



S.A.(MD).No.270 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.270 of 2021
and C.M.P.(MD).No.3750 of 2021

Thukkayi Gounder

... Appellant/Appellant/Defendant

Vs.

1.Karuppayammal

2.Thirumathal

3.Lakshmi (Died)

4.Thirumathal

... Respondents/Respondents/Plaintiffs

5.Vasanthi

(R5 brought on record as LR of deceased 3rd respondent vide Court Order dated 25.09.2020 made in C.M.P.(MD).No.2920 to 2922 of 2019 in S.A.(MD).No.sr37418 of 2018)

6.Manimegalai

7.Saraswathi

8.Balakumarasamy

... Respondents

(R6 to R8 are brought on record as LR of deceased 2nd respondent vide Court Order dated 25.09.2020 made in C.M.P.(MD).No.2923 to 2925 of 2019 in S.A.(MD).No.sr37418 of 2018)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 01.11.2017



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passed in A.S.No.48 of 2014 on the file of Additional District Court (Fast Track Court), Palani, confirming the Judgment and Decree, dated 11.11.2013 passed in O.S.No.239 of 2009 on the file of the Sub Court, Palani.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.Anand Chandrasekar for R1, R4 to R8

JUDGMENT

This second appeal has been preferred to set aside the Judgment and Decree dated 01.11.2017 passed in A.S.No.48 of 2014 on the file of Additional District Court (Fast Track Court), Palani, confirming the Judgment and Decree, dated 11.11.2013 passed in O.S.No.239 of 2009 on the file of the Sub Court, Palani.

2.Suit in O.S.No.239 of 2009 was filed by the first respondent and others against this appellant with the following averments:

The suit property originally belongs to one Thukayi Gounder ancestrally. To Thukayi Goundar, Arumuga Goundar, Goundappa Goundar were children. The first plaintiff is the wife of the Arumuga Goundar and other plaintiffs are children and also the defendant.



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Goundappa Goundar had two sons namely Thukkayi Goundar and Murugasamy Goundar. Arumuga Goundar and Thukkayi Goundar died several years back. After the death of Thukkayi Goundar, Arumuga Goundar and Goundappa Goundar, the plaintiffs and the children of Goundappa Goundar become entitled the property and were in joint possession. On 20.07.1989 a partition occurred in respect of the properties between these people. In the partition 'A' schedule property, which is the subject matter of the property was allotted to the plaintiffs and the defendant. So the plaintiffs and the defendant are in joint possession of the property. All are having equally 1/5 share. The first plaintiff wanted to partition the property. But, the defendant refused and delayed. So the suit is laid for partition and separate possession of the plaintiffs' 4/5 share in the properties.

3. Written Statement was filed by the defendant contending that the tracing of the title to the property, the partition deed dated 20.07.1986 are denied as false. The suit property originally belongs to the defendant's grandfather by name Thukkayi Goundar. Thukkayi Goundar had two sons namely Arumuga Goundar and Goundappa Goundar. The plaintiffs



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and the defendant are the children of Arumuga Goundar. He died some 50 years back. The mother Karupayammal was maintained and taken care by the defendant. The children of Arumuga Goundar and Goundappa Gounder are jointly enjoying the properties. The second plaintiff was married some 40 years back and third plaintiff and fourth plaintiff were also got married and they orally relinquished their right in their property in favour of the defendant.

4.The defendant and other children are other branch namely Goundappa Gounder. The children the partitioned the properties on 20.07.1989 by virtue of the partition deed. 'A' schedule property was allotted to the defendant. Ever since he is in possession and enjoyment.

5.Suit in O.S.No.229 of 2009 was filed by the defendant against the second plaintiff and others seeking permanent injunction, when they interfered in the possession and enjoyment. Pending the above said suit suppressing the same, this suit is filed. The plaintiffs 2 to 4 were married before 1986. So Tamil Nadu Hindu Succession Amendment and 1/1990 will not apply to the plaintiffs 2 to 4. So also the Hindu Succession



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Amendment Act 39/2005 is also not applicable.

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6. On the basis of the pleadings, there were no issues framed by the trial Court and suit is decreed as prayed for without any cost. Against which appeal suit was preferred by the defendant before the Additional District and Sessions Judge, Palani, in A.S.No.48 of 2014. But concurred with the judgment and decree passed by the trial Court, the appeal suit was dismissed. Against which, this second appeal is preferred.

7. Heard both sides.

8. At the time of admission the following substantial question of law were framed.

"i) Whether the courts below committed a serious error in law in granting partition to the respondents herein contrary to the very tenor of the amendment brought to Section 6 of the Hindu Succession Act, 1956 by virtue of the Hindu Succession (Amendment) Act, 2005 which is only prospective as held by Hon'ble Supreme Court of India in the



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judgment in Prakash and others Vs. Pulavathi and others reported in (2016) 2 L.W.865 and the decision of the Hon'ble Supreme Court of India in Vineeta Sharma Vs. Rakesh Sharma reported in 2020(5) CTC 302?

ii) Whether the judgment and decree of the lower Appellate Court could be sustained in law as the lower Appellate Court has mechanically concurred with the findings of the trial court without any independent consideration of the whole issue after framing proper issues for consideration in accordance with Order 41 Rule 31 C.P.C?”

9.But, however at the time of arguments, the learned counsel for the appellant has submitted that the trial Court judgment was confirmed by the appellate Court without framing proper points for consideration. In a cryptic manner, the appeal was dismissed, which is not proper as mandate under Section 41 Rule (31) CPC.

10.Perusal of the appellate Court judgment also indicates that the mandatory provisions has not been properly followed. But, only one point was framed by the appellate Court as to whether the appeal is liable



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to be allowed or not?

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11.As mentioned in the written statement whether the Hindu Succession Amendment Act 2005 applicable to the present facts or not is only point to be decided. The trial Court has not framed any issue in this regard.

12.But, perusal of the judgment of the trial Court shows that the application of the Hindu Succession Amendment Act 2005 would be applicable to the present facts and circumstances. The reason is that it is admitted by both sides that suit property originally belonged to Thukkayi Goundar. He had two sons namely Goundappa Goundar and Arumuga Goundar. There was a partition between children of Goundappa Goundar and Arumuga Goundar on 20.07.1989. In that partition deed ,the property was allotted to the defendant namely Thukkayi Goundar. Till 20.07.1989, the property was in joint property of two branched namely Goundappa Goundar and Arumuga Goundar. Since the property originally belongs to the grandfather namely Thukkayi Goundar and later became the joint property of Goundappa Goundar and Arumuga



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Goundar, whether the female children have any right over the property by virtue of the amendment Act namely Central Act is the point for consideration. That was not properly appreciated by the appellate Court.

13. Reading of the appellate Court judgment also does indicate as I mentioned that the mandatory provisions was not properly followed. On that sole ground, the judgment of the appellate Court is liable to be set aside. The matter is remitted back to the appellate Court for fresh consideration by properly framing the point for consideration and in accordance with law. Considering the oldness of the matter, there shall be a direction to the appellate Court to dispose of the appeal within a period of three months from the date of receipt of the copy of this order as well as records. Accordingly, this second appeal stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes / No
Internet : Yes / No
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To

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- 1.The Additional District Judge, (Fast Track Court), Palani
- 2.The Subordinate Judge, Palani.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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