

**SUPREME COURT OF INDIA**

C. Krishnan

Vs.

Kistammal

SLP (Civil) No.8142 of 2007

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

15.09.2008

**JUDGMENT**

**Dr.Arijit Pasayat, J**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court disposing of Second Appeal. The only grievance in the appeal is that the High Court in the appeal could not have set aside the decree of the trial Court so far as it relates to the partial relief granted in the suit filed by the plaintiffs-appellants when there was no appeal so far as said relief is concerned.

3. Learned counsel for the appellants pointed out to the following observations of the High Court.

“In the light of the above discussion, it is to be held that there was division in the family and Munusamy Reddy and Ramu Reddy separated themselves from other coparceners at the time of their death and therefore the shares so obtained by them under the division, certainly would pass on to their heirs, by succession and not by survivorship upon the surviving brothers. The deceased first plaintiff, suppressing all the above facts, misleading the Court, obtained a decree which is liable to be set aside.

In this case, whether Ex.A6 represents the correct date of death of Munusamy or not may not have much significance, in view of my findings supra. The first Appellate Court has held accepting the oral evidence of the parties and drawing presumption under law that Ex.A.6 is true and that will prove the date of death of Munusamy Reddy as 25.11.1935. Assuming it is correct, that alone will not give any absolute right over the suit properties to the deceased first plaintiff, to be inherited by other plaintiffs vis., the respondents herein. Therefore, it is unnecessary for us to dwell upon Ex.A.6 to find out its validity or correctness as the case may be. For these

reasons, the lower Appellate Court is not justified in decreeing the suit when the deceased first plaintiff Chengappa Reddy is only one of the four brothers, as if he had inherited the shares of two brothers viz., Munusamy Reddy and Ramu Reddy, excluding the others and ignoring the division of coparceners, as established. Therefore, it is to be held as rightly put in substantial question No.2, the lower Appellate Court fell into an error, which is to be rectified by allowing this appeal, answering these two substantial questions of law accordingly.

The result therefore is the appeal is allowed setting aside the decree and judgments of both the courts below, regarding the declaration and injunction granted in respect of items No.1 to 9 of the suit properties. Thus, the suit in O.S. No.593 of 1981 on the file of the District Munsif, Ponneri is dismissed, in respect of items No.1 to 9 of the suit properties. So far as the item No.10 of the suit properties is concerned, the suit is decreed, granting the reliefs of declaration and injunction as prayed for.”

4. In the counter-affidavit filed by the respondents it has been stated as follows:

“Aggrieved by the above judgment, the answering respondent filed the Second Appeal No.249 of 1995 confirming the findings recorded by the Ist Appellate Court only in respect of Items 1 to 9 of the plaint. The Hon'ble High Court after framing the questions of law came to a correct conclusion that the lower Appellate Court fell into error in ignoring the division in the family. The High Court further held that the shares so obtained under the division would pass on to their heirs by succession and not survivorship upon the surviving brothers. The Hon'ble High Court while allowing the appeal filed by the answering respondents has set aside the decree of the Ist Appellate Court with regard to Items 1 to 9 of the plaint schedule properties. The High Court accordingly confirmed the decree granted by the trial Court with regard to items 1 to 9 and with regard to item 10 of the plaint schedule properties, it confirmed the decree passed by the trial Court.”

5. It is accepted that the respondents filed Second Appeal where relief claimed was confined to plaint property Item Nos.1 to 9, which was allowed by the High Court. With regard to Item No.10 the respondents did not file appeal and the High Court should have affirmed the decree granted by the trial Court. With regard to Item No.10 the stand is very fair. But the stand taken to the effect that the High Court has affirmed the decree granted by the trial Court with regard to Item No.10 does not appear to be so clear. It has been stated that so far as Item No.10 of the suit property is concerned the suit was decreed granting relief of declaration and injunction as prayed for. While so observing, other part of the conclusions of the High Court that the appeal was allowed setting aside the decree and judgments of courts below regarding the declaration and injunction granted in respect of Item Nos. 1 to 9 of the suit properties is not clear. It is, therefore, directed that the decree passed by the trial Court is to be restored. The impugned judgment of the High Court is modified to the aforesaid extent.

6. The appeal is disposed of without any order as to costs.