

(1958) 09 MAD CK 0032
In the Madras High Court
Case No : A.A.O. No. 264 of 1955

Sundarammal

APPELLANT

Vs

Sadasiva Reddiar and Others

RESPONDENT

Date of Decision : 19-09-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Hindu Succession Act, 1956 — Section 14, 19

Citation : AIR 1959 Mad 349

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : S.T. Srinivasa Gopalachari, for the Appellant; P.R. Varadarajan, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyer, J.—This appeal is against an order of remand passed by the District Judge of Coimbatore in A. S. No. 156 of 1953 directing the rehearing of O. S. No. 344 of 1950 on the file of the Sub Court, Coimbatore, in the light of the observations made by the learned District Judge in his judgment. The plaintiff is the appellant herein and she filed a suit for recovery of possession of the suit properties from the defendants on the allegation that the properties originally belonged to her husband, Perumal Reddiar who died intestate. Perumal left behind him three widows.

It is stated on behalf of the plaintiff that Perumal Reddiar died a divided member of the family, divided from his step brothers, who are now represented by defendants 3 and 4 and the father of the first defendant, viz., the 4th defendant. On an earlier occasion the contesting defendants set up Ex. A. 2 as the will of the deceased Perumal. According to the plaintiff the will was a fabricated one.

The genuineness of the will was enquired into in O. S. No. 159 of 1946 on the file of the Sub Court, Coimbatore, wherein it was held that the will Ex. A. 2 was a forged one. That decision was affirmed on appeal by this court in C. M. A. No. 12

of 1948. The plaintiff, therefore, claims that the defendants who got unlawful possession of the properties taking advantage of the pendency of the testamentary proceedings should be directed to deliver those properties to her. The suit was contested on various grounds which are reflected in the issues framed in the case by the defendants.

The learned Subordinate Judge decreed the suit as prayed for, directing symbolical possession of the undivided properties and actual possession in regard to the separate items of properties. An appeal was filed to the lower court by the first defendant. The first defendant as stated already is the son of a step brother of the deceased Perumal Reddiar. The learned District Judge found that on the date of the death of Perumal Reddiar the properties did not belong to him. In coming to that conclusion the learned Judge made some mistakes. He has for instance held that Ex. A. 2 could not be relied on as an admission on the part of the contesting defendant that the properties belonged to Perumal Reddiar.

It is now found that the contesting defendants were responsible for the fabrication of Ex. A. 2 and if they themselves in their fabricated will allege that Perumal Reddiar was the owner of the properties and sought to derive title there under it should be taken as practically amounting to an admission on their part that Perumal Reddiar owned the properties said to be disposed of under the fabricated will. The learned Judge however, declined to consider Ex. A. 2 as relevant evidence as the ownership of the properties by Perumal Reddiar.

I do not agree that Ex. A. 2 should be so excluded from evidence. There is also other evidence in the case which would show title and possession was with Perumal Reddiar and after his death in his widows. That evidence has not been considered by the learned District Judge before he thought it fit to reverse the finding of the trial court on the point. I cannot, therefore, sustain the finding of the lower court in regard to point No. 1.

2. Next, the learned judge held that the plaintiff being one of the co-widows could not sustain the action. He thought that the presence of the other co-widows would be necessary for the purpose of adjudicating their disputes inter se. In that view he directed the other widows being impleaded as co-defendants under Order I, Rule 2 C. P. Code and directed fresh evidence to be taken in the case after so impleading them. Mr. D. Ramaswami Iyenger, learned counsel for the respondent, supports that view of the District Judge by contending that on the date when succession opened to the estate of Perumal Reddiar and on the date on which the suit was filed the widows were having only a joint estate. Therefore he argued that one of the co-widows could not by herself file a suit in ejectment against any trespasser on the footing that that she alone was entitled to the property. He further contended that the absence of the other co-widows from the record would result in the estate of the deceased male owner not being represented at all and that therefore, the suit should fail.

This argument, no doubt, has force but there are two answers to it. If the

learned advocate is right, he ought to have filed an appeal against the order of remand by which the learned District Judge gave an opportunity to the plaintiff to implead the co-widows. That, he has not done. Even apart from that, I am of opinion that if we take note of subsequent events in the case it is not necessary that the plaintiff should implead the co-widows. During the pendency of the suit the Hindu Succession Act XXX of 1956 came into force. u/s 14 of that Act, all persons having a woman's estate under the Hindu law are declared entitled to an absolute estate in the properties; so that after coming into force of that Act the three widows would be entitled to an absolute estate.

Joint tenancy is unknown to Hindu law except where it is created by statute or an instrument. Under the Hindu Succession Act a joint estate is not recognised as Section 19 of the Act would show. I am, therefore, of opinion that after coming into force of Act XXX of 1956 the position of co-widows is that of co-tenants in respect of absolute rights to which they are entitled under the Act. If so much is conceded the rest becomes easy. The plaintiff will be in the position of a co-tenant in regard to her husband's estate which has vested in her absolutely by the passing of Act XXX of 1956. It is well settled that a co-tenant can in her own right institute a suit for the ejectment of a trespasser. It may be that the benefit of the suit will go for all the other co-tenants; but so far as the trespasser is concerned it will not be open to him to plead that a co-tenant cannot by herself file a suit for ejectment.

In this view it would be unnecessary to implead the other co-widows and at any rate it would be unnecessary to remand the case. It, however, either of the parties want that during the pendency of the appeal it would be desirable to implead the other co-widows as parties it may be open to them to apply to the lower court under Order 1 Rule 10 C. P. C. and implead them. But their presence cannot be held to be necessary for the purpose of granting relief in the suit.

3. I am, therefore, of opinion that the order of remand is not justified in the circumstances of the case. That order is set aside and the appeal will be sent back to the lower appellate court to be disposed of on its merits in the light of the observations made above. It will be open to the parties to apply for amendment of pleadings occasioned by the coming into force of Act XXX of 1956, if so advised. There will be no order as to costs.