IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.156 of 1991

Kumarasamy ..appellant / plaintiff

..vs..

1.Pattigounder @ Pattulingam
2.Selvakumar
3.Minor. Balukumar by
next friend and guardian
Pattigounder
4.Aye Ammal ..respondents/defendants

Appeal is filed under Section 96 of CPC against the Judgment and decree dated 11.07.1989 made in O.S.No. 60 of 1984 on the file of the Subordinate Judge, Coimbatore.

For Appellant : Mr.S.V.Jayaraman for
Mr.A.S.Vijayaraghavan

For Respondent-2 : Mr.P.Raja

JUDGMENT

This appeal is filed against the judgment and decree dated 11.07.1989 made in O.S.No. 60 of 1984 on the file of the third Additional Subordinate Judge, Coimbatore in and by which the learned Sub Judge after analyzing the evidence in depth came to the conclusion that the plaintiff is not entitled to the suit claim and accordingly dismissed the suit.

2. For convenience, the parties are referred as arrayed in the suit.

3. The plaintiff states as follows:

The suit properties under item No.1 to 3 are the joint family properties of Chinnappa Gounder and his son Ramaswamy. His son Ramaswamy Gounder died in the year 1943. The plaintiff and the 1st defendant are the sons of Ramasamy Gounder.

4. The grandfather Chinnappa Gounder purported to have settled the first item of the properties under a settlement deed dated 10.04.1946. Under the document he

a) reserved a right of enjoyment for his life.
b) a right of life enjoyment to the mother of the plaintiff and the first defendant
c) that the plaintiff and the first defendant should enjoy for their life time.
d) and if they do get children their respective children will get absolute right.
e) if any of them do not beget, they will each became absolute owner of their respective shares.

5. The settlement deed of the ancestral and joint family properties in its entirety is totally void. Especially the plaintiff, the first defendant being minor co-parceners, and they could not validly give any consent. The settlement being void ab-initio, the plaintiff and the first defendant being the only male co-parceners are entitled to the entire property. The plaintiff is entitled to 1/2 share and the first defendant is entitled to the other half share.

6. The plaintiff in the alternative submits that as per the settlement also, the plaintiff will be entitled to half share. The plaintiff has no issues. The first defendant has two sons namely defendants 2 and 3. Under the settlement, if the plaintiff does not get any issue, the plaintiff will be entitled to absolutely to the half share and the clauses relating to the life interest will not operate since the plaintiff has no issues and no possibilities of begetting issues. The plaintiff will be entitled to half share absolutely.

7. The mother of the parties by her conduct and acts given up her right of enjoyment for her life. The plaintiff and the first defendant are each in possession of half share by convenience sake without any partition. Since the settlement deed is void, the plaintiff and the 1st defendant is entitled to half share. In the alternative also, the plaintiff is entitled to half share. Inspite of repeated demands, the 1st defendant is refusing to agree for an amicable partition. It is no longer possible to remain together. Hence, the suit.

8. The Written statement of the first defendant adopted by the second and third defendants reads as follows:

It is immaterial whether the plaintiff and the first defendant were minors or not, at the time when the settlement deed was executed. Chinnappa gounder had right, interest and title in respect of the suit properties and he was well within his rights when he executed the settlement deed. The said Chinnappa Gounder was the Manager and Kartha and he was entitled to execute the settlement deed dated 10-4-1946. The

said deed is valid, enforceable, proper, legal and acted upon. Therefore, it is not correct to say that the settlement deed is void or invalid. This one aspect would go to show that the plaintiff is not sure of his ground or he has no ground at all. Neither the plaintiff nor the first defendant is entitled to any share but the defendants 2 and 3 alone are entitled to the entire property.

9. The plaintiff should stick to a definite stand and he should stand or fall taking one and only stand. The plaintiff either should accept the settlement deed or should reject it. At one breadth he cannot say that the settlement deed is void and another breadth, he should not say that as per settlement deed, he is entitled to get half share in the suit properties. If the settlement deed is held valid, then the plaintiff will get only life interest and he cannot get any share in the suit properties.

10. The mother of the first defendant has not given up her right of enjoyment of the properties by her conduct and acts. Unless there is anything in writing by the mother of the first defendant, relinquishing her rights in the settlement deed she continues to have her rights. She is having her rights and she is exercising them even now.

