IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.729 of 2016
and
CMP No.13872 of 2016

S.Sampoornam ...Plaintiff/Appellant/Appellant

Vs.

1. C.K.Shanmugam
2. E.Santhakumar
3. S.Amudha
4. S.Amsa
5. C.K.Mani ...Defendants/Respondents/ Respondents

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 09.03.2016 made in A.S.No.44 of 2015 on the file of Subordinate Judge, Ranipet in confirming the judgement and decree dated 31.10.2013 made in O.S.No.119 of 2009 on the file of District Munsif cum Judicial Magistrate No.1, Walajapet, Vellore District.

For Appellant : Mr.A.Gouthaman

For Respondents : Mr.R.Rajarajan
for R1 to R5

JUDGMENT

The Plaintiff is the appellant in this second appeal.

2. The plaintiff filed the suit seeking for the relief of partition and for allotment of 1/5 th share in the suit property and also sought for declaration of the sale deed dated 15.06.2009 executed by the 1st defendant in favour of the 5th defendant as null and void.

3. The case of the plaintiff is that the suit property formed part of a larger extent of property which are ancestral in nature. It is stated that these properties were held by the great grand father Thalaivirichan Reddy, who had three sons namely Chinnasamy Reddy, Kathavarayan Reddy and

Chinnappa Reddy. On the demise of Thalaivirichan Reddy, his three sons inherited the property. One of the son Kathavaraya Reddy had three sons Munirathinam, Shanmugam and Mani. According to the plaintiff, these three sons were jointly enjoying the property on the demise of Kathavaraya Reddy. The Plaintiff claims that the 1st defendant father and defendants 2 to 4 who are the sisters of the plaintiff are each entitled for 1/5th share in the suit property.

4. The grievance of the plaintiff is that the 1st defendant went ahead and sold an extent of 36 cents in favour of the 5th defendant through a sale deed dated 15.06.2009 and according to the plaintiff, this sale deed is null and void and not binding on the other sharers. That apart, the 1st defendant was not coming forward to allot the shares to the other legal heirs and hence, the suit came to be filed seeking for the reliefs stated supra.

5. The 1st defendant filed a written statement. He

took a stand that the three sons of Kathavaraya reddy had a family arrangement and each was alloted specific portion to an extent of 1.07 acres. According to the 1st defendant, he is the absolute owner of the property measuring an extent of 1.07 acres and during his life time, the plaintiff cannot claim any share in the property. Therefore, the 1st defendant justified the sale of a portion of the property in favour of the 5th defendant, who is none other than the brother of the 1st defendant. Accordingly, the 1st defendant has sought for the dismissal of the suit. This written statement was adopted by defendants 2 and 5.

6. Both the Courts below on considering the facts and circumstances of the case and after analyzing the oral and documentary evidence concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this second appeal.

7. When the matter came up for hearing on 29.03.2022, this Court passed the following order :-

Heard the learned counsel for the appellant. When the matter was taken up for hearing on 25.03.2022, this Court wanted the learned counsel for the appellant to clarify as to the nature of the property in the hands of the first defendant, who is the father of the plaintiff. This is in view of the fact that both the Courts below have concurrently held that the property, in the hands of the first defendant, is an exclusive property and therefore the plaintiff is not entitled to claim a share during the life time of the first defendant. The learned counsel for the appellant, by bringing to the notice of this Court, the Judgment of the Hon'ble Supreme Court in Arshnoor Singh Vs. Harpal Jaur reported in 2019 (5) CTC 110, submitted that the property originally belonged to Thalaivirichan Reddy, who died about 65 years back and at that point of time, the Mitakshara Law was in force

and what was inherited by Kathavarayan Reddy, one of the sons of Thalaivirichan Reddy, will also be construed as a joint family property as per this Judgment. If it is construed to be a joint family property, the plaintiff will be entitled for a share after the 2005 Amendment Act in the properties which came to the share of the first defendant measuring an extent of 1 acre 7 cents.

2. The learned counsel for the respondents sought for some more time to make his submissions after going through the Judgments cited by the learned counsel for the appellant.

8. The above order gave rise to framing the following substantial questions of law :-

Whether both the Courts below erred in coming to a conclusion that the property in the hands of the 1st defendant is his exclusive property, when its source had an ancestral flavour and hence, the

children of the 1st defendant will also be entitled for a share on their birth?

9. Heard Mr.A.Gouthaman, learned counsel for the appellant and Mr.R.Raja rajan, learned counsel for the respondents and this Court also carefully perused the materials available on record and the findings of both the Courts below.

