

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2014

C O R A M

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

Second Appeal Nos.296 and 554 of 2011 &
M.P.No. 1 of 2011 in S.A.No.296 of 2011 &
M.P.Nos. 1 & 2 of 2011 in S.A.No.554 of 2011

PadmavathyAppellant in S.A.No.296/2011

1.Harikumar
2.N.Kothandapani
3.M.Rajeswari (deceased)
4.M.Hemavathi
5.M.KrishnakumarAppellants in S.A.No.554/2011

vs.

1.Thamaravardhini
2.Indirani
3.Harikumar
4.M.Kothandapani
5.M.Rajeswari (deceased)
6.M.Hemavathi
7.Krishnakumar
8.Jakkubai
9.Subamaniyan
10.Bawerlal
11.K.Rajamanickam
12.R.Immanuel Jacob Josephraj
13.R.Moris Johnson Amalraj
14.C.Arul Mary
15. Minor Reselin Amala Mary

(R 11 to R15 brought on record as
Lrs of the deceased R5 vide order of
court dated 9.4.2011 made
in M.P. Nos. 1 & 2/2011 in
S.A.No.296/2011)

..Respondent in S.A No.296/2011

1.Thamaravardhini
2.Indirani
3.Sakubai
4.Padmavathy
5.Subamaniyan
6.Bhavarlal

7.K.Rajamanickam
8.R.Immanuel Jacob Josephraj
9.R.Moris Johnson Amalraj
10.C.Arul Mary
11. Reselin Amala Mary
(R 7 to R11 brought on record as
Lrs of the deceased 3rd appellant vide
order of court dated 9.4.2011 made
in M.P. Nos. 2 & 3/2012 in S.A.
No.554/2011) ..Respondents in S.A.No.554/2011

Second Appeals filed under section 100 C.P.C. against the judgment and decree dated 18.02.2010 made in A.S.No.191 of 2008 on the file of the District Judge cum Fast Track Court No.II, Chennai reversing the Judgment and Decree dated 21.08.2007 made in O.S.No.1948 of 1988 on the file of IV Assistant Judge, City Civil Court, Chennai.

For Appellant in
S.A.No.296/2011 : Mr.A.N.Chandrasekaran

For Appellants in
S.A.No.554/2011 : Mr.P.T.Perumal

For Respondents in
S.A.No.296/2011 : Mr.P.B.Balaji - for R1
Mr.R.Rajavignesh - for R2
Mr.P.T.Perumal-for R3, R4, R6 & R7
Mrs.S.Hemalatha - for R8
Mr.M.Kalainathan - for R9
Mr.S.Selvakumar - for R13, R14, R15
No appearance-for R10, R11 & R12

For Respondents in
S.A.No.554/2011 : Mr.P.B.Balaji - for R1
Mr.R.Rajavignesh - for R2
Mrs.S.Hemalatha - for R3
Mr.A.N.Chandrasekaran - for R4
Mr.P.Sivamani - for R6
Mr.R.Selvakumar - for R9 & R10
No appearance-for R5, R7, R8 & R11

J U D G M E N T

Second Appeal No.296/2011 arises against the judgment and decree passed in A.S.No.191 of 2008 on the file of Additional District Court cum Fast Track Court No.II, Chennai reversing the Judgment and Decree passed in O.S.No.1948 of 1988 on the file of IV Assistant Judge, City Civil Court, Chennai. The 3rd defendant is the appellant, 6th defendant is the first respondent, respondents 2 to 7 were the plaintiffs 2 to 7, respondents 8 to 10 were the defendants 2, 4 and 5 and the respondents 11 to 15 are the legal representatives of the deceased 5th respondent, who died pending second appeal.

2. Second Appeal No.554/2011 arises against the judgment and decree passed in A.S.No.191 of 2008 on the file of Additional District Court cum Fast Track Court No.II, Chennai reversing the Judgment and Decree passed in O.S.No.1948 of 1988 on the file of IV Assistant Judge, City Civil Court, Chennai. The plaintiffs 3 to 7 are the appellants, the 3rd appellant died pending appeal and his legal representatives were made on record as respondents 7 to 11. The 6th defendant is the 1st respondent, the 2nd respondent was the 2nd plaintiff and the respondents 3 to 6 are the other defendants in the suit.

