
(2014) 10 MAD CK 0109
In the Madras High Court
Case No : L.P.A. No. 68 of 2002

Vasudeva Iyer

APPELLANT

Vs

Rajeswari Ammal

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0109

Hon'ble Judges : Sanjay Kishan Kaul, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—The deceased appellant, who is survived by his legal heirs, instituted a suit in the Court of Subordinate Judge, Virudhachalam against seven defendants seeking a preliminary decree for partition and separation of possession of the deceased appellant's half share in the suit rice-mill, as well as share of the future income, on the basis of the same being a property of the Hindu Undivided Joint Family. The deceased appellant pleaded that he and late Srinivasa Iyer (younger brother) and their father were members of Hindu Undivided Joint Family holding large extent of properties. The father passed away in the year 1952, leaving his widow and two sons. The widow also passed away in 1976 and thus the two brothers are in management of the properties and realising income there from.

2. It is stated that both brothers decided to put up a rice mill in Kolathur Village in the year 1958. But the license was applied in the name of late Srinivasa Iyer, the deceased appellant being prohibited from getting license, as he was the Panchayat President. This mill was located on the land purchased in the name of late Srinivasa Iyer, which is stated to be the result of the failure of the vendors of that sale to discharge their loans availed from the joint family of the deceased appellant. Even the outstandings are stated to have been in the name of late Srinivasa Iyer.

3. In 1959, the brothers are stated to have amicable division of the properties and an oral partition took place in the year 1969 with consent of their mother,

their sister having been already married. However, the rice mill was not divided and the brothers continued to own the same jointly and agreed to divide the income equally. The rice mill is stated to have been extended on the land, which was purchased by the deceased appellant.

4. Late Srinivasa Iyer is stated to have two marriages, from which there are three children. Misunderstanding is stated to have occurred between the deceased appellant and late Srinivasa Iyer, resulting in filing of suit O.S. No. 572 of 1979 by the deceased appellant in the Court of District Munsif, Kallakurichi for declaration of his absolute title to the properties allotted to him under the partition and for a permanent injunction. This suit is stated to be contested by late Srinivasa Iyer. The rice mill, however, did not form the subject matter of the suit. Srinivasa Iyer passed away on 06.07.1982.

5. It is the say of the deceased appellant that the first defendant started claiming his exclusive rights, being the second wife of late Srinivasa Iyer. The seventh defendant is stated to be the lessee of the rice mill.

6. The suit was contested by the defendants. The first defendant claimed exclusive rights on the basis that it was the self acquired property of late Srinivasa Iyer and that is why it was not included in the earlier partition suit. The property over which the rice mill was extended also fell to the share of late Srinivasa Iyer in the earlier partition and the patta for the property also stands in his name.

7. On the basis of the pleadings of the parties, the following issues were framed:-

(a) Whether the suit property is the property of joint family consisting of the plaintiff and Srinivasa Iyer?

(b) Whether the plaintiff is entitled to the relief of partition?

(c) To what other reliefs, the parties are entitled for?

8. The deceased appellant examined himself as P.W. 1, while the first defendant examined herself as D.W. 1 and one other witness as D.W. 2. The learned trial Court on going through the entire oral and documentary evidence concluded that the plaintiff/deceased appellant failed to make out a case of any right in the suit property and thus dismissed the suit for partition.

9. The deceased appellant aggrieved by the same preferred an appeal before this Court and in terms of the impugned judgment dated 15.10.2001, the appeal was dismissed, against which the present LPA has been filed.

10. We have heard the learned counsel appearing for the parties. A perusal of paragraph-8 of the judgment shows that the deceased appellant, contrary to the rules of the appellate side, failed to point out the documents, sought to be relied upon, to the Registry so that the same could be placed before this Court. The typed set contained only two documents, besides oral testimony. Except for a part of the record, no other record was available as the same was destroyed in

the District Court, Cuddalore, as per the endorsement made in the index sheet by the District Court. The impugned judgment has thus been passed on the basis of a perusal of the judgment of the trial Court.

11. It is, in fact, a common case that there was a Hindu Joint Family which owned properties. These properties were divided orally, though there was some dispute about the mode and manner of division, which had resulted in a separate suit. Insofar as the rice mill was concerned, while the deceased appellant contended it to be a part of the said joint family property, which remains undivided, the original defendants/respondents stand is that this was the self-acquired property of late Srinivasa Iyer and that is why it was not divided. It is undisputed that the license for the rice mill stands in the name of late Srinivasa Iyer. The sale deed for the portion of land on which the rice mill is situated stands in his name. The rights on the land are sought to be claimed on the basis that there were two debtors who had availed of money, as loan, from the joint family, though the lending was done in the name of late Srinivasa Iyer, and on the failure to discharge the loan, part of the property was conveyed to late Srinivasa Iyer. However, the deceased appellant failed to establish, by leading cogent evidence, the alleged loan transaction, and the debtors were also not examined.

12. We are in agreement with the concurrent view taken by the trial Court and the first Appellate Court that there was no reason to keep this property segregated when the brothers had divided all other immovable properties. This is coupled with the fact that the property was acquired in the name of late Srinivasa Iyer and this property was not included in the suit filed earlier. Though it was stated in the suit that this property has been kept out, it does not stand to reason, in the absence of any documentary evidence of the alleged loan transaction against which the property was sold, that the sale deed would have been executed in the name of late Srinivasa Iyer alone. There is no written instrument evidencing the partition, as it was only an oral partition. The expansion of the mill claims to be on the land of deceased appellant was also not found to be correct, as it is the case of the respondents that the said portion of the land had been allotted in the oral partition to late Srinivasa Iyer. The patta for the said land was also in the name of late Srinivasa Iyer. The disbelieving of the two documents relied upon by the appellant is a concurrent finding, which is not required to be interfered with. No material was produced to show the mode of delivery of the alleged letter, which was marked as Ex. A-49, as the contents of the letter show that it could not have been handed over personally. Even the income has been realised by late Srinivasa Iyer from the lessee.

13. We find no reason to interfere with the concurrent findings of trial Court and the first Appellate Court. The appeal is dismissed. No costs.