10. In the present case, the source of the property is admitted to be ancestral. There is no dispute that Thalaivirichan Reddy was originally holding the property and even as per the written statement filed by the 1st defendant, he died 65 years before the filing of the suit. The said Thalaivirichan Reddy had three sons and the parties who are involved in this suit fall under the branch of one of the son Kathavaraya Reddy. The main issue that is involved is as to the nature of inheritance made by the three sons of Thalaivirichan Reddy. In order to understand the same, the learned counsel for the appellant invited the attention of this Court to the judgement of the Hon'ble Supreme Court in

[Arshnoor Singh Vs.Harpal Kaur and others] reported in ***2019 5 CTC 110***. The relevant portions relied upon by the learned counsel for the appellant are extracted hereunder :-

> ***7****. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the mutation entry dated 16-1-1956 produced by Respondent 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu Mitakshara law.*
>
> ***7.1****. Mulla in his Commentary on Hindu Law (22nd Edn.) has stated the position with respect to succession under Mitakshara law as follows:*

"A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship."

"All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property."

7.2*. In Shyam Narayan Prasad v. Krishna Prasad [Shyam Narayan Prasad v. Krishna Prasad, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702] , this Court has recently held that: (SCC p. 651, para 12)*

"12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."

***7.3**. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.*

***7.4**. In Yudhishter v. Ashok Kumar [Yudhishter v. Ashok Kumar, (1987) 1 SCC 204] , this Court held that: (SCC p. 210, para 10)*

"10. This question has been considered by this Court in CWT v. Chander Sen [CWT v. Chander Sen, (1986) 3 SCC 567 : 1986 SCC (Tax) 641] where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from

whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity."

***7.5**. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.*

7.6*. If succession opened under the old Hindu law i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants up to three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.*

7.7*. In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was co-parcenary in nature. Even though Inder Singh had effected a partition of the co-parcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as*

coparcenary property qua their male descendants up to three degrees below them.

***7.8**. The judgment in Uttam v. Saubhag Singh [Uttam v. Saubhag Singh, (2016) 4 SCC 68 : (2016) 2 SCC (Civ) 545] relied upon by the respondents is not applicable to the facts of the present case. In Uttam [Uttam v. Saubhag Singh, (2016) 4 SCC 68 : (2016) 2 SCC (Civ) 545] , the appellant therein was claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the Hindu Succession Act, 1956 came into force. The Court was concerned with the share of the appellant's grandfather in the ancestral property, and the impact of Section 8 of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with Section 8 of the Hindu*

Succession Act, 1956, such property ceases to be joint family property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener vis-à-vis the share of his grandfather.

***7.9**. In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree of partition dated 4-11-1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands qua their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property qua the appellant.*

7.10. *With respect to the devolution of a share acquired on partition, Mulla on Hindu Law (22nd Edn.) states the following:*

*"**339. Devolution of share acquired on partition**.— The effect of a partition is to dissolve the coparcenary, with the result, that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. However, if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition, will in his hands, retain the character of a coparcenary property as regards the male issue [Section 221, sub-section (4)]."*

7.11. *This Court in Valliammai Achi v. Nagappa Chettiar [Valliammai Achi v. Nagappa Chettiar, AIR 1967 SC 1153] , held that: (AIR p. 1156, para 10)*

"10. … It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently; [see Hindu Law by Mulla, Thirteenth Edn. p. 249, Para 223(2)(4)]. If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, we fail to see how that character can change merely because the father makes a Will by which he gives the residue of the joint family property (after making certain bequests) to the son."

***7.12**. The suit property which came to the share of late Dharam Singh through partition, remained coparcenary property qua his son, the appellant herein, who became a coparcener in the suit property on his birth i.e. on 22-8-1985. Dharam Singh purportedly executed the two sale deeds on 1-9-1999*

in favour of Respondent 1 after the appellant became a coparcener in the suit property.

11. It is clear from the above judgment that when the Hindu Succession Act, 1956 was not in force, the old Hindu Mitakshara law was governing the field. Under the Mitakshara law whenever a male ancestor inherits any property from any of his parental ancestors up to three degrees above him, then his legal heirs upto three degrees below him, will get an equal right as co-parceners in that property. This position was altered after the coming into force of Section 8 of the Hindu Succession Act, 1956. After this provision came into force, where the son inherits property belonging to the father or grandfather, he does not take it as a co-parcener and he inherits the property in his individual capacity.

12. To understand the above preposition of law in a proper perspective, let us take a hypothetical case where Thalaivirichan Reddy is assumed to have died after the coming

into force of the 1956 Act. Admittedly, the property belonged to Thalaivirichan Reddy. On his demise, his three sons would have inherited 1/3 rd share each and the property that is inherited by them will be their individual property. Accordingly, the share that comes in favour of Kathavaraya Reddy will be his individual property. On the demise of Kathavaraya Reddy, it would have been inherited by his three sons once again in their individual capacity in view of Section 8 of the Hindu Succession Act, 1956. Under such circumstances, the children of the 1st defendant, who is the one of the son of Kathavaraya Reddy and who had inherited 1/3rd share, will not be entitled to claim for any share during the life time of the 1st defendant and the 1st defendant will have the exclusive right over the property to deal with the same in any manner.

