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A.S.No. 106 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.No. 106 of 2019
and
C.M.P.No. 4133 of 2019

Dhevadhoss

...Appellant

Vs.

1.Roja Sundharam (Died)

2.R.Karunakaran

3.Pandian

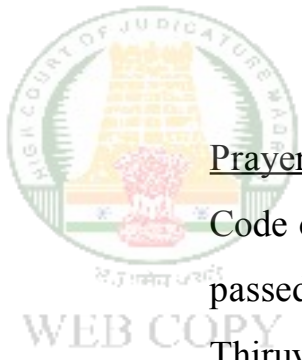
4.Vijayalakshmi

(R2 to R4 brought into record as the legal representatives
of the deceased 1st respondents Viz., (Rojasundharam)
as per memo dated 09.03.2022 in Sr.No.8166 vide Court
order dated 14.03.2022 made in AS.No.106 of 2019)

5.Premalatha

6.Kantha

...Respondents



Prayer: First Appeal filed under Section 96 r/w. Order XLI Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 26.03.2018 passed in O.S.No.14 of 2011 on the file of the IV-Additional District Judge, Thiruvallur @ Ponneri.

For Appellant : Mr.N.R.Anantharamakrishnan

For Respondents : Ms.K.Kavya for

Mr.N.Nithyanandam for R2 & R4
and Mr.R.Krishnaswamy for R3

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The plaintiff is on appeal. Challenge is to the decree for partition granted by the Trial Court declaring the plaintiff's 1/5 share as against his claim that he is entitled to 1/4th share as a coparcener.

2. There is no dispute regarding the character of the property as joint family property. The 1st defendant was the Karta of the family. The plaintiff, defendants 2 to 4 are the children of the 1st defendant. The 1st defendant was alive on the date of the filing of the suit therefore, on and from the introduction of the Hindu Succession (Amendment) Act 39 of 2005, the 4th defendant would also become a coparcener along with the 1st



defendant. The plaintiff however, pleaded that since the 4th defendant had got married even prior to the Hindu Succession (Amendment) Act 1 of 1990 introduced in the State of Tamil Nadu and Section 29-A of the Hindu Succession Act as introduced in the State of Tamil Nadu not having been disturbed by the Central Act both amended Section 6 and Section 29-A would co-exist, therefore, the 4th defendant would not become a coparcener and he is entitled to 1/4th share.

3. The 1st defendant filed a written statement admitting the relationship and also the character of the property. It was contended that the parties are in possession of the various extents of properties as per an arrangement between them and they are enjoying the income therefrom. The claim that the 1st defendant suppressed the fact that the properties are ancestral properties and entered into an agreement for sale with the defendants 5 and 6 was denied. The 2nd defendant filed a separate written statement claiming his 1/4th share. He also pointed out that various tenants are paying rents to the plaintiff and the 3rd defendant. He prayed for a decree in his favour. The 4th defendant filed a written statement claiming her 1/4th share.



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issues:-

4. On the pleadings, the learned Trial Judge framed the following

"1) Whether the alleged sale agreement executed by 1st defendant in favour of 5th and 6th defendants are binding upon the plaintiff ?

2) Whether the 1st defendant had executed a settlement deed more than his share in respect of items 1 and 2 of suit properties, in favour of 4th defendant ?

3) Whether the plaintiff is entitled for 1/4th share in the suit properties ?

4) To what relief, if any the plaintiff is entitled to ?"

5. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A16 were marked. The 2nd defendant was examined as D.W.1 and the 4th defendant was examined as D.W.2. The Trial Court, on a consideration of the evidence concluded that the 4th defendant would also become a coparcener in view of the amendment to Section 6. The Trial Court repelled the contention of the plaintiff that the 4th defendant having got married in the year 1975, would not become a coparcener in view of Section 29-A of



the Hindu Succession Act as amended by the Hindu Succession (Tamil Nadu Amendment) Act 1 of 1990 which disqualifies married daughters from becoming coparceners.

