

(2009) 11 MAD CK 0183

Madras High Court

Case No: Appeal Suit No. 464 of 1999

Maanvizhi (a) Mana Vijie

APPELLANT

Vs

Venkatachalam (a) Vingudasalam
and Others

RESPONDENT

Date of Decision: Nov. 4, 2009

Citation: (2010) 2 MLJ 40

Hon'ble Judges: T.S. Sivagnanam, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: R. Subramanian, for the Appellant; R. Subramanian for S. Hemalatha, for the Respondent

Final Decision: Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.

This appeal has been preferred as against the judgment and decree dated 15.10.1998 passed in O.S. No. 342 of 1995 on the file of the Additional Subordinate Judge, Pondicherry.

2. The appellant claiming herself to be the daughter of respondents 1 and 2 and the sister of respondents 3 to 5, filed the suit for partition to divide the suit properties into five equal shares and for allotment of one such share in her favour.

3. The suit claim was resisted by the first respondent, contending that the appellant had no right to claim for partition, inasmuch as the parties to the suit being domiciled at Pondicherry, there was no question of any right in the appellant to claim for partition, that the first respondent/first defendant, who is the legitimate son of his father Kesava Gounder, in whose name the properties originally stood, is alive and therefore there was no scope for considering the claim for partition at the instance of the appellant.

4. The suit came to be filed in the year 1995. The learned trial Judge framed as many as seven issues.

5. After hearing learned Counsel for the appellant as well as Mr. R. Subramaniam, learned Senior Counsel for respondents, we are of the considered opinion that the conclusions of the trial Court on the issue Nos. 2 and 3 would be sufficient to dispose of the appeal. The said issues which arise for consideration even in this first appeal are as under:

(1) Whether the plaintiff and defendants 3 to 5 are the legitimate children of defendants 1 and 2?

(2) Whether the defendant No. 1 and his father Kesava Gounder constituted a joint family under Mithakshara Hindu Law? If so, whether the suit properties were the joint family properties?

6. When we consider the above issues, the first and foremost issue that arises for consideration is as to whether the family of the appellant as well as that of the respondents" domicile is at Pondicherry and if the said question is answered in the affirmative, whether there was any scope at all for the appellant to seek for partition.

7. It would be worthwhile to state the legal position relating to the right of a Hindu domiciled in Pondicherry, who claims any right on the basis of devolvement of ancestral property. In the judgment of a Division Bench of this Court in the case of Viswanathan and A. Andal Vs. Savarimouthurayan and Others, the legal position has been directly set out in paragraph No. 10 which reads as under:

The learned Judge in the decision in Ramalingam v. Manicka Gounder 1980 (1) M.L.J. 350, has held as follows:

10. In the event, I think, it would be proper to hold that under the Hindu Law as in vogue in Pondicherry all properties held by a father in a joint family are his absolute properties, whatever might be their origin or their modes of acquisition, and all of them devolve on his death in accordance with the law which governs succession to a male Hindu's absolute estate. This was the law as administered in Pondicherry when the Hindu Succession Act, 1956 came to be extended to that territory in 1963.

8. When we are clear about the legal position, the only other question to be examined is whether the parties herein are the domicile of Pondicherry. In that context, when we peruse the judgment of the trial Court on Issue No. 3, in paragraph No. 10, the Birth Certificate of the father of the first respondent viz., Kesava Gounder under Ex.B.1, has been dealt with, which discloses that the said Kesava Gounder was born in Pondicherry as the son of Manicka Gounder. The very same document also reveals that Kesava Gounder's father Manicka Gounder was the person domiciled in Mangalam village, Villianur Commune, Pondicherry. The said Ex.B.1 came into existence in the year 1909. Though the appellant herein claimed that the first respondent and his ancestors hailed from Pudukuppam, Anumandai, Tamil Nadu, there was absolutely no iota of evidence in support of the

said claim. On the other hand, Ex.B.2, the Birth Certificate of the first respondent discloses that he was also born in Pondicherry. There was another document Ex.B.6 which is the Marriage Invitation of one of the sons of the first respondent, by name, Adhimoolam with Saroja and Ex.B.8 is Voter's Card relating to the year 1995, wherein the names of the first respondent, second respondent, Andal Ammal-mother of the first respondent and the names of the first respondent's sons Adhimoolam, Kulasekaran and Saroja are noted, which all disclose that they were domiciled in Pondicherry. Ex.B.9 is the Voter's list for the year 1976 relating to Odiampet, in which, the name of the first defendant is shown. Death Certificate of Kesava Gounder, viz. Ex.B.28 which again confirms the domicile of the first respondent and his forefathers.

9. Having regard to such overwhelming evidence placed before the trial Court in support of the stand that the family of the first respondent belongs to Pondicherry and not to the State of Tamil Nadu and applying the law relating to the Hindu woman in the State of Pondicherry, as set out in the legal position, which prevailed as on the date, there can be no two opinion as to the eligibility of the appellant to claim for partition. Consequently, the rejection of the same by the learned trial Judge, cannot be found fault with.

10. We therefore, answer the issues against the appellant and hold that there was no question of any right in the appellant to seek for partition. The appeal fails and the same is dismissed. No costs.