

(1999) 01 MAD CK 0091
In the Madras High Court
Case No : S.A. No. 791 of 1987

Kannappa Mudaliar (died) and another APPELLANT
Vs
Kulandai Ammal and 5 others RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15, 15(2)

Citation : (1999) 01 MAD CK 0091

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Hema Sampath, for the Appellant; Y.K. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The first defendant in O.S. No. 130 of 1976 on the file of the District Munsif Court, Arani is the appellant in this Second Appeal. The first defendant/appellant died and his legal representative has already been brought on record. This Second Appeal comes up for consideration by way of second round of litigation. At the time of admission, the following substantial question of law was framed :-

"Whether the learned Subordinate Judge has not properly construed the evidence and overlooked material evidence in holding that the suit property has not been purchased by the first defendant benami in the name of his mother?"

2. Mrs. Chithra, learned counsel for the appellant fairly stated that the question of law framed by this Court cannot be agitated at all in view of the earlier findings of this Court in Section Appeal No. 1954 of 1979. It is not necessary to refer to the factual matrix as the pleadings of either parties are admittedly defective.

3. In S.A. No. 1954 of 1979, this Court took note of the contention advanced for the first time that the suit properties would not go to Rajammal but would revert back to the heirs of Valliammal after the death of Rajammal. This Court

remanded the matter to the first appellate Court after setting aside the judgment and decree of the first appellate Court for consideration of the question as to whether Valliammal is the real owner of the property and whether the property belongs to the heirs of Valliammal's daughter Rajammal after the death of Valliammal or whether it would revert back to the heirs of Valliammal after the death of Rajammal.

4. This Court granted liberty to both the parties to let in evidence before the first appellate Court, while remanding the Second Appeal to the lower appellate Court for consideration. After remand, both parties have let in evidence. The findings of the first appellate Court after remand are not being challenged. It is also to be pointed out that the plea of benami has been negatived even by this Court in S.A. No. 1954 of 1979. The plea of adverse possession put forward by the first defendant also had been negatived, and that finding is not being challenged.

5. The first appellate Court after considering the evidence let in after remand held that the suit property was not purchased by Rajammal but it was purchased by her mother Valliammal. The first appellate Court also found that the sale consideration was not paid by the first defendant. It was also further found that for the purchase of the suit property under Ex.B-1 dated 31.10.1938 the daughter Rajammal did not provide the funds. In that view the first appellate Court held that the suit properties belonged to mother Valliammal and it is her Stridhana Property. To this extent, there is no controversy nor the finding of the first appellate Court is being challenged.

6. Mrs. Chithra, learned counsel for the appellant takes exception to a portion of the judgment of the first appellate Court and contended that the first appellate Court had applied wrong principles with respect to the succession which opened even prior to the commencement of the Hindu Succession Act, 1956.

7. The first appellate Court ultimately found that the suit property was purchased by the mother Valliammal. The first appellate Court also found that it will not devolve on the heirs of Rajammal after her death but the same will be inherited by the heirs of husband of Valliammal as per the II proviso to Section 15 of the Hindu Succession Act. This conclusion of the first appellate Court is being challenged by raising new question at the time of hearing. Such a contention has not been raised either in the appeal memorandum nor such a substantial question of law has been raised nor there had been a plea in this respect before the two Courts below as well as in the earlier Second appeal.

8. It is fairly stated by the counsel for either side now that the properties were purchased by Valliammal, the mother under Ex.B-1. It is admitted that the suit property is the Stridhana property in the hands of Valliammal.

9. Valliammal died on 28.9.1955 as seen from Ex.B-3. It is not in dispute that the Stridhana heir left by Valliammal being her daughter Rajammal, who also died on 12.7.1958 as seen from Ex.A-2. Rajammal died after the commencement of the Hindu Succession Act, 1956.

