(2015) 03 MAD CK 0289

Madras High Court

Case No: Second Appeal No. 1308 of 2014 and M.P. No. 1 of 2011

Muthusamy and Others		APPELLANT
	Vs	
A. Maruchamy and Others		RESPONDENT

Date of Decision: March 17, 2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) - Order 41 Rule 2#Hindu Succession Act, 1956 - Section 14

Citation: (2015) 03 MAD CK 0289

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: N. Anand Venkatesh for V. Anandhamoorthy, for the Appellant; R. Bharathkumar, Advocates for the Respondent

Final Decision: Allowed

Judgement

S. Nagamuthu, J.
The defendants 2 to 5 in O.S. No. 2394 of 2004 on the file of the learned III Additional District Munsif, Coimbatore

are the appellants herein. The first respondent is the sole plaintiff in the suit. One Mr. Arumugam was the first defendant in the suit. On his demise,

the second respondent herein has been impleaded as his legal representative. It was a suit for partition and for separate possession of half share in

the suit property and also for permanent injunction to restrain the defendants from in any manner altering the physical features of the suit property

namely the suit building. By decree and judgement dated 16.08.2007, the trial Court dismissed the suit in its entirety. As against the same, the first

respondent/plaintiff filed an appeal in A.S. No. 111 of 2007 on the file of the learned First Additional Subordinate Judge, Coimbatore. By decree

and judgement dated 04.07.2008, the First Appellate Court allowed the appeal thereby setting aside the decree and judgement of the trial Court

and granted decree for partition allotting half share to the plaintiff but, there was no decree granted for injunction in favour of the plaintiff/first

respondent. As against the same, the defendants 2 to 5 are before this Court with this second appeal.

2. I have heard the learned counsel for the appellants; learned counsel for the first respondent; learned counsel for the second respondent and I

have also perused the records carefully.

3. The case of the plaintiff is as follows:--

The suit property was earlier a "natham land". It was in the occupation of the ancestors of the plaintiff. On 01.03.1928, the Revenue Department

granted patta for the suit property on behalf of the entire family but, in the name of Mrs. Rangammal. The husband of Mrs. Rangammal was one

Mr. Marappa Gounder. They had a son by name Mr. Chinnaya Gounder and a daughter by name Ms. Chinnakkal @ Chinnammal. Since, Mr.

Chinnaya Gounder was the only son of Mr. Marappa Gounder and Mrs. Rangammal, he inherited the entire property and became the absolute

owner of the property. Mr. Chinnaya Gounder had his only son Mr. Arumugam, the first defendant in the suit (died subsequently). Mr. Chinnaya

Gounder died on 20.12.1981. Therefore, being the only son of Mr. Chinnaya Gounder, Mr. Arumugam, inherited the suit property which is the

ancestral property. Mr. Arumugam (first defendant) and the plaintiff have got half share each in the suit property. It is the further case of the plaintiff

that the daughter of Mr. Marappa Gounder and Mrs. Rangammal namely, Ms. Chinnakkal @ Chinnammal was married to one Mr. Chinnaya

Gounder (different Chinnaya Gounder). They had four daughters by name, (1) Ms. Maruthathal; (2) Ms. Palaniammal; (3) Ms. Sarasammal and

Ms. Rangammal who are the defendants 2 to 5 respectively in the suit.

4. According to the plaintiff, neither Ms. Chinnakkal @ Chinnammal nor her children have got any right whatsoever over the suit property.

Therefore, according to the plaintiff, he is entitled for half share in the suit property and the other half share should go to the first defendant namely

Mr. Arumugam. Before the trial Court, the first defendant remained ex parte. The defendants 2 to 5 have filed a written statement stating that Mr.

Chinnaya Gounder was not at all the son of Mr. Marappa Gounder and Mrs. Rangammal and therefore, question of inheriting the suit property by

Mr. Chinnaya Gounder after the demise of his parents namely Mr. Marappa Gounder and Mrs. Rangammal did not arise at all. Thus, neither Mr.

Arumugam, the first defendant in the suit nor the plaintiff have got no right over the suit property.

5. It is further stated that the suit property was owned by one Mrs. Rangammal. Being his only daughter Ms. Chinnakkal @ Chinnammal inherited

the same after her. The patta for the property was originally in the name of Mr. Chinnaya Gounder namely, the husband of Ms. Chinnakkal @

Chinnammal which was later on transferred in the name of Ms. Chinnakkal @ Chinnammal. Ms. Chinnakkal @ Chinnammal had executed a Will

in respect of the suit property under Ex. B.13 dated 25.05.1983, in favour of her daughters. The Will has taken force on the demise of Ms.