11. The houses, namely house properties bearing Door Nos. 104,105 and 107 which are described as Item Nos.2 and 3 in plaint schedule do not belong to Chinnappa Gounder or his son Ramasamy. The said properties belong to Ayeeammal, the mother of the first defendant. The mother of the plaintiff is alive and she has not settled these houses. The said houses are the individual properties of Ayeeammal. The plaintiff has committed a mistake in including these three houses and the plaint is bad for wrong joinder of properties. The plaintiff cannot and does not have any right or interest in item Nos.2 and 3 of the plaint schedule properties.

12. In the plaint schedule in item No.1, the plaintiff has included a 10 H.P. electric motor pumpset. This motor pumpset belongs absolutely to the first defendant. This motor pumpset was purchased by the first defendant in 1971 from M/s. Selvam Agencies, Coimbatore-18. The plaintiff does not even know the number of the service connection. The service connection was obtained by the first defendant on behalf of his minor sons and in guardian's name. The service connection number is 279.

13. All properties have not been included. Very important declarations or reliefs have no been asked for. As the suit is not properly laid, it is liable to be dismissed.

14. The settlement deed dated 10-4-1946 is perfectly valid, sustainable and maintainable. It is not void. The grand-father of the plaintiff was within his rights to executed the settlement deed. He did not transgress his rights. The settlement deed was acted upon and it is

being acted upon. The plaintiff himself accepted it and he had acted upon it. Even in the plaint, the plaintiff has stated that he is accepting its validity. If the settlement deed is valid, then the mother of the plaintiff, the plaintiff and the first defendant get only life interest and the children of the plaintiff and the first defendant alone get full title. If either the plaintiff or the first defendant does not get any child, the whole property will go to the other who gets the child or children. Now, the plaintiff does not have any child and he is jealous because the first defendant has got sons.

15. If both the plaintiff and the first defendant do not have any child, then the properties described in the settlement deed would go to them in equal shares. If any one of them has got child, then the whole property will go to that child. The plaintiff is out of possession. He is not in enjoyment of the lands. The motor pumpset and service connection do not belong to him. Hence, the suit is liable to be dismissed.

16. The 4th defendant states as follows:

This defendant's husband died 43 years back. Chinnappa Gounder died 40 years back. The settlement is invalid and void. So far as Chinnappa Gounder's share is concerned intestate succession opens and this defendant is a class-I heir entitled to share in Chinnappa Gounder's estate. One Rangammal, wife of Palani Gounder and Palani Gounder died 50 years back and Rangammal has already filed a suit and obtained relief. The defendant has already orally relinquished her rights equally to the plaintiff and the first defendant. There was no oral relinquishment and only then this defendant is entitled to a share in Chinnappa Gounder's share namely in the 1/3rd share of Chinnappa Gounder in which this defendant gets an 1/3rd i.e., 1/9.

17. The plaintiff examined as PW.1. Ex.A1 to Ex.A9 were marked on the side of the plaintiff. The first defendant was examined as DW.1. Ex.B1 to Ex.B16 were marked on the side of the defendants to disprove the claim of the plaintiff.

18. The Lower Court after analyzing both oral and documentary evidence in depth found that the plaintiff is not entitled to suit claim and accordingly dismissed the suit. The present appeal is filed, against the said judgment and decree, by the plaintiff.

19. Heard Thiru.S.V.Jayaraman, the learned counsel for appellant and Thiru.P.Raja, the learned counsel for the 2nd respondent.

20. Upon hearing the rival claims, the points for determination are:-

1) Whether the suit settlement deed dated 10-4-1946 is not a void one?

2) Whether the plaintiff is entitled for a share in the suit property?

3) Whether the life estate of the 4th defendant is enlarged as per section 14(1) and 14(2) of the Hindu Succession Act?

4) Whether the findings of the Lower Court in dismissing the suit is in order?

21. Point No.1:

It is the specific case of the plaintiff that late Chinnappa Gounder has no alienable right with regard to the property under dispute in which his minor sons have got right over the same as the disputed property is of ancestral in nature and therefore the said settlement deed in respect of the properties of the minors is void. The learned counsel for the respondents/defendants would contend that the disputed property is the absolute property of the late Chinnappa Gounder and therefore, the settlement is valid in law. Even otherwise the late Chinnappa Gounder as Kartha of the family executed the settlement deed for the benefit of the family members including the minors and therefore the settlement deed is valid in law. At this juncture, it is useful to refer the settlement deed dated 10-4-1946 marked as Ex.A1 (Ex.B1). A portion of the settlement deed reads as follows:

"எனக்கு பிதுராச்சித சுயார்ஜித வகையில் பாத்தியப்பட்டு என் அனுபோக சுவாதீனத்திலிருக்கிற "