6. Though there was some controversy on the fate of Section 29-A after the enactment of the Hindu Succession (Amendment) Act, 39 of 2005 by the Parliament, the same was settled by the Hon'ble Division Bench of this Court in ***P.Hemamalini Vs. K.Palani Malai*** made in A.S.No.687 of 2018 wherein it was held Section 6 will prevail over Section 29-A as introduced by the Tamil Nadu Act 1 of 1990. In view of the said pronouncements of the Hon'ble Division Bench, the claim of the plaintiff that the 4th defendant will not become a coparcener was rejected by the Trial Court and the Trial Court granted a decree for 1/5th share in favour of the plaintiff. Aggrieved, the plaintiff has come up with this appeal.

7. We have heard Mr.N.R.Anantharamakrishnan, learned counsel for the appellant and Ms.K.Kavya, learned counsel for the respondents.



8. Mr.N.R.Anantharamakrishnan, learned counsel for the appellant would reiterate the submissions made before the Trial Court to contend that Section 29-A is left untouched by the Central Act and therefore, the same - would prevail in so far as the State of Tamil Nadu is concerned and a daughter married prior to Act 1 of 1990 would not be a coparcener.

9. Contending contra, the learned counsel for the respondents would submit that Act 39 of 2005 being a Central enactment will over ride the provisions of the State enactment, if it is shown that the said enactment is inconsistent is of the Central enactment. The fact that there is an inconsistency between the provisions of amended Section 6 and 29-A of the Hindu Succession Act has been noticed by the Division Bench in the decision cited supra. The Division Bench after considering the law on the fate of a State enactment which becomes the repugnant with the subsequently enacted Central enactment has held that the State enactment will have to give way unless it is re-enacted and reserved for the assent of the President by the competent State legislature. This position of law was laid down by the Hon'ble Supreme Court in ***Pt.Rishikesh and another Vs. Salma Begum*** reported in ***(1995) 4 SCC 718*** and Article 245 (2) of the

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Constitution of India also supports this view. We have considered the rival submissions.

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10.The only question that arose for determination in this appeal is as to the fate of Section 29-A as introduced by Hindu Succession (Amendment) Tamil Nadu Act 1 of 1990, in view of the amendment to Section 6 of the Central Act by Act 39 of 2005 under Article 245 of the Constitution of India reads as follows:-

"245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

11.A reading of Clause - 2 of Article 245 would clearly demonstrate that in so far as the subjects that are enumerated in the concurrent list both the parliament and State legislature are competent to enact laws. If law enacted by a State legislature on any of the subjects enumerated in the



concurrent list is inconsistent with the existing Central law, if is for the State legislature reserve the law so enacted for the assent of President and the law so enacted and upon assent being given, the law so enacted will be valid in that particular State *de hors* an inconsistent Central law.

12. The question as to what happens if an existing State law becomes repugnant to a subsequently enacted Central law was considered by the Hon'ble Supreme Court in ***Pt.Rishikesh and another Vs. Salma Begum*** and it was held that if an existing State law becomes repugnant to a subsequently enacted Central law, the subsequently enacted Central law alone would prevail even in that State unless the State law is reenacted and reserved for assent of the President pointing out the repugnancy. Admittedly, said exercise has not been done by the Tamil Nadu legislature therefore, Section 29-A of the Hindu Succession as introduced by Tamil Nadu Act 1 of 1990 will not prevail over Section 6 as amended by Act 39 of 2005. We therefore, see no reason to interfere with the judgment and decree of the Trial Court which is in accordance with law. This Appeal Suit therefore, fails and it is accordingly, dismissed. Considering the relationship between the parties, we do not make any order as to costs. Consequently, connected miscellaneous petitions are closed.



13. It is now stated that the 1st defendant has died intestate during the pendency of the appeal and his 1/5th share will devolve on the plaintiff and the defendants 2 to 4 under Section 8 and therefore, the plaintiff would get 1/20th share in the 1/5th share of the 1st defendant therefore, the plaintiff would get $1/5\text{th} + 1/20\text{th}$ which will be equivalent to $1/4$ in the entire property. Therefore, the preliminary decree granted is modified to that extent declaring that the plaintiff will be entitled to $1/4\text{th}$ share in the entirety of the suit properties. The benefit will go to the other defendants who had paid Court fee and claimed their share in the suit.

(R.S.M., J.) (R.S.V., J.)
11.06.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

R.SUBRAMANIAN, J.



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and
R.SAKTHIVEL, J.

KKN

To:-

The IV-Additional District Court,
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