3. The plaintiff filed the suit in O.S.No.1948 of 1988 for partition and injunction.

4. The trial court passed a preliminary decree for partition and on appeal filed by the 6th defendant, the lower appellate court dismissed the suit and allowed the appeal. Aggrieved over the same, the plaintiffs 3 to 7 and the 3rd defendant have filed the above second appeals.

5. Since the issues involved in both the second appeals are common, both the second appeals are disposed of by this common judgment.

6. The brief case of the plaintiffs are as follows:-

(i) The plaintiffs and the defendants 1 to 4 are the legal heirs of one Murugan @ Murugesan who died intestate on 29.7.1946 and all the legal heirs are enjoying the property jointly as tenancy in common and having constructive possession. The said Murugesan had left the suit properties. The plaintiffs and the defendants 1 to 4 are entitled to succeed and inherit the intestate properties of late Murugan @ Murugesan. 5th defendant is a third party and colluding with the other defendants and trying to purchase the suit properties without the consent and authority of the plaintiffs, to deprive their legitimate shares. The said Murugesan had two wives viz., Govindammal and Alamelu. The 1st and 2nd plaintiffs are the

daughters of Murugan and the 3rd plaintiff is the son of the 1st plaintiff as well as the grandson of Murugan.

(ii) The 1st defendant had taken active part in disposing of the properties to his advantage without considering the plaintiffs' right and claim. The 1st defendant negotiated with the 5th defendant to alienate the properties and share the sale proceeds among the other defendants. The plaintiffs sent notice to the defendants and also lodged an objection with the Sub Registrar. Ignoring the notice and objection, the defendants are preparing to alienate the properties. If the properties are sold, the plaintiffs will be deprived of their legitimate rights in the suit property.

(iii) The suit properties are to be partitioned among all the plaintiffs and the defendants 1 to 3. The 1st defendant died during the pendency of the suit and the 6th defendant was impleaded as his legal representative. In these circumstances, the plaintiffs filed the suit for partition claiming 1/6th share each of the plaintiff and for permanent injunction.

7. The brief case of the 1st defendant is as follows:-

(i) According to the 1st defendant, plaintiffs 1 and 2 are the sisters and the 3rd plaintiff is the son of the 1st defendant. The suit property is not the joint family property, therefore, the plaintiffs cannot claim right in the suit properties. The suit properties are self acquired properties of Murugan, who died in the year 1946. After the death of said Murugan, the 1st defendant was enjoying the property. The defendants 1 to 4 are the legal heirs of Murugan, therefore, only they are entitled to the properties. The plaintiffs have no right in the suit properties. Only the defendants 1 to 4 are having right in the properties. In these circumstances, the 1st defendant prayed for dismissal of the suit.

8. The brief case of the 2nd defendant is as follows:-

(i) According to the 2nd defendant, the suit property in Door Nos.64 and 65, Kannabiran Koil Street, Perambur, Chennai belong to Murugan @ Murugesan and Govindammal. The properties at Redhills belongs to Murugan @ Murugesan, who died intestate in the year 1946. The plaintiffs 2 to 6 and the defendants 1 to 4 are his legal heirs. The plaintiffs 2 to 6 are entitled to 1/25th share and the defendants 1 to 4 are entitled to 1/5th share each in the suit properties.

(ii) According to the 2nd defendant, Murugan did not marry Alamelu. The 1st defendant did not take any steps to alienate the suit properties. The 2nd plaintiff has no right to alienate the suit property. If the suit properties are divided as per the Hindu Succession Act, the 2nd defendant is agreeable for partition. In these circumstances, the 2nd defendant prayed for dismissal of the

suit.

9. The brief case of the 3rd defendant is as follows:-

(i) According to the 3rd defendant, the 5th defendant is a third party. The 1st plaintiff and the defendants 1 to 4 are the legal heirs of Murugan @ Murugesan. The 1st defendant died on 25.11.1989 his legal heir is the 6th defendant. The 4th and 6th defendants along with other defendants partitioned the properties under 'kooor cheetu'. In these circumstances, the 3rd defendant prayed for dismissal of the suit.