13. The above scenario will not apply to the facts of the present case since admittedly, Thalaivirichan Reddy had died even before the coming into force of the Hindu Succession Act, 1956.Therefore, the property was governed under the Mitakshara

law and whatever was inherited by the sons of Talaivirichan Reddy will continue to retain the character of a co-parcenary property in the hands of his sons. Thereby, whatever came into the hands of the 1st defendant, will also continue to be in the nature of a co-parcenery property. Till any children are born to the 1st defendant, probably the 1st defendant will be entitled to deal with the property as if it is his individual property. However, the moment a son or daughter (after the 2005 amendment Act) are born, they automatically get a right over the property by birth. Therefore, insofar as their shares are concerned, the 1st defendant will not be entitled to deal with the same.

14. There was yet another issue that was brought forth before this Court pertaining to the nature of property in the hands of a sharer (in this case the 1st defendant) after the joint family property is partitioned among the co-parceners. This Court in ***[M.Krishnamoorthy Vs.K.Pondeepankar and others]*** reported in ***2017 3 CTC 170*** after analyzing the entire case law held as follows :-

26. In the light of the above categoric observations of the Supreme Court and in the light of the pronouncements of two judge Bench of the Hon'ble Supreme Court in Uttam v. Saubhag Singh reported in (2016) 4 LW 309 and Prakash v. Phulavathi reported in (2016) 2 LW 865 : [(2016) 1 HLR (SC) 94] wherein the judgment in Sheela Devi v. Lal Chand reported in (2006) 8 SCC 581, was taken note of and the Hon'ble Supreme Court in Prakash v. Phulavathi case went on to hold that daughters born after 1956 would become coparceners by virtue of Act 39 of 2005. The other two Judge Bench in Uttam v. Saubhag Singh reported in (2016) 4 LW 309 held that the property would be treated as self acquisition of a male Hindu only if it is inherited either under Section 8 or under the proviso to Section 6, that is the interest of the male Hindu at the time of his

death in Mitakshara coparcenary property worked out by assuming a partition, just prior to his death.

27. A reading clause-iv and v of the summary of the law enunciated in Uttam v. Saubhag Singh reported in (2016) 4 LW 309 would undoubtedly show that irrespective of date of birth of the son, the property which devolves on him as a coparcener would continue to retain character of coparcenery property in his hands vis a vis his son/daughter (after 09/09/2005).

28. Yet another circumstance that would compel me to follow the judgments in Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, (1988) 2 SCC 126, Rohit Chauhan v. Surinder Singh reported in (2013) 9 SCC 419 : [(2013) 2 HLR (SC) 5581, and Prakash v. Phulavathi reported in (2016) 2 LW 865 : [(2016) 1 HLR (SC) 94] is the subsequent enactment of Act 39 of 2005 as well as the

enactment of laws which confers equal rights on daughters by various orates. In so far as the Tamil Nadu is concerned, Act 1 of 1990 was brought into force with limited retrospective effect from 25.03.1989. In and by such enactment, a daughter was conferred the status of coparcener along with her father. Exception for the rule was prescribed where a daughter married prior to 25.03.1989 was prohibited from claiming as a coparcener. If the law laid down by the Hon'ble Supreme Court in 1) (2006) 8 SCC 581, 2) (2006) 3 SCC 87 and 3) (2009) 15 SCC 184 is to be followed in its letter and spirit, no daughter born after 1956 would be entitled to the benefits of the subsequent enactments which came nearly 34 years thereafter. Parliament had also enacted Act 39 of 2005, which confers equal rights to the daughters. One exception that was made by the State legislature relating to the married daughters was

conspicuously absent in the Central enactment, thereby enabling the daughter who was married even prior to 9.9.2005 or 25.03.1989 (In Tamil Nadu) to claim as coparcener. If it is to be held that the daughters born after 1956 would not become coparcener, the very purpose of the amending enactments would be defeated. It was Andrapradesh which led the move to make daughters as coparceners along with their fathers by enacting a law in 1986. The same was followed by the Tamilnadu in 1989 and several other States followed suit. Ultimately the parliament has enacted the law in 2005. If the legislatures' intention, in the year 1956, was to put an end Page: 58 to coparcenary by saying that the son born after 1956 will not become a coparcener, there was no need for several State enactments and the Central enactment which intended to place daughters on a equal footing with the son. If

the interpretation to the effect that the son/daughter born after 1956 would not become a co-parcener, is accepted the provisions of the amending Acts, particularly Act 39 of 2005 would be rendered otiose.