Chinnakkal @ Chinnammal on 15.07.1990. Thus, according to the defendants 2 to 5, they are the absolute owners of the suit property, over

which, neither the plaintiff nor the first defendant have got any right over the suit property for partition. Thus, according to the defendants 2 to 5,

the suit is liable to be dismissed..

6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as

14 documents were exhibited. On the side of the defendants, four witnesses were examined and as many as 29 documents were exhibited.

7. Having considered all the above, the trial Court dismissed the suit but, the First Appellate Court reversed it and allowed the suit. That is how the

appellants/defendants 2 to 5 are before this Court with this second appeal.

8. In this second appeal, it is contended that, absolutely, there is no proof that Mr. Chinnaya Gounder was the son of Mr. Marappa Gounder and

Mrs. Rangammal. The learned counsel for the appellants would submit that the trial Court has relied on the oral evidence of P.W.1 and Exs. A.2,

A.13 and A.14 to come to the conclusion that Mr. Chinnaya Gounder was the son of Mr. Marappa Gounder and Mrs. Rangammal. This,

according to the learned counsel for the appellants, is erroneous. He would further submit that assuming that Mr. Chinnaya Gounder was the son of

Mr. Marappa Gounder and Mrs. Rangammal, even then, the plaintiff has got no case. According to him, the suit property was the sridhana

property of Mrs. Rangammal, which, she had acquired by grant of patta by the Government in the year 1928. On the demise of Mrs. Rangammal,

as per the Mitakshara Hindu Law, the property devolve on her daughter Ms. Chinnakkal @ Chinnammal absolutely. As per the said law, the so-

called son of Mr. Marappa Gounder and Mrs. Rangammal namely, Mr. Chinnaya Gounder had no right of inheritance. It is further contended by

the learned counsel for the appellants that Ms. Chinnakkal @ Chinnammal had executed a Will under Ex. B.13. According to the same, the

defendants who are the children of Ms. Chinnakkal @ Chinnammal are enjoying the suit property which has also been proved by means of both

oral as well as vast number of documentary evidences.

9. From the records available, this Court has found that the following substantial questions of law have arisen for consideration:--

(i) Whether the First Appellate Court was right in holding that Mr. Chinnaya Gounder was the son of Mr. Marappa Gounder and Mrs.

Rangammal by treating Exs. A.2, 13 and 14 as conclusive proof of the said fact?

(ii) Whether the First Appellate Court was right in decreeing the suit de-hors the fact that the suit property was the sridhana property of Mrs.

Rangammal which would have devolve on her only daughter Ms. Chinnakkal @ Chinnammal as per the Mitakshara Hindu Law? and

(iii) Whether the suit property is the sridhana property of Mrs. Rangammal or the same is the ancestral property of Mr. Marappa Gounder and so,

his son Mr. Chinnaya Gounder (subject to proof) would have inherited the same ?

10. The learned counsel for the first respondent/plaintiff would submit that the above three documents namely Exs. A.2, 13 and 14 would

conclusively go to prove that Mr. Chinnaya Gounder was the son of Mr. Marappa Gounder and Mrs. Rangammal. He would further submit that in

Ex. A.14, the name of the father of Mr. Chinnaya Gounder has been mentioned as Mr. Marappa Gounder, which would only go to prove that Mr.

Chinnaya Gounder was the son of Mr. Marappa Gounder. So far as the other pleas are concerned, it is the contention of the learned counsel for

the first respondent that the suit property cannot be treated as the Sridhana property of Mrs. Rangammal. According to him, it is in evidence of

D.W.1 that patta was originally issued in the name of Mr. Marappa Gounder. From this admission, according to the learned counsel, it can be

culled out that the suit property was owned only by Mr. Marappa Gounder and not by Mrs. Rangammal. If it is so held, according to the learned

counsel, as per the law which was in prevalence, before coming into force of the Hindu Succession Act, the suit property would have been

devolved only to Mr. Chinnaya Gounder and thus, the plaintiff is entitled half share whereas, the first defendant is entitled for the other half share.

11. As I have already pointed out, the first defendant remained ex parte throughout. On his demise, the second respondent herein has been

brought on record as his legal representative.

12. The learned counsel for the second respondent while reiterating the submissions made by the learned counsel for the first respondent would

submit that the admission made by D.W.1 would go to conclusively prove that the suit property was owned by Mr. Marappa Gounder and not by

Mrs. Rangammal. The learned counsel would further submit that the patta issued in the name of Mrs. Rangammal would only indicate the

occupancy right of her and not any right. Therefore, based on the patta, according to the learned counsel, it cannot be concluded that Mrs.

