



Second Appeal No.10 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Second Appeal No.10 of 2011

AND

M.P.No.1 of 2011

1.Valliammal (deceased)

2.S.Loganayaki

.. Appellant

Vs

1.Selvamuthukumarasamy

2.Sarojani Devi

3.Divya Prabha

4.Anandhi

5.Radhamani

6.Parimalam

.. Respondents

(2nd appellant & RR4 to 6 brought on record as LR's of the deceased sole appellant *vide* order dt.8.1.2015 made in M.P.No.2 of 2011)

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 23.02.2010 passed in A.S.No.16 of 2009 on the file of the Sub Court, Pollachi, reversing the judgment and decree dated 25.07.2006 passed in O.S.No.216 of 1999 on the file of the District Munsif Court, Pollachi.

For Appellant	: Mr.R.Kannan
For R1	: No appearance
For RR2 & 3	: Mr.V.G.Suresh Kumar
For RR4 to 6	: Mr.M.Aniruthan



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J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 23.02.2010 passed in A.S.No.16 of 2009 on the file of the Sub Court, Pollachi, reversing the judgment and decree dated 25.07.2006 passed in O.S.No.216 of 1999 on the file of the District Munsif Court, Pollachi.

2. Heard both sides and perused the materials available on record.

3. The plaintiff, who is the appellant, has filed a suit to declare suit A and B schedule properties as her absolute properties and for granting preliminary decree for partition of 1/3rd share in the suit C schedule property. The trial Court dismissed the suit in respect of relief of declaration and granted preliminary decree for partition only in respect of suit C schedule property to the extent of admitting 1/6th share to the plaintiff. The first appeal preferred by the defendants 2 and 3 against the preliminary decree for partition was allowed and the judgment and decree passed by the trial Court by partly allowing the suit was set aside and thereby, the suit was dismissed in its entirety. Hence, the plaintiff has filed this second appeal, challenging the judgment of the first appellate Court.



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4. The short facts of the suit as it appears from the plaint is as under :

4.1. The plaintiff is the mother of the 1st defendant. The plaintiff had another son by name Manohara Muthu Jayaraman, who died intestate in the year 1996, leaving behind the plaintiff and the defendants 2 and 3, who are his wife and daughter, respectively, as his legal heirs. The suit properties are ancestral properties of the plaintiff's husband Mysamy Gounder, who also died intestate in the year 1967. The plaintiff and the defendants are the legal heirs of the deceased Mysamy Gounder and inherited the suit properties jointly.

4.2. Subsequently, the 1st defendant got married and thereafter, the relationship between the family members got strained. Hence, the family properties have been partitioned on 18.01.1984 through a registered partition deed, in which, suit A and B schedule properties have been allotted to the share of the plaintiff towards her maintenance. However, as per law, the plaintiff is entitled to absolute interest in the entire suit schedule properties, including suit C schedule property.

4.3. The plaintiff has also got 1/3rd share in the suit C schedule property as one of the legal heirs of her deceased son Manohara Muthu



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Jayaraman. As the defendants caused disturbance to the enjoyment of the plaintiff's entitlement in respect of suit A and B schedule properties and partition of 1/3rd share in respect of suit C schedule property, she filed a suit seeking relief of declaration of title in respect of suit A and B schedule properties and partition of 1/3rd share in the suit C schedule property.

5. The written statement filed by the 2nd defendant in brief as under :

The husband of the 2nd defendant, who is the deceased son of the plaintiff, had executed a will dated 07.01.1996 in favour of the defendants 2 and 3, during his lifetime. In view of the said will, the defendants 2 and 3 got the entire suit C schedule property. The plaintiff is not given with any absolute right in suit B schedule property. She is not entitled to get relief of declaration as prayed in respect of suit A and B schedule property. Even in the panchayat held, the plaintiff agreed that she does not have any right in the suit properties.

6. The 3rd defendant's written statement is also on the same lines in which the 2nd defendant has raised her defence.

7. On the basis of the above pleadings, the trial Court has framed the



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following issues and additional issues as under :

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1. Whether the plaintiff is entitled for the declaration with regard to A and B schedule properties as prayed for ?
2. Whether the plaintiff is entitled for the permanent injunction with regard to A and B schedule properties as prayed for ?
3. Whether the plaintiff is entitled for 1/3rd share in C schedule property as prayed for ?
4. To what other relief ?