" செட்டில்மெண்டு பத்திரம் என் ஜீவதிசை வரையில் அடியில் கண்ட பூமிகளுக்கு பட்டா என் பேருக்கு இருக்க வேண்டியது"

22. The recitals referred above would show that though the properties referred in the settlement deed are the ancestral properties, it devolved exclusively upon the testator Chinnappa Gounder and enjoyed the same by him exclusively after obtaining the patta in his name. No doubt, it is true that the 4th defendant acted as guardian for the minor children namely Kumarasamy (the plaintiff) and Patti Gounder (the first defendant). The said Chinnappa Gounder is not alive. The recitals in the settlement deed exposes that the said settlement deed executed only for the benefit of the family members including the plaintiff and the first defendant. It is also clear from the settlement deed, that the said Chinnappa Gounder enjoyed the property under dispute in his own right exclusively after obtaining a patta in his name. It also exposes that the patta, in respect of the land in dispute, stands in the name of late Chinnappa Gounder till the time of his death. Infact, the plaintiff and the first defendant have benefitted by the settlement deed. It is not the case of the plaintiff that there was no benefit for him in respect of the

settlement deed. It is also not the case of the plaintiff that the said settlement deed was executed against the interest of the plaintiff. Infact, the plaintiff's mother is a party to the settlement deed. The said settlement deed was executed in the year 1946. The plaintiff was 10 years old at that time. The plaintiff attained majority during 1964. The present suit was filed only on 13.01.1984. If really the said settlement deed was executed against the interest of the plaintiff, he ought to have challenged the same soon after he attained majority and before the expiry of limitation contemplated under the Act.

23. Since the properties under dispute were enjoyed by late Chinnappa Gounder in his own right and executed a settlement deed for the same for the benefit of the family members including the plaintiff, it cannot be stated that the said settlement deed is ab-initio void. Admittedly, the patta stands in the name of late Chinnappa Gounder while executing the settlement deed for the benefit of family members, which is marked as Ex.A1.

24. Even otherwise, the said settlement deed cannot be stated to be void. At best it can be a voidable document. The said voidable document can become valid on the happening of certain things. In this case, the plaintiff has not questioned the validity of the settlement deed soon after attaining majority and before the expiry of period of limitation as contemplated under the Act. In such view of the fact, the plaintiff cannot say that the suit settlement deed is a void document. The Lower Court has also dealt this point in that line and rightly held that the suit settlement deed is valid and binding on the plaintiff and accordingly answered this point against the plaintiff. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered against the plaintiff.

25. Point No.2:

The learned counsel for the appellant/plaintiff takes me to the relevant portion of the settlement deed and contended that the plaintiff has got half share in the suit property. The learned counsel for the respondents/defendants also takes me to to the same recitals and contended that the plaintiff is not entitled to half share in the suit property. Now, let me to go through the recitals of Ex.A1 (Ex.B1) to find out whether the plaintiff has got half share in the suit property. The relevant portion of Ex.A1(Ex.B1) reads as follows:

"இந்த இரண்டு பேர்களும் இவர்கள் ஜீவதிசை வரையில் அடியில் கண்ட பூமிகளில் வரப்பட்ட வரும்படியைக் கொண்டு அனுபவித்து வந்து இவர்களுக்கு ஏற்படும் வாரிசுகளுக்கு சார்வசுதந்திரத்துடன் தானாதி விக்கிரயங்களுக்கு யோக்கியமாய் ஆண்டு அனுபவித்துக்

கொள்ள வேண்டியது, இவர்களுக்கு வாரிசுகள் ஏற்படாமல் போனால் இவர்களே சர்வசுதந்திரமாய் அனுபவித்துக் கொள்ள வேண்டியது."

The relevant words in the above recitals is that

"இவர்களுக்கு வாரிசுகள் ஏற்படாமல் போனால் "

Now, let me go back to the year 1946 to find out the intention of the testator. The intention of the testator was that the property under dispute shall be enjoyed by his heirs only and not by third parties. Only in case where there is no heirs for the life estate holder, it can be enjoyed by them absolutely. In this case, the first defendant has got legal heirs, but the plaintiff has no heirs. It was not the intention of the testator that even in case if any one of the life estate holder has no heirs, the property under dispute can be enjoyed by them absolutely.

26. In this case, the first defendant has got heirs, who can fulfil the obligation of the testator. Whereas, the plaintiff has no heir at all. If that be so, the plaintiff can enjoy the suit property till his lifetime. He cannot seek for partition of the property under dispute as the first defendant has legal heirs to satisfy the needs of the testator. If that be so, as per the recitals of the settlement deed, the plaintiff cannot ask for the partition of the suit property. The plaintiff can enjoy the suit property till his lifetime. The Lower Court has rightly negatived the claim of the plaintiff. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered against the plaintiff.

