
(2017) 04 MAD CK 0231

In the Madras High Court

Case No : 17 of 2005 ?CMP No 1822 of 2005

Mutha @ Kamalaveni Ammal

APPELLANT

Vs

Narayanasamy Reddiar

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0231

Hon'ble Judges : C.V.Karthikeyan

Bench : SINGLE BENCH

Advocate : C.V.Karthikeyan

Final Decision : Dismissed

Judgement

1. The Plaintiff in OS.No.46 of 2004, who suffered an order of dismissal of the suit by judgement and decree dated 28.12.2004, is the Appellant herein.
2. The suit had been filed, seeking partition of 1/9th share in the suit property, division of metes and bounds and allotment of separate possession of the said share and for costs of the suit.
3. It is the case of the Plaintiff that her father Subba Reddiar was possessed of ancestral properties. The Plaintiff is the daughter. The 1st Defendant is the son of Subba Reddiar. The Defendants 2 to 5 are the legal heirs of another son Ponram Reddiar. Subba Reddiar died in the year 1963 and the mother of the Plaintiff Lakshmi Ammal died in 1997. On the death of Subba Reddiar, his legal heirs were his widow Lakshmi Ammal, the Plaintiff Mutha @ Kamalaveni Ammal, the 1st Defendant Narayanasamy Reddiar and another son Ponram Reddiar. During his life time, Subba Reddiar and his two sons, Narayanasamy Reddiar and Ponram Reddiar were coparceners, each entitled to 1/3rd share in the suit properties.
4. It is the further case of the Plaintiff that on the death of Subba reddiar, his 1/3rd share further devolved on his legal heirs, namely, his widow Lakshmi

Ammal, the Plaintiff, Mutha @ Kamalaveni Ammal and his two sons, Narayanasamy Reddiar and Ponram Reddiar. Consequently, as on 1963, the Plaintiff was entitled to 1/12th undivided share, the mother of the Plaintiff was entitled to 1/12th undivided share, the 1st Defendant Narayanasamy Reddiar was entitled to 5/12 share and another brother Ponram Reddiar was entitled to 5/12 share. The Plaintiff had claimed that the property was not divided by metes and bounds. Subsequently, the mother of the Plaintiff died in 1997. Thereafter, the two brothers of the Plaintiff were looking after the properties and paying kist and other receipts. They were trying to take away her share and consequently, the Plaintiff had issued a notice dated 26.5.1997, demanding 1/9th share. A reply was sent by the Defendants 2 to 5 denying that the Plaintiff was entitled to any share. The 1st Defendant had sent a reply dated 17.8.1998, conceding to the share of the Plaintiff. Thereafter, since the property was not divided, the Plaintiff had instituted the suit, seeking 1/9th undivided share.

5. The 4th Defendant had filed a written statement, which was adopted by the Defendants 2 to 5. The Defendants 2 to 5 had denied that the Plaintiff was entitled to any share. They claimed that the share of the Plaintiff was settled by a registered document dated 3.10.1962, whereby Subba Reddiar had settled 7 acres and 43 cents of land to the Plaintiff. The Plaintiff was in absolute possession of the said property. Thereafter, the Defendants have been enjoying the remaining property among themselves. Further, a partition was effected into between Narayanasamy Reddiar and Ponram Reddiar by a document dated 24.9.1968. It had been stated that the Defendants had enjoyed the suit property continuously from 1968 and consequently, the Plaintiff had been ousted from the joint family property and the Plaintiff cannot claim any share in the joint family property.

5. During the trial, the Plaintiff had examined herself as PW.1 and examined another witness Ramasamy as PW.2 and marked Ex.A1 to A10. Ex.A1 is the notice issued by the Plaintiff to the Defendants dated 26.5.1997 and Ex.A3 is the reply of the 1st Defendant dated 17.8.1998 and the reply of the Defendants 2 to 5, dated 9.7.1997 was marked as Ex.A4. The settlement deed dated 3.10.1962 was marked as Ex.A10. The 4th Defendant had examined herself as DW.1 and there were two other witnesses examined as DW.2 and DW.3. The Defendants had marked Ex.B1 to B28. Among them, Ex.B1 is the partition deed between the 1st Defendant and Ponram Reddiar dated 24.6.1969. Two documents were marked as Ex.X1 and X2, which were kist receipts. The court below, on consideration of the oral and documentary evidence, had dismissed the suit.