Additional issues :

1. Whether the plaintiff is entitled to claim absolute estate under Section 14(1) of Hindu Succession Act on the basis of the partition deed dated 18.01.1984 with respect to A and B schedule property ?
2. Whether the will dated is true and valid and binding the plaintiff ?

8. During the course of trial, one witness was examined on the side of the plaintiff as PW1 and Ex.A1 to Ex.A11 were marked and on the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Ex.B1 was marked.

9. At the conclusion of the trial and on considering the evidence available on record, the trial Court dismissed the suit in respect of relief of



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declaration and decreed the suit in part and passed a preliminary decree in respect of 1/6th share in the suit C schedule property in favour of the plaintiff.

The first appeal filed by the defendants 2 and 3 got allowed and thereby, the preliminary decree passed in respect of partition also got set aside and the suit was dismissed in its entirety. Now, the plaintiff has filed this second appeal.

10. The learned counsel for the appellant submitted that the plaintiff's entitlement to maintenance will enlarge into absolute right in respect of suit A and B schedule properties, in view of Section 14(1) of the Hindu Succession Act, 1956. Admittedly, the partition deed is of the year 1984 and it was subsequent to coming into force of the Hindu Succession Act. The plaintiff, being a party to the partition suit, knowingly accepted the life interest allotted to her in the partition deed in respect of suit A and B schedule properties.

11. Had she been given with any right of maintenance in respect of any property prior to amendment to the Hindu Succession Act, then, there could be an argument whether Section 14(1) or Section 14(2), *ibid.*, has to be applied to the plaintiff's entitlement. But, here is a case, where the plaintiff's partition deed itself is of the year 1984 and hence, no question of enhancement of right would arise and whatever is allotted in the partition deed will determine the



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interest of plaintiff, as the plaintiff had been given with life interest and she also accepted the same, by being a party to the partition deed.

12. It is right for the Courts below to deny the relief of declaration in respect of suit A and B schedule properties. In fact, the plaintiff did not prefer any appeal, but the suit was dismissed by the trial Court in respect of relief of declaration as against A and B schedule properties.

13. Now, the learned counsel for the plaintiff submitted that the decree of dismissing the suit in its entirety, merges with the trial court decree and she can once again renew her right of appeal in respect of denial of declaration also. But, that argument cannot be countenanced, as the plaintiff had willingly failed to file any appeal, in respect of the denial of relief of declaration as against A and B schedule properties and the judgment of the first appellate Court did not have a different impact on suit A and B schedule properties and hence, there is no question of renewing a right of appeal in respect of A and B schedule properties, after the denial of the relief in respect of these properties has been confirmed by the first appellate Court.

14. Even for the sake of argument, if it is admitted that the plaintiff has a right of appeal in respect of the dismissal of the relief of declaration, then



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also, the plaintiff does not have any merit and she cannot seek recourse to

Section 14(1) or 14(2) of the Hindu Succession Act. Because the partition deed itself was entered into in the year 1985 and hence, there is no question of enhancement of right.

15. So far as the relief of 1/3rd share in respect of C schedule property is concerned, the first appellate Court had reversed the preliminary decree passed in favour of the plaintiff for 1/6th share in the C schedule property on the finding that the deceased husband of the 2nd defendant had executed a will on 07.01.1996 during his lifetime and after his death, the will came into effect. It is observed that the will has been proved by examination of one of the attesting witnesses, viz., D.W.2. Therefore, the trial Court ought not to have believed the genuineness of the will and the first appellate Court had recorded the reasons for accepting the genuineness of the will. The Trial Court was not convinced with the genuineness because, the will was not produced before the trial court when the written statement was filed, but was produced on a later date and further, it was an unregistered will. However, the first appellate Court has recorded that when the will was proved without any doubt, the reason for delay in producing the same cannot be held against the defendants 2 and 3.



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16. In the absence of any suspicious circumstances surrounding the will, it is the right for the first appellate Court to accept the genuineness of the will and deny the partition. On the materials placed before the Court, there is no scope for substantial question of law and hence, this second appeal is dismissed and the judgment and decree dated 23.02.2010 passed in A.S.No.16 of 2009 by the first appellate Court, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2025

Index : Yes/No
Neutral Citation : Yes/No
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To
1.Sub Court
Pollachi

2.District Munsif Court
Pollachi



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R.N.MANJULA, J.

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