10. Mrs. Chithra, learned counsel for the appellant contends that there has been no plea before the two Courts below contending that the property, which Rajammal had succeeded as Stridhana heir was being possessed by Rajammal on the date of commencement of the Hindu Succession Act 1956 and therefore it cannot be contended that the suit property gets enlarged as absolute property in the hands of Rajammal.

11. It was further contended that as a consequence, the plaintiff or other heirs claiming u/s 15 of the Hindu Succession Act could lay a claim. The plaintiffs claim in this respect is bald according to the learned counsel for the appellant. Therefore, the plaintiff has to fall or succeed on the pleadings. It is true that both the parties as well as the lower appellate Court have proceeded on the basis that Valliammal is entitled to the property absolutely and as Rajammal died after the commencement of the Hindu Succession Act, the heirs of Rajammal being the plaintiff and the defendants will be entitled to share the property in proportion.

12. The only contention that has been raised for the first time in the Second Appeal though attractive, this Court is not inclined to sustain the same.

13. It is fairly stated by the counsel for either side that the property in question acquired by Valliammal under Ex.B-1 was the Stridhana property in the hands of Valliammal and on the death of Valliammal on 28.9.1955 her daughter Rajammal had acquired the limited right. To this extent, there is no dispute. u/s 14 of the Hindu Succession Act, 1956 any property possessed by female Hindu, whether acquired earlier and after the commencement of the Hindu Succession Act shall be held by her as full owner thereof and not as a limited owner.

14. Explanation to Section 14(1) provides that the property shall include Stridhana property as well both movable or immovable prior to the commencement of the Act. Therefore, it follows that Rajammal the Stridhana heir was not holding the suit property as a limited owner on the date of commencement of the Hindu Succession Act, but she was holding the property as full owner thereof. It is not the case of the counsel for the appellant that Rajammal had parted with her possession by way of alienation or she had lost her right to be in possession in any manner known to law.

15. Therefore, it follows that u/s 14, the property was the absolute property of Rajammal and she was no longer a limited owner but she is a full owner. There is nothing to show that Rajammal had lost possession of the property at any point of time during her life time and there is no pleading by either side. The learned counsel for the appellant may be justified in pointing out that the appellant had not pleaded a case. Be that so, it is to be pointed out that none has put forward or focused such case. But the presumption is that Rajammal was alive on the date of death of Valliammal and on the date of commencement of the Hindu Succession Act, Rajammal was in possession.

16. The sole Stridhana heir Rajammal a limited owner holds the property as full owner as she was being possessed of the property on the date of

commencement of Act. Rajammal Stridhana heir though was a limited owner before the commencement of the Hindu Succession Act, her right has enlarged u/s 14(1) read with Explanation to the said section.

17. As Rajammal died on 17.7.1958 after the commencement of the Hindu Succession Act, in terms of Section 15(2) the heirs of the father alone will inherit the property. There is no quarrel with respect to this legal position. That being so, the plaintiffs as well as the defendants being the heirs of the father of Rajammal will be entitled to the share as claimed by them.

18. The learned counsel for the appellant points out that in the absence of a pleading in this respect and both the parties not having focused their claim, the plaintiff had to be non-suited and the suit had to be dismissed. This Court is unable to sustain such contention. It is true that for the first time such a plea is being raised in this Second Appeal and this Court has to consider as it is a question of law. There is no reason at all to exclude the plaintiff or other heirs of Rajammal from getting a share and consequently non suit them. The first defendant had not prescribed title to the property by adverse possession and finding in this respect has not been challenged.

19. The plea of benami put forward by the appellant had been negatived. The plea of adverse possession put forward by the first defendant has also been negatived. After the death of Rajammal on 17.7.1958, the heirs of her father namely the plaintiff and the defendants as found by the Courts below are defined to be in joint possession and the first defendant's possession not being adverse will, be entitled to claim partition as prayer for. The quantum of share is not disputed. In the circumstances, this Court for different reasons sustains the plaintiff's claim of partition and holds that the decree for partition has to be sustained. The Second Appeal fails and it is dismissed, but without costs.