(2017) 12 MAD CK 0091

In the Madras High Court

Case No : 100 of 2006

Jayalakshmi & Ors — APPELLANT

Vs

Vellayammal & Ors — RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

Citation : (2017) 12 MAD CK 0091

Hon'ble Judges : M.Duraiswamy

Bench : SINGLE BENCH

Advocate : M.Duraiswamy

Final Decision : Partly allowed

Judgement

1. Challenging the judgment and decree passed in O.S.No.155 of 2004 on the file of the Additional District Court, Fast Track Court No.II, Salem, the defendants 1 to 3 have filed the above appeal.

2. The 1st respondent/plaintiff filed the suit in O.S.No.155 of 2004 for partition, separate possession in respect of the suit properties and for permanent injunction restraining the defendants 4 to 6 from disbursing the amount belonging to late K.Natarajan till the finality of the partition suit.

3. The plaintiff is the mother of one K.Natarajan. The 1st defendant is his wife and the defendants 2 & 3 are the children of late K.Natarajan and the 1st defendant.

4. According to the plaintiff, the said K.Natarajan, till his death, worked as Superintendent in Customs and Central Excise Department, Erode and suddenly died intestate on 13.11.2002, leaving behind the plaintiff and the defendants 1 to 3 as his legal heirs. According to the plaintiff, under the Hindu Succession Act, she is entitled to claim one-fourth share in the movable and immovable properties of late K.Natarajan. In these circumstances, she sent a notice to the defendants 1 to 3 seeking for partition. Since the defendants did not agree for

partition, she has filed the suit.

5. According to the defendants 1 to 3, in the family arrangement between the brothers of late K.Natarajan, a sum of Rs.2,75,000/- was deposited with Mahalakshmi Co-operative Bank, Gangavalli in the joint name and the plaintiff was drawing the interest every month. Further, according to the defendants, subsequent to the death of K.Natarajan, the plaintiff had withdrawn the same on 25.11.2002. Further, the defendants have stated that the entire earnings of late K.Natarajan was given only to the welfare of the plaintiff and her children. Further, they have stated that Item No.4 of the suit property does not belong to late K.Natarajan and that it has nothing to do with the family. Further, Item No.2 was purchased for the benefit of the 2nd defendant. The defendants have also disputed that the defendants do not possess so much gold and gold jewellery and the same were sold for meeting the medical expenses of late K.Natarajan. Item No.6 was purchased by the 2nd defendant and she is the absolute owner of the same. So far as Item No.8 is concerned, there is no deposit in the District Central Co-operative Bank and whatever was available had been taken by him. In these circumstances, the defendants 1 to 3 prayed for dismissal of the suit.

6. In the written statement filed by the 4th defendant, they have stated that the 1st defendant/wife was named as nominee and therefore, she is entitled to departmental dues meant for late K.Natarajan.

7. Before the trial Court, on the side of the plaintiff, she was examined as P.W.1 and 5 documents, Exs.A1 to A5 were marked. On the side of the defendants, 4 witnesses were examined and 22 documents, Exs.B1 to B22 were marked. The trial Court, after taking into consideration the oral and documentary evidences, passed a preliminary decree, allotting one-fourth share to the plaintiff in respect of Items 1, 2, 3, 7 & 8 of the suit properties. Aggrieved over the judgment and decree of the trial Court, the defendants 1 to 3 have filed the appeal.

8. Heard Mr.P.Sathish, learned counsel for the appellants, Mr.R.Asai Thambi, learned counsel for the 1st respondent, Mr.V.Sundareswaran, learned counsel for the 2nd respondent and Mr.M.R.Raghavan, learned counsel for the 3rd respondent.

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is no dispute with regard to the relationship of the parties. Admittedly, the immovable properties of Item Nos.1, 2 & 3 stood in the name of late K.Natarajan, son of the plaintiff and the husband of the 1st defendant. The defendants 2 & 3 are the children of K.Natarajan and 1st defendant. It is also not in dispute that K.Natarajan had died intestate on 13.11.2002 and was working as Superintendent in the Office of the Customs and Central Excise Department, Erode. So far as Item No.4 is concerned, that does not belong to K.Natarajan and it has nothing to do with the family of late K.Natarajan, hence, the trial Court has rightly dismissed the suit in respect of Item No.4. Insofar as Item No.6 is

concerned, it is a Maruthi Esteem Car, which stood in the name of the 2nd defendant, therefore, the trial Court has rightly dismissed the suit in respect of Item No.6 also. Item No.7 is concerned with the Family Pension, Provident Fund, Gratuity Arrears of salary etc., belonging to late K.Natarajan.

10. Now, it is brought to the notice of this Court that the 4th defendant, by order dated 23.11.2006, had disbursed the GPF/DCRG as per the decree of the trial Court to the plaintiff and the 1st defendant, giving one-fourth share to the plaintiff and three-fourth share to the 1st defendant.

11. In these circumstances, since the pensionary benefits have been disbursed as per the preliminary decree passed by the trial Court, the learned counsel on either side submitted that so far as Item No.7 is concerned, the decree can be modified.

12. Even with regard to Item No.8, which is a Fixed Deposit held with Salem District Central Co-operative Bank, it is brought to the notice of this Court that the Fixed Deposit amount has been disbursed to the 1st defendant.

13. The learned counsel appearing for the plaintiff and the defendants 1 to 3 submitted that the decree can also be set aside in respect of Item No.8.

14. So far as Item Nos.1 to 3 are concerned, admittedly, the properties were purchased by late K.Natarajan. After his death, his Class-I heirs are entitled to equal share. Accordingly, his mother (the plaintiff), his wife (1st defendant) and his children (defendants 2 & 3) are entitled to equal share. The trial Court, considering all these aspects, rightly passed the preliminary decree for partition, allotting one-fourth share to the plaintiff and defendants 1 to 3. I do not find any error in allotting onefourth share to the plaintiff.

15. Since Item Nos.7 & 8 were already disbursed to the parties, the preliminary decree in respect of Item Nos.7 & 8 are liable to be set aside.

16. In view of the submissions made by the learned counsel on either side, the preliminary decree passed by the trial Court is modified as follows: (i)The plaintiff is entitled to one-fourth share in Item Nos.1, 2 & 3 of the suit properties; and

(ii)The preliminary decree passed by the trial Court in respect of Item Nos.7 & 8 of the suit properties is set aside.

17. It is made clear that the 1st defendant is entitled to get the future family pension from the 4th defendant.

18. With these observations, the Appeal is partly allowed. No costs.