



S.A.No.66 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 66 of 2024
&
C.M.P. No. 1860 of 2024

P.Narayana Reddy

...Appellant

Vs.

1.Ramakrishna Reddy

2.Savithamma

3.Narayanamma

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.04.2023 made in A.S.No.29 of 2019 on the file of the learned Additional District Court, Hosur, confirming the Judgement and Decree dated 31.10.2012 made in O.S.No.45 of 2011 on the file of the Principal Sub Court, Hosur (FAC).

For Appellant : Mr. N.Manoharan.



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J U D G M E N T

The unsuccessful 1st defendant before the Courts below has preferred the above Second Appeal. The facts are briefly set out herein below and for ease of understanding, the parties are referred to in their respective ranking as before the Trial Court.

2. The plaintiff had filed the above referred suit for partition of his 1/4th share in the suit schedule property. The plaintiff's case is that the property belonged to one Pedda Appaiah Reddy, who was also known by several aliases like, Pedda Appaiah, Munibeema Reddy, Bema Reddy, Muniappa Reddy. In the narration herein below he shall only be referred as Pedda Appaiah Reddy. The said Pedda Appaiah Reddy had four children Jayamma (mother of the plaintiff), Narayana Reddy, Savithramma and Narayanamma.

3. The plaintiff would submit that the said Pedda Appaiah Reddy



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died on 05.12.1976 and his wife had died on 21.07.2000. The plaintiff's mother, Jayamma had predeceased her father in the year 1954 leaving behind her husband Muni Reddy and her son, the plaintiff. The said Jayamma's husband, Muni Reddy also passed away on 05.12.1992 and the plaintiff is their sole legal representative. The said Pedda Appaiah Reddy had properties both in Sathur as well as in Kempatty Taraff. The said Pedda Appaiah Reddy had died intestate and on his death, the properties devolved on the plaintiff, being the son of a predeceased daughter and the defendants.

4. The plaintiff would submit that the 1st defendant being an elder male member was managing the properties and the revenue records stood in his name. Till about recently, the 1st defendant was sharing the usufructs / income from the suit property with the other sharers including the plaintiff. However, for the past few years, the same has not been given. Therefore, the plaintiff had issued a legal notice dated 25.05.2006 calling upon the 1st defendant to effect partition. Since there was no response to the request, the plaintiff has come forward



with the suit in question.

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5. The 1st defendant had filed a written statement denying the averments contained in the plaint. He had however admitted the relationship between the parties. The 1st defendant would contend that the plaintiff's mother had died even prior to 1950 and therefore she was not entitled to any right in the property of the said Pedda Appaiah Reddy. He would submit that the plaintiff has therefore falsely stated that his mother had died in the year 1954.

6. The 1st defendant would contend that the plaintiff and defendants 2 and 3 are not coparcenors of the family of the 1st defendant. After Jayamma's death Muni Reddy had married the sister of the 2nd defendant as the 2nd wife. He would further submit that the plaintiff cannot be termed as legal representative of the deceased Pedda Appaiah Reddy since his mother had died even prior to the enactment of the Hindu Succession Act. Therefore, he was not entitled to the share.



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7. The 1st defendant would further submit that when his father was alive, there was an oral partition between the defendant and his father and all the suit properties were allotted to the share of the 1st defendant. This partition took place even before the settlement survey. Therefore, taking note of his possession of the property during the UDR survey, UDR patta was issued to the 1st defendant. Even as early as in the year 1966, the 1st defendant has been paying the public outgoings and all the revenue records continued to be in his name. The 1st defendant would deny the receipt of the legal notice. Therefore, he sought for the dismissal of the suit.

8. The Trial Court had framed the following issues:

(i) Is the plaintiff entitled to seek partition of the suit properties as claimed? If so to what share?

(ii) Is it true that the plaintiff and defendants are coparcener as claimed?

(iii) To what other reliefs to parties are entitled to?



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9. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.6. The 1st defendant examined himself as D.W.1 and one of the tenant in the suit property as D.W.2 and neighbouring land owner as D.W.3. Ex.B.1 to Ex.B.19 were marked on the side of the 1st defendant.

10. Ultimately, the Trial Court decreed the suit granting the plaintiff a 1/8th share in the property. Aggrieved by the same, the 1st defendant had filed A.S.No.29 of 2019 on the file of the Additional District Court, Hosur. The learned Judge also concurred with the findings of the Trial Court and dismissed the appeal. Against this concurrent Judgement and Decree, the 1st defendant is before this Court.

11. Heard Mr. N.Manoharan, learned counsel for the appellant.

12. The 1st defendant has not disputed the fact that the suit



property belonged to the said Pedda Appaiah Reddy was his ancestral properties. The main defense put forward by the 1st defendant is that there was an oral partition between himself and his father Pedda Appaiah Reddy and in this partition, the suit properties were allotted to his share. The plaintiff has not objected to the finding that the properties were the ancestral property of Pedda Appaiah Reddy. The plaintiff has produced revenue records, however the same stands in the name of the 1st defendant. It is stated that it is on account of the fact that the 1st defendant was managing the properties.

13. The 1st defendant as D.W.1 has not been in a position to give any particulars regarding the said partition as to the date and the properties partitioned etc., Therefore, it can be safely concluded that the said Pedda Appaiah Reddy had died intestate. Therefore, his share has to be divided amongst his legal representatives. The 1st defendant has also not pleaded or proved ouster. The defense that the plaintiff will not be entitled to the share in view of the fact that his mother had died prior to the enactment of the Hindu Succession Act may not come



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to the rescue of the 1st defendant in as much as the plaintiff is entitled even otherwise to the share of the said Pedda Appaiah Reddy who had died after the enactment of the Hindu Succession Act and it is only on his death that succession has opened.

14. The plaintiff being the son of predeceased daughter is entitled to the share and he is a Class I legal heir. Since the property is an ancestral property, the Courts below have rightly held that the plaintiff would be entitled to a 1/8th share. The plaintiff has not challenged the findings of the Courts below.

15. Therefore, I see no reason to interfere with the concurrent Judgement of the Courts below. Accordingly, the Second Appeal Stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Internet : Yes/No
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To

1.The Additional District Court,
Hosur.

2.The Principal Sub Court,
Hosur (FAC).



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P.T. ASHA, J,

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