6. It is contended before this court by the learned counsel for the Appellant that the Plaintiff, as a daughter of Subba Reddiar, was entitled to undivided 1/9th share consequent to his death and the death of her mother, of Lakshmi Ammal. There were only two other legal heirs, namely, the 1st Defendant Narayanasamy Reddiar and Ponram Reddiar, whose legal heirs are the Respondents 2 to 5. The learned counsel for the Appellant has challenged Ex.B1, which is the partition

deed executed between Narayanasamy Reddiar and Ponram Reddiar on the ground that it is both insufficiently stamped and unregistered. The learned counsel for the Appellant has further stated that penalty can be imposed to overcome insufficiency of stamp, but non registration is fatal to the document.

7. The learned counsel for the Respondents had countered the submissions of the learned counsel for the Appellant and stated that the suit had been filed with much delay. It had been stated that the father of the Plaintiff died in 1963 and partition opened on that date. It had been further stated that the share of the Plaintiff had been allotted by the father by a registered settlement deed Ex.A10 and consequently, the Plaintiff cannot claim a share in the other properties.

8. The point to be determined is whether the Plaintiff has an existing share in the suit property and can seek partition.

9. The Plaintiff is the daughter of Subba Reddiar and Lakshmi Ammal. They had two other sons, namely, Narayanasamy Reddiar and Ponram Reddiar. The properties in the plaint are ancestral properties. Consequently, during the life time of Subba Reddiar, he became coparcener along with his two sons, namely, Narayanasamy Reddiar and Ponram Reddiar. The father of the Plaintiff died in 1963. Till the date of his death, he had undivided 1/3rd share and Narayanasamy Reddiar and Ponram Reddiar had 1/3rd undivided share in the suit properties. In 1962, by Ex.A10, Subba Reddiar had settled 7 acres and 43 cents to the Plaintiff. On that date, she did not have any share in the suit property. Her share will open only on the death of her father.

10. Since the father died, predeceasing his wife, the Plaintiff was entitled to an undivided 1/12th share. However, it is the common contention of both the learned counsel for the Appellant and the Respondents that the property settled in the name of the Plaintiff, namely, 7 acres and 43 cents constituted 1/9th share of the original extent of the ancestral property. This naturally means that even during his life time, the father of the Plaintiff, namely, Subba Reddiar had settled the share, which would devolve on the Plaintiff on his death by way of a registered settlement deed. The Plaintiff should actually be thankful to her father for the same. The said document has been marked as Ex.A10. It is a registered document. The witnesses to the said document are the 1st Defendant, Narayanasamy Reddiar and his brother Ponram Reddiar. Consequently, all the three coparceners jointly in one way or the other had participated in the execution of settling a substantial portion of the coparcenery property exclusively to the Plaintiff. This portion was to an extent of 7 acres and 43 cents. This property has not been claimed by the Defendants. They admit that the Plaintiff is the exclusive owner of the said property. On the other hand, after getting her share, the Plaintiff has turned against the Defendants and is claiming further shares much more than what she would actually be entitled to, even if the settlement had not been executed. The learned counsel for the Appellant tried to deflect arguments, disputing Ex.B1, which is the partition deed between Narayanasamy Reddiar and Ponram Reddiar. The properties so divided did not

include the properties already settled on the Appellant. The remainder of the joint family properties had been divided among the two brothers. The manner in which the two brothers divided them is an issue between two brothers. On that date, the Appellant had already been allotted her share of the ancestral property. She should be grateful that the Defendants are not questioning her title to the property and it is very ungrateful on her part to question the title of the Defendants over their share.

11. The arguments with respect to the admissibility or otherwise of Ex.B1 are beyond the scope of the suit laid by the Plaintiff seeking 1/9th undivided share. She had already been allotted her share and on such allotment, had been granted her share in the joint family property with respect to the residual share which would fall on her on the death of her father. Preempting a situation wherein she might not be granted any share, her father Subba Reddiar had settled her share on her. The learned counsel for the Appellant had stated that it was a sreedana property. Whatever be the nomenclature, the share that would devolve on her had been allotted to her by a registered document Ex.A10. Reopening the remainder of the property for partition would be highly inappropriate and improper. Consequently, I hold that the Appellant has not made out any case to seek a share in the existing joint family property and on this ground, the appeal is liable to be dismissed.

12. In the result, this appeal suit is dismissed. No costs. Consequently, the connected MP is closed.