27. Point No. 3:

The learned counsel for the appellant/plaintiff would contend that the 4th defendant being the wife of late Ramasamy, the father of the plaintiff and the first defendant, vested with life estate in respect of the property under dispute in lieu of maintenance of her right, enlarged subsequently as per section 14(1) and 14(2) of the Hindu Succession Act. He also relied on the following decisions, in support of his contention.

1)"Sengoda Gounder and another ..vs.. Chinna Ponnal and two Others" reported in "2003-4-L.W. Page 709";

2)"Raghuvir Singh and others ..vs.. Gulab Singh and Others" reported in 1998 II C.T.C. Page 253;

3)"Smt. Palchuri Hanumayamma ..vs.. Tadikamalla Kotlingam (D) by LR's. and Others" reported in 2001 (4) C.T.C. Page 556;

4)"Smt. Beni Bai ..vs.. Raghubir Prasad " reported in A.I.R. 1999 S.C. Page 1147;

5)"Vaddeboyina Tulasamma and others ..vs.. Vaddeboyina Sesha Reddi (dead) by L.Rs." reported in A.I.R. 1977 S.C. Page 1944.

27. The learned counsel for the respondents/defendants would contend that only in case where there was a pre-existing right in such properties by virtue of the document, the same could be enlarged under sections 14 (1), 14(2) and section 30 of the Hindu Succession Act. The case on hand is not like that. Therefore, the contention of the learned counsel for the appellant/plaintiff is bereft of any merit.
He also relied on the decision in the case of

"Sadhu Singh ..vs.. Gurdwara Sahib Narike and Others" reported in "2007 (I) M.L.J. 25 (S.C)"

in support of his contention.

28. I have gone through the recitals of the alleged settlement deed. The testator has not given life interest to the 4th defendant in lieu of any maintenance. According to the recitals, both the testator and the 4th defendant have to enjoy the property under dispute jointly. They have to maintain their minor children. Thereafter the property under dispute to be devolved upon the heirs of the plaintiff and the first defendant. There was no pre-existing right vested with the 4th defendant as per the settlement. The decisions relied on by the learned counsel for the appellant/plaintiff was with reference to pre-existing right in respect of the properties concerned in that case in lieu of maintenance. Therefore, the enlargement of the pre-existing right under sections 14(1), 14(2) and 30 of the Hindu Succession Act has been dealt in that decision. The case on hand, is with reference to the settlement deed, which does not speak about any pre-existing right to the property in lieu of maintenance. The case on hand is not similar to the case referred by the learned counsel for the appellant/plaintiff. I am of the considered view that the principles laid down in those decisions are not applicable to the case on hand. The principles laid down in the decision cited by the learned counsel for the respondents/defendants reads as follows:

" When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, his heirs as per the schedule, take it in terms of

Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17.06.1956 leaving his widow as his sole heir, she gets the property as Class I heir and there is no limit to her estate or limitation on her title. In such circumstances, Section 14(1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14(1) of the Act, she gets an absolute estate.

An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a Will bequeathing the properties, the legatees take it, subject to the terms of the Will, unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His Will hence could not be challenged as being hit by the Act.

When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression ' property possessed by a female Hindu' occurring in Section 14(1) of the Act.

> An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act, being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance. "

29.Bearing in mind about the principles laid down in the above said ruling and also the connected facts while comparing with the case on hand coupled with the recitals of the suit settlement deed, I am satisfied that the 4th defendant has no pre-existing right as contended by the learned counsel for the appellant/plaintiff. If that be so, the question of enlargement of the rights of the 4th defendant under section 14(2) of the Hindu Succession Act does not arise at all in this case. Therefore, I am of the considered view that the contention of the learned counsel for the appellant/plaintiff is bereft of any merit and the same is rejected.

30. Point No.4:

In view of the findings rendered to point Nos. 1 to 3, I am satisfied that the plaintiff is not entitled to the suit claim. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered against the plaintiff.

31. In the result, this appeal fails and accordingly dismissed. The parties have to bear their respective costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mra

To

1.The Subordinate Judge, Coimbatore.
2.The Section officer, VR Section, High Court, Madras.

+ 1 CC To Mr.S.Subbiah, Advocate SR NO.12431

A.S.No.156 0F 1991

PV[CO]
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