

SUPREME COURT OF INDIA

R.Mahalakshmi

Vs.

A.Kanchana & Ors.

C.A.No.9153-9156 of 2016

(Anil R.Dave and L.Nageswara Rao,JJ.,)

15.09.2016

JUDGMENT

L.Nageswara Rao,J.,

SLP (C) No.19820-19823 of 2016

1. Leave granted.

2. The Appellant is the Fourth defendant in O.S. No. 666 of 2001 filed by her brother Sri A. V. Venkataraman for partition and allotment of a share of 6/20 in the property in the Court of Additional Subordinate Judge, Chengalpattu. Defendants No. 1 to 3 are the sisters of the Appellant. It was averred in the plaint that the suit property was an ancestral property inherited by the father of the Plaintiff, Sri A.V. Venkataraman, by a partition deed dated 27.04.1954. Sri A.V. Venkataraman died in 1961 leaving his wife Smt. A.V. Rathnabai, the Plaintiff and the defendants. According to the Plaintiff he was entitled to a share of 6/20, the Second and Fourth defendants 6/20 share each and First and Third defendants 1/20 share each of the suit property. Section 29 A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 was inserted w.e.f. 15.03.1989 by which the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and was given the same rights in the coparcenary property which the son had. Defendants 1 and 3 married prior to the amendment and so they were entitled to 1/20 share. The Appellant married after the amendment and Defendant No.2 did not marry as she was paralyzed in an accident due to which they were entitled to 6/20 share. The Appellant filed a written statement claiming a share of 36/90.

3. The Additional Sub Judge, Chengalpattu by his judgment dated 27.07.2004 decreed the suit holding that the Plaintiff, the Second Defendant and the Fourth defendant (Appellant) were entitled to a share of 6/20 each and First and Third defendants were entitled to a share of 1/20 each in the suit property. The Appellant preferred A.S. No. 39 of 2006 in which she stated that the Plaintiff omitted other properties which were available for partition and that the suit for partial partition was bad in law. The Principal District Judge, Chengalpattu

dismissed A. S. No.39 of 2006 by a judgment dated 20.11.2006. The Appellant approached the High Court of Judicature at Madras by filing Second Appeal No.1168 of 2007 which was also dismissed on 01.11.2007.

4. Aggrieved by the judgment of the High Court, the Appellant filed Civil Appeal No. 5053 of 2009 which was allowed by this Court by a judgment dated 03.08.2009. This Court examined the scope of Section 29 A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 and held that the daughters who got married after 1989 would have equal share as that of a son. After a critical examination of the registered deed of partition, this Court held that all the immovable properties inherited by Sri A.V. Venkataraman were not included in the suit schedule. Finally, this Court remitted the matter to the Trial Court for the reason that all the properties which were inherited by the Appellant's father by virtue of the registered deed of partition dated 27.04.1954 were not included in the suit schedule.

5. The Additional Subordinate Judge, Chengalpattu by his judgment dated 08.09.2010 passed a preliminary decree holding that the Appellant is entitled to 1/4 share of the suit property(house) and that the Plaintiff is entitled to remaining 3/4 share. The above judgment was passed by the Trial Court on re-examination of the material on record after finding that there was no documentary proof of availability of any additional assets for partition. It is relevant to mention that the original Plaintiff, A. V. Anantharaman, died on 20.04.2010 during the pendency of O.S. No. 666 of 2001. Respondents No. 1, 2 and 3 herein were brought on record as LR's of the original Plaintiff on 21.07.2010 as Plaintiffs No. 2, 3 and 4.

5.Appeal Suit No. 3 of 2011 was filed by Respondents No. 4 and 5 herein who are Defendants 1 and 3 in O.S. No.666 of 2001 and Appeal Suit No.9 of 2013 was filed by the Appellant herein in the Court of Principal District Judge, Chengalpattu, assailing the judgment* of the Additional Subordinate Judge, Chengalpattu in O. S. 666 of 2001 dated 08.09.2010. The Principal District Judge, Chengalpattu allowed both the appeals, set aside the judgment and decree passed by the Additional Subordinate Judge, Chengalpattu in O.S. No.666 of 2001 dated 08.09.2010 and remitted the matter back to the Trial Court. It was held in the above judgment that the directions given by this Court in Civil Appeal No.5053 of 2009 were not complied with by the Trial Court as all the properties that were inherited by Sri A.V. Venkataraman by the partition deed dated 27.04.1954 were not included in the partition suit.

