



S.A.No.1052 of 2001

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1052 of 2001

Pandiarajan

... Appellant

-VS-

1.Narasinga Nadar (died)

2.Balakrishnan

3.Karuppiah Nadar

4.M.Rajalakshmi

5.Vijayalakshmi

6.N.Asokan

... Respondents

PRAYER: Appeal against the judgment and decree, dated 09.09.1999, passed in A.S.No.283 of 1996 on the file of Principal District Court, Virudhunagar District at Srivilliputhur, reversing the judgment and decree, dated 14.03.1996, passed in O.S.No.414 of 1993 on the file of Additional Sub Court, Virudhunagar District at Srivilliputhur.



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For Appellant : Mr.S.Venkatesan
for Mr.A.Sivaji

For Respondent 1 : Died

For Respondent 2 : No appearance

For Respondent 3 : Dispensed with

For Respondents 4 & 5 : Mr.K.B.Udhayan

For Respondent 6 : Mr.Feroz Khan

JUDGMENT

The second defendant in the suit is the appellant herein. The deceased first respondent filed a suit for partition claiming his half share in respect of three items of suit properties. The trial Court partly decreed the suit granting decree for partition in respect of first item alone. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.283 of 1996 challenging the dismissal of the suit in respect of items 2 and 3. The first appellate Court allowed the appeal and granted decree for partition in respect of all the three items. Challenging the said judgment and decree, second defendant has come by way of this Second Appeal. While the Second Appeal was pending, first



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respondent/plaintiff died and his legal representatives were brought on record as respondents 4 to 6.

2. According to the plaintiff, the suit property originally belonged to plaintiff's parents, namely, Aruchanala Nadar and Alagammal. Defendants 1 and 2 are sons of plaintiff's brother Vallimuthu Nadar. It was claimed by the plaintiff that items 1 and 2 were ancestral properties of Arunachala Nadar and third item of the suit property was purchased by Alagammal under a Sale Deed, dated 20.08.1966. Arunachala Nadar and Alagammal died in the year 1980 and 1989 respectively. Hence, the plaintiff claimed half share in the suit properties along with defendants 1 and 2, who are sons of his brother.

3. First defendant remained ex parte. Second defendant filed a Written Statement and resisted the suit on the ground that the suit properties were self-acquired properties of Alammai and the plaintiff had no right over the same. It was also claimed by second defendant that the plaintiff was not the son of Alagammal and he was the son of Aranuchala Nadar's first wife Valliammal. Further, it was also admitted by second defendant that Arunachala Nadar took Alagammal as his second wife.



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4. Before the trial Court, the plaintiff was examined as P.W.1 and 12 documents were marked on his side as Exs.A-1 to A-12. The second defendant was examined as D.W.1 and 5 documents were marked on his side as Exs.B-1 to B-5.

5. The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that first respondent was entitled to half share in suit item 1 and in respect of items 2 and 3, the suit was dismissed. Aggrieved by the same, the plaintiff filed an appeal and the first appellate Court reversed the finding of the trial Court in respect of items 2 and 3 and granted the decree in respect of all the three items. Challenging the said judgment and decree, second defendant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by an order, dated 10.10.2003 :

(1) Has not the lower appellate Court committed error in applying Section 15 (1) (b) of the Hindu Succession Act to the facts of this case, when there are no materials to show that these properties are inherited by Alagammal from her husband or from her father-in-law ?



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(2) Is the plaintiff entitled to partition in the suit items 2 and 3, the separate properties of Alagammal, who was not at all treated by the plaintiff as a step-mother and when she has not inherited these properties, as defined under Section 15 (1) (b) of the Hindu Succession Act ?

(3) Whether the lower appellate Court is right in law, in applying Section 15 (1) (b) of the Hindu Succession Act, to a case where there is no proof of marriage between Alagammal and Arunachala Nadar, when the plaintiff was born to the said Arunachala Nadar through Valliammal ?

(4) Can the lower appellate Court validly grant decree for partition in respect of items 2 and 3, based on revenue records, which came into existence after the issue of suit notice and pending the suit ?

(5) Is the lower appellate Court right in holding that the plaintiff and the first defendant are in joint possession, based on the revenue records filed by the plaintiff, when the documents came into existence after the suit ?



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7. Elaborating the substantial questions of law, learned counsel for the appellant submitted that the plaintiff failed to lead any evidence to show that Alagammal was the legally wedded wife of Arunachala Nadar and hence the first appellate Court committed a serious error in coming to the conclusion that as per operation of Section 15 (1) (b) of the Hindu Succession Act, 1956, the property of Alagammal will devolve on shares of her husband, namely, Arunachala Nadar. In this regard, the learned counsel has taken this Court to the admissions of P.W.1 in his cross-examination and the letter written by the plaintiff under Ex.B-4.

8. Learned counsel for the respondents submitted that the factum of marriage between Arunachala Nadar and Alagammal was not in dispute and hence the first appellate Court was perfectly justified in relying on Section 15 (1) (b) of the Hindu Succession Act, 1956, while holding that the heirs of Alagammal's husband Arunachala Nadar, namely, plaintiff and defendants 1 and 2 were entitled to share in the suit properties.

9. The plaintiff, in his pleadings, referred to Arunachala Nadar and Alagammal, as his parents. The said statement made by the plaintiff was



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denied by the appellant/second defendant in his written statement. It was specifically pleaded by the appellant that the plaintiff was the son of Valliammal, first wife of Arunachala Nadar. Therefore, it is the case of the appellant that after the death of Alagammal, the plaintiff could not inherit her properties, as he was not the son of Alagammal. However, the first appellate Court, by relying on Section 15 (1) (b) of the Hindu Succession Act, 1956, came to the conclusion that after the death of Alagammal, who died issueless, the properties will devolve upon the heirs of her husband, namely, Arunachala Naddar. The plaintiff, being the son of Arunachala Nadar, is entitled to half share in the suit properties along with defendants 1 and 2, who are entitled to other half share, as they being the sons of plaintiff's brother.

10. Learned counsel for the appellant vehemently contended that the factum of marriage between Arunachala Nadar and Alagammal was not at all proved by the plaintiff.

11. However, a reading of the written statement filed by the appellant /second defendant would clearly establish that the appellant admitted that Alagammal was the second wife of Arunachala Nadar. When Alagammal's status as second wife of Arunachala Nadar was admitted by the



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appellant in his written statement, it is not open to him to cross-examine P.W.1 as if Alagammi was not the legally wedded wife of Arunachala Nadar.

12. It is well settled that there cannot be any evidence when there is no foundational plea. In the written statement filed by the appellant, he has not raised any plea disputing the factum of marriage between Arunachala Nadrar and Alagammal, on the contrary, he admitted the same by pleading that after the death of Valliammal, Arunachala Nadar had taken Alagammal as his second wife. As such, the reliance placed by the learned counsel for the appellant on Ex.B-4 and the answers given by P.W.1 in his cross-examination regarding the status of Alagammal is not acceptable to this Court. The appellant, having failed to raise any plea disputing the factum of marriage between Arunachala Nadar and Alagammal, is not entitled to cross-examine the plaintiff disputing the factum of marriage or status of Alagammal. The question of law regarding joint possession of plaintiff was not seriously canvassed at the time of arguments. Therefore, all the questions of law, raised by the appellant, have no foundation in the pleadings. In such circumstances, all the questions of law, framed at the time of admission, are answered against the appellant and in favour of the respondents.



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13. The Second Appeal stands dismissed accordingly. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Principal District Court,
Virudhunagar District at Srivilliputhur.
- 2.Additional Sub Court,
Virudhunagar District at Srivilliputhur.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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