10. The brief case of the 4th defendant is as follows:-

(i) According to the 4th defendant, the house property in Door Nos.64 and 65, Kannabiran Koil Street, Perambur, Chennai belong to Murugan @ Murugesan and Govindammal. The father of the defendants 2 to 4 and the grand-parents of the plaintiffs 2 to 6, viz., Jayalakshmi and Arjunan are the legal heirs. The property at Redhills belongs to Murugan, who died in the year 1946. Govindammal died in the year 1982. The plaintiffs 2 to 6 and the defendants 2 to 4 are the legal heirs, therefore, the plaintiffs 2 to 6 are entitled to 1/25th share each and the defendants 1 to 4 are entitled to 1/5th share each in the suit property.

(ii) According to the 4th defendant, Murugan did not marry Alamelu. The 1st defendant did not try to alienate the property. The 4th defendant is agreeable for partition, if the properties are divided under the Hindu Succession Act. In these circumstances, the 4th defendant prayed for dismissal of the suit.

11. Before the trial Court, on the side of the plaintiffs, P.W.1 was examined and 8 documents, Exs.A1 to A8 were marked and on the side of the defendants, 3 witnesses were examined and 4 documents, Exs.B1 to B4 were marked.

12. The trial court after taking into consideration, the oral and documentary evidences of both sides, passed a preliminary decree for partition allotting 1/6th share to the 2nd plaintiff and allotting 1/6th share of the 1st plaintiff to the plaintiffs 3 to 7. Aggrieved over the judgment and decree of the trial court, the 6th defendant preferred appeal in A.S.No.191 of 2008 on the file of Additional District Court cum Fast Track Court No.II, Chennai and the lower appellate court reversed the judgment and decree of the trial court and dismissed the suit. Aggrieved over the judgment and decree of the lower appellate court, the plaintiffs 3 to 7 have filed Second Appeal in S.A.No.554 of 2011 and the 3rd defendant has preferred Second Appeal in S.A.No.296 of 2011.

13. Heard Mr.A.N.Chandrasekaran learned counsel appearing for the appellant in S.A.No.296/2011 and for the 4th respondent in

S.A.No.554/2011, Mr.P.T.Perumal, learned counsel appearing for the appellant in Second Appeal No.554/2011, Mr. P.B. Balaji, learned counsel for the 1st respondent in both the second appeals, Mr.R.Rajavignesh, learned counsel for the 2nd respondent in both the second appeals, Mr.P.T.Perumal, learned counsel for the respondents, 3, 4, 6 and 7 in S.A.No.296/2011, Mrs.Hemalatha, learned counsel for the 8th respondent in S.A.No.296/2011 and for the 3rd respondent in S.A.No.554/2011, Mr.Kalainathan, learned counsel for the 9th respondent in S.A.No.296/2011, Mr.S.Selvakumar learned counsel for the respondents 13, 14 and 15 in S.A.No.296/2011 and for the respondents 9 and 10 in S.A.No.554/2011 and Mr.P.Sivamani, learned counsel for the 6th respondent in S.A.No.554/2011,

14. The appellant has raised the following substantial questions of law in Second Appeal No.296 of 2011:-

(a) Whether the lower appellate court erred in law and misdirected itself in dismissing the suit in its entirety, when the widows of late Murugan alias Murugesan acquires equal shares in the separate properties of their husband as per section 3 of the Hindu Women's Right to Property Act, 1937 along with the male heirs on the death of Murugan during the year 1946 which limited right enlarges into an absolute right and as full owner thereof by virtue of section 14(1) of the Hindu Succession Act, 1956?

(b) Is not the sons and daughters viz., plaintiffs 1 and 2 and the defendants 1 to 4 in the suit as the legal heirs of the widows of late Murugan alias Murugesan, who admittedly died after the coming into force of the Hindu Succession Act, 1956, are entitled for a share as per section 15 of the Hindu Succession Act, 1956 and is not the lower appellate court committed serious error in denying their share by ignoring the said provision of law?

(c) Is not the appellant entitled for an order of permanent injunction when admittedly the first respondent and the ninth respondent have been alienating the suit properties much to the detriment of other co-owners?

15. The appellants have raised the following substantial questions of law in Second Appeal No.554 of 2011:-

(a) Does the claim of the appellant/plaintiffs for partition is barred under the provisions of the Hindu Succession Act, 1956?

(b) All other reasons given by the lower appellate court in reversing the judgment unsustainable in law?