6. C.M.A. Nos. 3041 of 2014 and 3042 of 2014 were filed by Respondents No. 1 and 2 herein (Plaintiffs No. 2 and 3 in the suit) and C.M.A. Nos.3043 of 2014 and 3044 of 2014 were filed by Respondents No. 4 and 5 herein (Defendants No. 1 and 3 in the suit) in the High Court of Judicature at Madras challenging the judgment dated 09.07.2014 in A. S. 3 of 2011 and A. S. No. 9 of 2013. The High Court allowed the CMAs, set aside the judgment and decree of the First Appellate Court and granted a preliminary decree in the suit for partition by declaring that the Plaintiffs were entitled for 5/8 share jointly and Defendants 1, 3 and 4 were entitled to 1/8 share in the suit house property. Aggrieved by the said judgment of the High Court, the Appellant has filed the above Civil Appeals.

7. The Appellant appeared in person and submitted that the finding recorded by the High Court that there was no direction by the Supreme Court to include other properties in the suit schedule to enable the parties to claim their share is erroneous. She also submitted that the High Court was wrong in its finding that this Court while remanding only granted liberty to amend the pleadings, file additional documents and to lead further evidence in support of the amended pleadings. The Appellant also submitted that the judgment of the First Appellate Court was wrongly reversed by the High Court on a mis-interpretation of the remand order passed by this Court in Civil Appeal No.5053 of 2009. The Appellant further submitted that the other findings on other aspects by the High Court were unwarranted. The Appellant also submitted that the declaration in the impugned judgment of the High Court that the Appellant is entitled to 1/8 share is erroneous. Mr. V.M. Venkatramana, learned Counsel, appearing for Respondents 1 and 2 submitted that apart from the ancestral property there are no other properties that were available for partition. He further submitted that two plots i.e. Plot 2 and 3 at 185, Adyarthankal were acquired under the Land Acquisition Act in 1956. He also supported the judgment of the High Court, which according to him, does not suffer from any infirmity.

8. The only point to be decided in this case is whether the High Court was right in interfering with the judgment of the Lower Appellate Court by which the suit was remanded to the Trial Court. As stated earlier, this Court in its judgment dated 03.08.2009 in has categorically held that all the properties that were inherited by Sri A.V. Venkataraman by virtue of a registered deed of partition dated 27.04.1954 have not been included in the suit schedule. This Court clearly held in the said judgment that another ground for remand was that the Appellant has taken a consistent stand from the beginning that the suit for partial partition was bad in law. In our view, the First Appellate Court was right in remitting the matter to the Trial Court to take into account the other properties which were inherited by the Appellant's father, Sri A. V. Venkataraman, by virtue of the registered deed of partition dated 27.04.1954. The High Court committed an error in holding that there was no direction given by this Court for including the other properties in the suit schedule. The High Court held that the only direction given by this Court while remitting back to the Trial Court was to give an opportunity to the parties to amend their respective pleadings, file additional documents and to lead further evidence in support of the amended pleadings. The High Court was wrong in ignoring paragraph 33 of the judgment in which it was clearly held by this Court that the remand was warranted in view of the grounds mentioned therein. One of the grounds was that all the properties that were inherited by the Appellant's father, Sri A.V. Venkataraman, were not included in the suit schedule.

9. As we have held that the High Court mis-interpreted the judgment of this Court in Civil Appeal No.5053 of 2009, we set aside the judgment of the High Court and uphold the judgment of the First Appellate Court in A. S. No.3 of 2011 and 9 of 2013. The Trial Court is directed to consider the matter strictly in accordance with the directions of this Court in and decide expeditiously in view of the suit being of the year 2001.

10. For the aforementioned reasons, the Civil Appeals are allowed. No orders as to costs.