

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.11136 OF 2013

John Kennedy & Another ... Petitioners

Versus

Ranjana & Others ... Respondents

JUDGMENT

Chelameswar, J.

1. The instant special leave petition is filed by two unsuccessful petitioners before the High Court of Madras in CRP (PD) No.3342 of 2012 aggrieved by a final order dated 15.11.2012 passed therein.

2. The petitioners herein are defendant nos.2 and 3 respectively in Original Suit No.300 of 2011 on the file of the Court of District Judge, Coimbatore. The said suit was filed by the first respondent herein. She is the daughter of 2nd respondent herein. The suit was filed with the prayer as follows:

- “a) for partitioning of the properties more fully described in the schedule hereunder and allot ½ share to the plaintiff.
- b) directing the defendants to pay plaintiff the cost;
- c) granting to the plaintiff such other and further reliefs as this Hon’ble Court may deem fit and proper in the circumstances of the case and render justice.”

Such a prayer is based upon the pleading that the suit scheduled property originally belonged to one Shri S. Somanathan, the grandfather of the plaintiff who according to the plaint died intestate on 16.08.1981. The relevant portion of the plaint reads as follows:

“The suit properties more fully described hereunder in the schedule belongs to Late Somanathan vide document bearing Registration No.1072/1972 dated 20.03.1972. He died intestate on 16.08.1981. On his death, the properties devolve upon his legal heirs including the 1st defendant. Subsequently, the properties were partitioned to metes and bounds between the legal heirs vide Partition Deed bearing Registration No.2435/1982, dated 05.06.1982 in the Office of the District Registrar, Coimbatore. The 1st defendant being one of the son of Late Somanathan the Schedule hereunder.”

3. According to the plaintiff, the 1st petitioner herein is the “erstwhile power of attorney” of the father of the plaintiff. The other defendants no.3 to 8 are the “alleged purchasers of a part of the suit property from the 1st defendant through the 2nd defendant”. It is alleged in the plaint that the plaintiff and her father constituted a Hindu Undivided Family and the suit property

is ancestral property in the hands of the 1st defendant. The relevant portion of the plaint reads as follows:

“The suit property is an ancestral property in the hands of the 1st defendant. The 1st defendant being the Kartha of the Hindu Undivided Family was looking after the same. He is having only the right to manage the properties. The properties mentioned in the schedule were enjoyed by the plaintiff and the 1st defendant jointly. The plaintiff and the 1st defendant are the co-owners in the suit property. There is no partition between the plaintiff and is not having any right to alienate the same without the consent and concurrence of the plaintiff. The 1st defendant and the plaintiff are having $\frac{1}{2}$ undivided share each in the suit property, being the coparceners of the Hindu Undivided Family.”

4. In the background of the abovementioned pleading, the plaintiff made a further allegation that -

“Upon enquiry, the plaintiff came to know that the sale of a part of the suit property to the defendants 3 to 8 are collusive transactions without any consideration. The price quoted in the sale deeds are imaginary and very low. The market value of the property is much more than what is mentioned as price in the sale deeds. The 3rd to 8th defendants are not bonafide purchasers for good consideration. The alleged sale transactions are fraudulent and designed to defeat the right of the plaintiff. The alleged transactions were neither in good faith nor for valuable consideration. All the above said sale deeds will not bind the plaintiff in any manner. Hence the plaintiff is ignoring the same.”

5. Having made such an allegation, the plaintiff never gave any description or any details of the sale transaction/s entered into between the 1st petitioner and the other alleged purchasers of the part of the suit scheduled property through the 2nd petitioner

herein. More interestingly no relief is sought in the suit either against the 1st petitioner herein or the other defendants who are allegedly the vendees of some part of the suit scheduled property.

6. In the background of such a plaint, the petitioners herein filed I.A. No.1097 of 2011 praying that the plaint be rejected on the ground that the suit is a vexatious suit. By an order dated 19.06.2002, the trial court dismissed the said application.

7. Aggrieved by the same, the petitioners herein carried the matter by way of a revision to the High Court unsuccessfully. Hence, this SLP.

8. It appears from the impugned judgment that the debate before the High Court was - whether the suit scheduled property is the self acquired property of the father of the plaintiff or the property 'belong to the coparcenery' between the plaintiff and her father.

9. The High Court on the basis of such a vague pleading in the plaint, even without a written statement chose to declare as follows:

"Therefore, the property in the hands of 1st defendant takes the character of ancestral property and after the

Tamil Nadu Amendment Act, 1989 to the Hindu Succession Act, 1956, unmarried daughter also became coparceners and they are entitled to claim a share in the ancestral property along with son.”

10. Even before this Court, it was argued by the petitioners that the suit scheduled property is to be treated as self acquired property of the father of the plaintiff and not ancestral property and, therefore, the plaint is required to be rejected.

11. We refrain from making any further comment as any comment at this stage by this Court will have some impact on the rights and obligations of some parties to the suit or the other.

12. We are of the opinion that the IA No.1097 of 2011 is wholly misconceived. Whether the suit scheduled property is ancestral property of the plaintiff's father or self acquired property depends upon various factors. The law in this regard is well settled. Whether the plaintiff is entitled for a right of partition in the suit scheduled property by virtue of the amendment carried to the Hindu Succession Act by the State of Tamil Nadu in 1989, or subsequently by the Parliament, are matters to be decided after the pleadings are completed and evidence adduced. In the circumstances, though we are of the opinion that I.A. No.1097 of

2011 is required to be dismissed, the finding recorded by the High Court that the suit scheduled property is ancestral property of the father of the plaintiff and, therefore, the plaintiff is entitled for a share is uncalled for at this stage and we set aside the same leaving it open for the trial court to examine these questions during the course of trial uninfluenced by any observation made by the High Court in the impugned order. The Special Leave Petition is disposed of accordingly. No order as to costs.

.....J.
(J. Chelameswar)

.....J.
(Pinaki Chandra Ghose)

New Delhi.
November 12, 2014

JUDGMENT