29. In view of the above, I am compelled with great respect to the learned Judges, who decided Sheela Devi v. Lal Chand reported in (2006) 8 SCC 581, in Bhanwar Singh v. Puran reported in (2008) 3 SCC 87 : [(2008) 1 HLR (SC) 337] and M. Yogendra v. Leelamma N. reported in (2009) 15 SCC 184 : [(2010) 1 HLR (SC) 1] to conclude that I find the law is more clearly and elaborately stated in Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, (1988) 2 SCC 126, Rohit Chauhan v. Surinder Singh reported in (2013) 9 SCC 419 : [(2013) 2 HLR (SC) 558], Uttam v. Saubhag Singh reported in (2016) 4 LW 309 and Prakash v. Phulavathi reported in (2016) 2 LW 865 : [(2016) 1

HLR (SC) 94]. In view of the above conclusion, the point that is raised in this appeal is answered in the affirmative and the plaintiff is entitled to sue for partition of the properties, inasmuch as they were alloted to his father at a partition that took place in 1984 as a coparcener of a joint Hindu family and the plaintiff would essentially have a right by birth to seek partition.

15. I am in complete agreement with the law as enunciated in the above judgment. Even after the joint family properties are partitioned and allotted to each sharer, the same can be held to be the individual property of the sharer only till a son and/or daughter are born. Once a son and/or daughter is born, they will get a right and share over the property by birth. As rightly held in the above judgment, the 1956 Act has not put to an end the co-parcenery rights and infact, it continues to be reiterated after the coming into force of the 2005 amendment Act.

16. In view of the above, even if there was a family arrangement between the three sons of Kathavaraya Reddy and by virtue of the same, the 1st defendant had allotted 1.07 acres, the moment the plaintiff and defendants 2 to 4 were born, they will also be entitled for a share in the property. This will be in view of the 2005 amendment Act. The Substantial question of law framed by this Court is answered accordingly.

17. Both the Courts below have lost sight of the law governing the property at the relevant point of time and had erroneously concluded that the property in the hands of the 1st defendant is his exclusive property and that his daughters will not be entitled to claim for a share in the property. Such findings of both the Courts below are liable to be interfered by this Court.

18. The 1st defendant through a sale deed dated 15.06.2009, marked as Ex.A4 had sold an extent of 36 cents out of 1.07 acres in favour of the 5th defendant, who was his brother.

The 1st defendant will be entitled for 1/5th share in the suit property. Therefore, out of 1.07 acres, the 1st defendant will be roughly entitled for 21.40 cents. However, he had sold an extent of 36 cents. Obviously, the 1st defendant has sold 14.60 cents in excess of his rights. Admittedly, the 1st defendant is the Karta of the family and he had to take care of his daughter and should spend for their marriage and other family expenses. It is nobody's case that the 1st defendant had sold the property and had utilized the money for illegal purposes. Therefore, the assumption should be that it was utilized by the 1st defendant for the family.

18. In view of the above, this Court is not inclined to disturb the sale deed executed by the 1st defendant in favour of the 5th defendant on 15.06.2009. At the same time, this Court must also safeguard the rights of the plaintiff and defendants 2 to 4 to the extent possible and ensure that they get a reasonable share in the suit property. This is the only way to balance the rights of the daughters and the father in the suit property.

19. The Sale deed that was executed by the 1st defendant in favour of the 5th defendant on 15.06.2009 will almost tantamount to the 1st defendant selling his share in the suit property. The excess property that was conveyed to the 5th defendant can be adjusted towards family expenses. Thus, the 1st defendant is held to have already dealt with his share in the suit property. In view of the same, this Court is inclined to pass a preliminary decree with respect to the balance 71 cents by granting 1/4th share each to the plaintiff and defendants 2 to 4. By doing so, each of the daughter will get approximately 17.75 cents. The manner in which the property is going to be distributed by balancing the equities can be decided by the Trial Court at the time of passing the final decree.

20. In the result, the second appeal is partly allowed and the judgment and decree passed by both the Courts below is hereby modified and there shall be a preliminary decree granting ¼ share to the plaintiff and defendants 2 to 4 in the property that remains after the extent that has already been sold in

favour of the 5th defendant through sale deed dated 15.06.2009. Considering the facts and circumstances of the case, there shall be no order as to costs. The Trial Court shall pass a final decree within a period of three months from the date of filing of the application for final decree.

05.04.2022

Speaking Order
Index : Yes / No
Internet : Yes / No
rka

N.ANAND VENKATESH.,J

rka

To
1. The Subordinate Judge, Ranipet

2. The District Munsif cum Judicial Magistrate No.1, Walajapet, Vellore District.

Copy To:-
The Section Officer
VR Section, High Court
Madras.

SA.No.729 of 2016

05.04.2022