Rangammal had title. In other words, according to the learned counsel, Mr. Marappa Gounder was alone the owner of the suit property and

therefore, the suit property would have devolved on his son Mr. Chinnaya Gounder.

13. So far as the relationship between Mr. Marappa Gounder and Mr. Chinnaya Gounder is concerned, the learned counsel for the second

respondent would submit that it has been proved by means of Exs. A.2, 13 and 14 and the evidence of P.W.1. Thus, the learned counsel would

further submit that had it been true that Ms. Chinnakkal @ Chinnammal had inherited the property from Mrs. Rangammal, there was no occasion

for the Revenue Authorities to transfer patta in the name of Mr. Chinnaya Gounder. The learned counsel would further submit that though it is

stated that Mr. Chinnaya Gounder in whose name patta was transferred is stated to be the husband of Ms. Chinnakkal @ Chinnammal, as a

matter of fact, patta was transferred only in the name of the son of Mr. Marappa Gounder namely Mr. Chinnaya Gounder. The learned counsel

would further submit that at any rate, neither in the written statement, nor in the appeal memorandum before the First Appellate Court, it was raised

that as per the Mitakshara Hindu Law, the property devolved on Ms. Chinnakkal @ Chinnammal. Thus, according to the learned counsel,

altogether, a new plea cannot be going to raise for the first time in this second appeal.

14. The learned counsel for the first respondent as well as the learned counsel for the second respondent would rely on few judgements of this

Court about which, I would make reference at the appropriate stage of this judgement.

15. I have considered the above submissions.

16. For the sake of convenience, let me go into the questions of law, with the assumption that Mr. Chinnaya Gounder was the son of Mr. Marappa

Gounder and Mrs. Rangammal. It is true that there was no plea taken in the written statement that as per the Mitakshara Hindu Law, the property

would have devolved only on Ms. Chinnakkal @ Chinnammal and not on Mr. Chinnaya Gounder. In my considered opinion, this argument of the

learned counsel for the first respondent and the learned counsel for the second respondent does not persuade me at all for the simple reason that

this is pure and simple a question of law. The learned counsel for the first respondent has relied on a judgement of this Court in Poongavanam

Ammal v. Karuppayi Ammal (A.S. No. 943 of 1993) decided on 30.10.2007. In that case, in paragraph No. 34 of the judgement, a learned

Single Judge of this Court has held as follows:--

34. It is settled law that if the facts proved and found as established are sufficient to raise a new plea under Order 41 Rule 2 of the Code of Civil

Procedure it is not only competent to but expedient in the interest of justice to entertain that plea. But when the question is not a pure question of

law but a question of fact, the Court should not allow such question to be raised for the first time.

17. In my considered opinion, the above observation made by the learned Single Judge of this Court rather helps only the case of the appellants

herein than the case of the first respondent/plaintiff. What all that the learned Judge has concluded is that, if, the new question raised at the time of

second appeal is either a question of fact or a mixed question of law and facts that cannot be allowed to be raised for the first time whereas, if, the

question raised is a pure question of law, it can be allowed to be raised at any stage. This is too well settled.

18. Accordingly, in the case on hand, the question raised for the first time as to whether the property devolved as per Mitakshara Hindu Law on

the daughter of Mrs. Rangammal or on the son of Mrs. Rangammal is a pure question of law and it does not involve any question of fact at all.

Therefore, I am allowed to raise this question for the first time in this second appeal in which, there is no illegality. Apart from that, the respondents

were invited to argue on this question of law. In this regard, the learned counsel for the first respondent and the learned counsel for the second

respondent also advanced their arguments at length. Therefore, in my considered opinion, the appellants were right in raising the said question of

law for the first time.

19. The learned counsel for the first respondent would submit that in the event it is proved that the suit property was the Sridhana property of Mrs.

Rangammal, then only, the question of the said property devolving on her daughter would arise. But, in this case, according to the learned counsel,

it has been established that the suit property belonged only to Mr. Mariappa Gounder.

20. In my considered opinion, absolutely, I find no substance in the said argument. It is in evidence that Mr. Marappa Gounder died somewhere in

the year 1925, whereas, the admitted case of the parties is that, patta was issued in the name of Mrs. Rangammal only in the year 1928. The

contention of the learned counsel for the second respondent is that the patta granted is only in respect of occupancy right and not in respect of title.

This argument again does not persuade me at all. It is too well settled by a catena of judgements that a land classified as natham land (house site) is

only a property of private party and the same does not belong to the Government. Even in the absence of issuance of patta, the title for the

property lies with the person in occupation for a long time. Patta under the natham settlement scheme is only an act of reiteration of title of the

individual. Applying the settled principle of law, if we look into the patta, there can be no difficulty for this Court to come to the conclusion that

Mrs. Rangammal had absolute title for the suit property as she was in occupation of the property.