16. The learned counsel for the appellants submitted that the reasoning of the lower appellate court cannot stand for the reason that the widows of late Murugan @ Murugesan were entitled to equal shares in the separate properties of their husband as per section 3 of the Hindu Women's Right to Property Act, 1937 along with male heirs on the death of Murugan in the year 1946. Further, the learned counsel submitted that the limited right of the widows enlarged into an absolute right by virtue of section 14(1) of the Hindu Succession Act, 1956. Further, the learned counsel submitted that after the coming into force of the Hindu Succession Act, 1956, the plaintiffs 1 and 2 and defendants 1 to 4 are entitled to a share in the properties as per section 15 of the Hindu Succession Act, 1956. In support of his contention, the learned counsel for the appellant relied upon the following judgments:-

(i) AIR 1998 Supreme Court 1692 (Seethalakshmi Ammal v. Muthuvenkatarama Iyengar and another) wherein the Apex court held that in order to decide who are the heirs of female Hindu under category (b) of Section 15(1), one does not have to go back to the date of death of the husband to ascertain who were his heirs at that time. The heirs have to be ascertained not at the time of the husband's death but at the time of the wife's death because the succession opens only at the time of her death. Her heirs under section 15(1)(b) will have to be ascertained as if the succession to her husband had opened at the time of her death.

(ii) AIR 1979 Madras 31 (B.Narasimhachari v. Andalammal (died) and others) wherein, a Division Bench of this court held that a Hindu widow entitled to rights under the 1937 Act need not seek for partition either by demanding it or by filing a suit for that purpose, since her entitled or right to possess the property under the 1937 Act entitlement itself by reason of the liberal and wide amplitude of section 14(1) of the 1956 Act.

(iii) 1980 (1) SCC 19 (Sundari and others v. Laxmi and others) wherein the Apex court held as follows:

"10. The scheme of the Hindu Succession Act in the matter of succession to the property of Hindu dying intestate is provided in Sections 8 to 13. Sections 15 and 16 provide for the succession to the property of a female dying intestate. Section 17 specifically provides for application of the Hindu Succession Act to persons governed by Malabar and Aliyasanthana law. Section 14 does not relate to succession but provides that any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as limited owner."

17. Countering the submissions made by the learned counsel appearing on behalf of the appellants, Mr.P.B. Balaji, learned counsel appearing on behalf of the first respondent submitted that the lower appellate court has rightly reversed the judgment and decree of the trial court and dismissed the suit in toto. The learned counsel further submitted that provisions of section 8 are not retrospective in operation and therefore, where a male Hindu died before the coming into force of the Hindu Succession Act, the section shall have no application. In support of his contention, the learned counsel for the first respondent relied upon the following judgments:-

(i) AIR 1966 SC 1879 (J.Kuppuswami Mudali and others v. Mahalingam) wherein the Apex Court held that section 6 of the Hindu Succession Act applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. Further the words "The property of a male Hindu dying intestate" and the words "shall devolve" occurring in section 8 make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Act. Therefore, the provisions of section 8 are not retrospective in operation and where a male Hindu died before the Act came into force i.e., where succession opened before the Act, section 8 will have no application.

(ii) AIR 1977 SC 2069 (Controller of Estate Duty, Madras v. Alladi Kuppuswamy) wherein the Hon'ble Supreme Court held that a female shall have power to make her interest definite by making a demand for partition, as a male owner may. If the widow after being introduced into family to which her husband belonged does not seek partition, on the termination of her estate her interest will merge into the coparcenary property.

(iii) AIR 1970 Madras 366 (Aladi Kuppuswamy v. The Controller of estate Duty, Madras) wherein a Full Bench of this Court held that on the death of a female, her interest merged in the coparcenary, on which her sons were coparceners. It would be inappropriate to describe the merger as passing of property on the death of the widow. Therefore, on the widows death, there is no seizure of any interest she had in the joint family property and her interest being undefined lapses at the death resulting in no change in the coparcenary property as such and her interest cannot be regarded as an interest in property under section 7(1) of the Estanted Duty Act.

18. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel on either side, it could be seen that in the case on

hand, there is no dispute with regard to the relationship of the parties. The plaintiffs 1 and 2 are the daughters of Murugan @ Murugesan and Govindammal. They have filed the suit for partition claiming 1/6th share in the suit properties. It is also not in dispute that the plaintiffs 1 and 2 and the defendants 1 to 4 are the legal heirs of Murugan @ Murugesan, who died in the year 1946 and his wife Govindammal died in the year 1981. After the death of Murugan @ Murugesan in the year 1946, since the provisions of the Act was not given retrospective effect, the properties devolved on the male heirs of Murugan @ Murugesan viz., Arjunan and the 4th defendant Subramaniyan.

19. Now, the plaintiffs have filed the suit for partition claiming right in their father's share, who died prior to Hindu Succession Act, 1956. Since the provisions of the Hindu Succession Act, 1956 was not given retrospective effect, it has only prospective application. If at all, the daughters could have their share in the property of her mother provided later got any independent share on partition during her life time. In the absence of partition, the claim of the daughter is not tenable. Since under the provisions of the Hindu Succession Act, 1956, the plaintiffs are not entitled to claim for partition of their father's property who died in the year 1946 i.e., before coming into the force of the Hindu Succession Act, 1956, the lower appellate court rightly dismissed the suit in toto.

20. In these circumstances, I find no ground much less any substantial question of law to interfere with the judgment and decrees of the lower appellate court. The second appeals are liable to be dismissed. Accordingly, the same are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

Dated: 26.06.2014

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Sub Assistant Registrar

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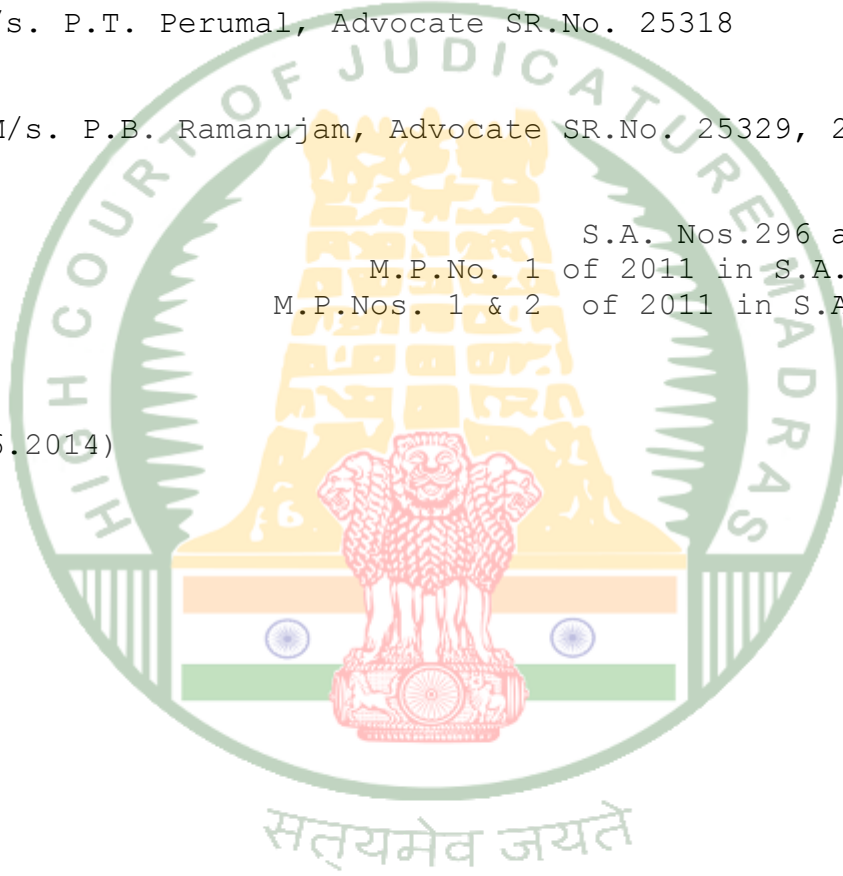
1. The District Judge cum
Fast Track Court No.II,
Chennai.
2. IV Assistant Judge,
City Civil Court,
Chennai.

1 CC to M/s. P.T. Perumal, Advocate SR.No. 25318

2 CCs to M/s. P.B. Ramanujam, Advocate SR.No. 25329, 25332

S.A. Nos.296 and 554 of 2011 &
M.P.No. 1 of 2011 in S.A.No.296 of 2011 &
M.P.Nos. 1 & 2 of 2011 in S.A.No.554 of 2011

AD (CO)
PSI (27.06.2014)



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