit property.

10. Considering the fact that the 6th appellant viz., Saraswathi, died pending Second Appeal and the appellants 7 to 10, have been impleaded and brought on record as legal representatives of the said deceased Saraswathi, 6th appellant, they are jointly entitled to a 1/4th share.

11. In view of the above, the plaintiff's share shall stand modified



S.A.No.827 of 2022

from $1/3^{\text{rd}}$ to $1/4^{\text{th}}$ and similarly the first defendant's share is also modified as $1/4^{\text{th}}$ from $1/3^{\text{rd}}$ and defendants 3 to 5 are jointly entitled to a $1/4^{\text{th}}$ share, each being entitled for a $1/12^{\text{th}}$ share and the legal representatives of the 6th Appellant viz., Appellants 7 to 10 shall be jointly entitled to a $1/4^{\text{th}}$ share. A preliminary decree shall be passed in line with all the above modifications.

12. Accordingly, the substantial questions of law are answered in favour of the appellants and the Second Appeal is hereby partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

06.02.2024

Index : Yes/No

Internet : Yes/No

rkp

To

1.The III Additional District Judge, Salem.

7/10



S.A.No.827 of 2017

2.The II Additional Subordinate Judge, Salem.

WEB COPY

P.B.BALAJI, J,

rkp

S.A.No.827 of 2017
and
CMP. No.20455 of 2017



WEB COPY



S.A.No.827 of 2017

06.02.2024

S.A No.827 of 2017
and CMP. No.20455 of 2017

P.B.BALAJI, J.,

Today, this matter is listed under the caption '*for being mentioned*' at the instance of the learned counsel for the Appellants.

2. I have heard Ms.J.Prithvi, learned counsel for the appellants.

3. The learned counsel for the appellants would bring to my notice that the share of each of the defendants 3 to 5 would be $1/16^{\text{th}}$ instead of $1/12^{\text{th}}$.

4. On going through the Judgment, it is seen that the share of the defendants 3 to 5 is inadvertently typed as $1/12^{\text{th}}$. Considering that there are four sharers, the share would have to be $1/16^{\text{th}}$ and not $1/12^{\text{th}}$. Accordingly, Registry is directed to correct the share viz.,



WEB COPY



S.A.No.827 of 2024

1/16th share instead of 1/12th share in the the fourth line at Paragraph 11, in the Judgment 06.02.2024.

5. Except for the aforesaid modification, Judgment dated 06.02.2024, remains unaltered in all other respects.

09.09.2024

rkp

Note: Registry is directed to issue a fresh copy of the Judgment after incorporating necessary corrections.