21. The next question is whether the suit property should be treated as a Sridhana property of Mrs. Rangammal. There is a popular misconception

that only the properties which are inherited from the ancestors by a Hindu woman or the properties which were given at the time of her marriage

alone are her sridhana properties. But, this mis-conception has been cleared by this Court in a number of judgements, including a Full Bench

judgement of this Court. After referring to all the judgements, I had an occasion to hold in K. Natarajan Vs. Mrs. Gopalasundari and Others,

(2011) 5 LW 341 case that a property acquired by a woman by any source, even by purchase out of her own earnings, should be treated only as

her sridhana property for the purpose of inheritance in terms of Mitakshara Hindu Law.

22. As per the original text of Mitakshara Hindu Law, a Hindu Female may acquire property from diverse sources. Several descriptions of

property that may be lawfully acquired by a Hindu female are:--

(1) gifts and bequests from relations

(2) gifts and bequests from strangers

(3) property obtained on partition

(4) property given in lieu of maintenance

(5) property acquired by inheritance

(6) property acquired by mechanical arts

(7) property obtained by compromise

(8) property acquired by adverse possession

(9) property purchased with stridhana or with savings of income of stridhana and

(10) property acquired from sources other than those mentioned above. Bequests stand on the same footing as gifts.

23. Applying the said law to the facts of the case, if we look into the facts of the present case, there can be no second opinion that patta granted in

favour of Mrs. Rangammal would only ensure the ownership on Mrs. Rangammal over the suit property and the said suit property should be

treated only as her sridhana property of her. As per the above judgement and the judgements referred to in K. Natarajan v. Mrs. Gopalasundari

and others (cited supra), if once, it is so concluded that the suit property was owned by Mrs. Rangammal as her sridhana property, then, as per

Mitakshara Hindu law, the property would devolve only on her children. In this regard, I wish to again refer to the Mitakshara Hindu law by Mulla,

where it is stated that sridhana other than shulka passes in the following order:--

(i) unmarried daughter; she takes before a married daughter. The rule applies to Jains in the absence of a special custom;

(ii) married daughter who is unprovided for;

(iii) married daughter who is unprovided for;

(iv) daughter''s daughter;

(v) daughter''s son;

(vi) son;

(vii) son''s son.

24. If the above order of inheritance is applied to the facts of the present case, Ms. Chinnakkal @ Chinnammal would have inherited the suit

property from Mrs. Rangammal and thus, Ms. Chinnakkal @ Chinnammal, the daughter of Mrs. Rangammal was the absolute owner of the suit

property as she had inherited the said property. By virtue of Section 14 of the Hindu Succession Act, she would have become the absolute owner

of the same. Therefore, the Will executed by her under Ex. B.3 is valid by which, the defendants 2 to 5 have got absolute title and it has also been

established that they are in possession of the property.

25. In view of all the above, I have no hesitation to hold that neither the plaintiff nor the first defendant has got any right whatsoever over the suit

property.

26. Now, turning to the next question of law, namely, whether Mr. Chinnaya Gounder is the son of Mr. Marappa Gounder and Mrs. Rangammal,

I do not want to go into this question. The learned counsel for the appellants himself would submit that this question need not be gone into as the

appellants have got a strong case under the other substantial questions of law. Therefore, this question is left open and as such, I am not reversing

the finding of the First Appellate Court that Mr. Chinnaya Gounder is the son of Mr. Marappa Gounder.

27. Now, turning to the factual aspects, though, it is true that patta was transferred in the name of Mr. Chinnaya Gounder, though, doubt has been

raised whether Mr. Chinnaya Gounder in whose name patta was transferred refers to the son of Mr. Marapa Gounder or the husband of Ms.

Chinnakkal @ Chinnammal, that is immaterial, because, applying the Mitakshara Hindu law, I have already concluded that the property had been

inherited only by Ms. Chinnakkal @ Chinnammal.

28. In view of all the above, I am inclined to leave the first substantial question of law un-answered and I answer all the other substantial questions

of law in favour of the appellants. Hence, the second appeal is bound to succeed and the decree and judgement of the First Appellate Court is

liable to be set aside.

29. In the result, the second appeal is allowed and the decree and judgement of the First Appellate Court in A.S. No. 111 of 2007 dated

04.07.2008, is hereby set aside and the decree and judgement of the trial Court in O.S. No. 2394 of 2004 dated 16.08.2007 is restored. There

shall be no order as to cost. Consequently, connected miscellaneous petition is closed.