



Second Appeal No.35 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.35 of 2019
and C.M.P.No.618 of 2019

1.Arumugha Gounder @ Arappa Gounder
2.Palaniammal @ Pappathi

.... Appellants

-Vs-

1.Tmt.Lakshmi
2.Minor.Suguna
3.Minor.Saranya Devi
(Minors rep.by Guardian and mother
Lakshmi)

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 14.12.2006 passed in A.S.No.19 of 2006 by the learned Subordinate Judge, Tiruppur confirming the judgment and decree dated 28.02.2006 passed in O.S.No.187 of 2004 by the learned District Munsif-cum-Judicial Magistrate, Avinashi.

For Appellants : Mr.S.S.Swaminathan
For Respondents : Mr.K.Govi Ganesan

J U D G M E N T

This appeal arises against the judgment and decree of the Court of the Subordinate Judge at Tiruppur in A.S.No.19 of 2006 dated 14.12.2006 in confirming the judgment and decree of the Court of the learned District Munsif-cum-Judicial Magistrate, Avinashi in O.S.No.187 of 2004 dated 28.02.2006.



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For the sake of convenience, the parties will be referred to as per their ranking in the suit.

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2. O.S.No.187 of 2004 was originally presented as O.S.No.437 of 2001 on the file of the learned Subordinate Judge at Tiruppur. Due to enhancement of pecuniary jurisdiction, the suit then stood transferred to the file of the learned District Munsif at Avinashi and was renumbered as O.S.No.187 of 2004.

3. The plaintiffs are two in number; they are the father and daughter. The defendants who are three in number are the wife and two daughters of the predeceased son of the first plaintiff Arumugha Gounder viz., Karuppasamy. There is no dispute in the relationship between the parties. Arumugha Gounder married one Thulasiammal and from the wedlock, the couple begot two children viz., Karuppasamy and Palaniammal @ Pappathi. Karuppasamy passed away on 17.11.2000, even before the presentation of the plaint on 25.01.2001, leaving behind him the defendants as his legal heirs.

4. It is the case of the plaintiffs that they acquired the suit schedule mentioned properties by way of succession as well as by way of purchase. A portion of the suit schedule mentioned properties was purchased on 25.01.1965 by one Karuppakkal. She was the mother-in-law of the first plaintiff and the



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mother of Thulasiammal, the wife of Arumugha Gounder. She passed away intestate on 28.10.1989. By virtue of the operation of the Hindu Succession Act, the properties that was purchased by Karuppakkal devolved on Thulasiammal. Thulasiammal too subsequently passed away on 01.04.1998 leaving behind Arumugha Gounder, Karuppasamy and Pappathi as her legal heirs. Insofar as the properties purchased by Karuppakkal is concerned, there cannot be any issue and it is only a simple application of the Hindu Succession Act. The property purchased by her devolves entirely on her daughter Thulasiammal and on the death of Thulasiammal, it is divided into three equal shares, 1/3 share going to the first plaintiff, 1/3 share going to the second plaintiff and 1/3 share devolving in common to the defendants.

5. There is a subsequent event after the judgment of the lower appellate Court which I have to take note of while dividng Karuppakkal's property. The first plaintiff Arumugha Gounder expired on 13.07.2016. Therefore, his 1/3 share will be equally shared by the surviving legal heirs viz., Palaniammal @ Pappathi, the second plaintiff and the defendants as the legal heirs of a predeceased son. Consequently, the decree of the Courts below would have to be modified insofar as the properties of Karuppakkal is concerned. Due to the subsequent event, the second plaintiff and the defendants will take equal half share in the properties left behind by Karuppakkal.



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6. Now turning to the other share of the property purchased under Ex.A2, the property was purchased by the first plaintiff on 04.02.1965 after the alienation of the assets of the joint family consisting of Karuppasamy and Arumugha Gounder. Therefore, the Courts below applied the Tamil Nadu amendment to the Hindu Succession Act viz., Section 29A and held that since the second plaintiff had not adduced any evidence to show that she had been married after 1989, they denied her a share in the joint family assets.

7. This Court is entitled to take note of the subsequent change in law by which Section 6 of the Hindu Succession Act was amended declaring that the daughters of Hindu joint families still will have to be treated as coparceners in the property. If the amended position is applied to the facts of the case, then irrespective of whether Palaniammal @ Pappathi was married prior to 1988 and 1989, as long as the final decree had not been passed, she will get a share in the joint family property. This position has been settled by the Supreme Court in **Vineeta Sharma -vs- Rakesh Sharma and Others (AIR 2020 Supreme Court 3717)**. Applying the said verdict of the Supreme Court to the facts of the present case, the second plaintiff will be entitled to 1/3 share in her own right as being a coparcener of the joint family consisting of Arumugha Gounder, Karuppasamy and herself.



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8. In the light of the subsequent event viz., the death of Arumugha Gounder as well as the amendment to Section 6 of the Hindu Succession Act, the Second Appeal would necessarily have to be allowed and I have to declare the shares accordingly as follows:

- i. Insofar as the properties that came to the share of the parties to the suit which had been purchased by Karuppakkal, the second plaintiff and the defendants will be entitled to equal 1/2 share.
- ii. Insofar as the purchase made by Arumugha Gounder under Ex.A2, the plaintiff Palaniammal @ Pappathi will be entitled to 1/3 share, the defendants will be entitled to 1/3 share and the 1/3 share of Arumugha Gounder will again have to be divided into half each and would have to be allotted equally to the second plaintiff and the defendants in common.

9. In fine, the suit for partition is decreed declaring 1/2 share each to the second plaintiff and the defendants. The final decree which has been passed pending the Second Appeal would have to be reopened and the shares have to be divided accordingly. The learned District Munsif, Avinashi is requested to follow the ratio laid down in the recent judgment in **Kattukandi Edathil Krishnan and Another -vs- Kattukandi Edathil Valsan and Others (2022 SCC Online SC 737)** and not wait for the parties to file a fresh application for



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final decree. On the basis of the aforesaid judgment, the Court shall reopen the final decree proceedings, issue notice to the respective parties and pass fresh final decree in terms of this judgment.

10. The Second Appeal is allowed on the above terms. The judgment and decree of the Court of the Subordinate Judge at Tiruppur in A.S.No.19 of 2006 dated 14.12.2006 in confirming the judgment and decree of the Court of the learned District Munsif-cum-Judicial Magistrate, Avinashi in O.S.No.187 of 2004 dated 28.02.2006 is set aside. As the parties are close relatives, there shall be no order as to the costs. Connected C.M.P. is closed.

28.06.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

- 1.The Subordinate Judge, Tiruppur.
- 2.The District Munsif-cum-Judicial Magistrate,Avinashi.



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V.LAKSHMINARAYANAN, J.

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