

Sellammal and Others

Vs

Nallammal (Dead) By L. Rs.

Civil Appeal No. 126 of 1972

(A. C. Gupta, P. N. Bhagwati, Syed M. Fazal Ali JJ)

17.03.1977

JUDGMENT

FAZAL ALI, J. –

1. Palanisamy Gounder and Nallasamy Gounder were step brothers and the first respondent Nallammal was the wife of Palanisamy Gounder. Palanisamy Gounder died in 1936. Nallasamy Gounder died on March 11, 1949 leaving his widow Sellammal and two sons Periyasamy Gounder and Doraisami Gounder. Admittedly P. Gounder and N. Gounder were members of a joint family but the plaintiff Nallammal claimed that there was a division in the family. This fact was contested by N. Gounder who took proceedings against the plaintiff Nallammal in Original Suit 43 of 1942 where it was held that there was no division in the status between the two brothers P. Gounder and N. Gounder and that the entire family properties passing by survivorship to the other brother Nallaswami Gounder. This judgment is dated February 22, 1945 and it was confirmed in appeal by the Sub-Judge on March 17, 1946. The plaintiff's case was that after this suit there was a panchayat in the family some time in the year 1949 wherein the plaintiff's claim for maintenance and residence was settled and the suit properties comprising an extent of 40 acres out of a total 160 acres were given by the defendants 2 and 3 to the first plaintiff Nallammal in lieu of her claim for maintenance and residence. As disputes arose between the parties, the plaintiff filed a suit for injunction or in the alternative for possession on the ground that the property had been given to the plaintiff absolutely by the panchayat and she became an absolute owner of the same under Section 14(1) of the Act of 1956. The suit was resisted by the defendants on the ground that the properties were given to the first plaintiff only for her maintenance with a stipulation that they should be enjoyed by her during her lifetime without any powers of alienation and, therefore, the case of the plaintiff fell within the ambit of Section 14(2) of the Act and she would not get an absolute interest. It was further averred by the defendants that the plaintiff had already agreed to take Rs. 500 per annum towards her maintenance and was to surrender the properties when the Act of 1956 came into force, she could not claim any benefit under Section 14(1) of the Act.

2. The learned Munsif as also the appellate Court found that the suit properties were given to Nallammal in lieu of her maintenance and as she continued to be in possession when the 1956 Act came into force, she got, by force of Section 14(1) and Explanation to that section an absolute right over the properties. The Courts below also did not accept the case of the defendants that the plaintiff had surrendered possession of the properties to them in lieu of getting Rs. 500 per annum. The present suit was filed on June 11, 1963 and was decreed by the Munsif on February 26, 1964. The defendants went up in appeal before the appellate Court which was dismissed on March 18, 1966. Thereafter the defendants filed a second appeal in the High Court which was also dismissed on March 3, 1971. The High Court of Madras held that as the properties were allotted to the plaintiff in

lieu of her maintenance in 1949, the properties were in recognition of a pre-existing right, and, therefore, Section 14(2) was not attracted. The High Court, therefore, affirmed the findings of the Courts below that the plaintiff acquired absolute interest in the properties allotted to her by virtue of Section 14(1) of the 1956 Act. Thereafter, the appellant obtained special leave to appeal from the judgment of the High Court dated November 1, 1971 and hence this appeal. (This is really an appeal against the judgment of Ramamurti, J., in Chellammal v. Nallammal (1971) 1 MLJ 439 (Mad HC).

3. For the reasons given by us in Civil Appeal 1360 of 1968 which was heard along with this appeal, we find ourselves in complete agreement with the view taken by the High Court who was rightly held that the present case is covered by Section 14(1) and not be Section 14(2) of the 1975 Act. According the judgment of the High Court is hereby affirmed and the appeal is dismissed. In the circumstances, however, we make no order as to costs in this Court.

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