

1.Mariammal Vs. 1.Subbuthai3.Chellathi

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Court : Chennai

Decided On : Jul-22-2013

Judge : A.Selvam

Appellant : 1.Mariammal

Respondent : 1.Subbuthai3.Chellathi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

22. 07/2013 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM
SA(MD)No.255 of 2010 and MP(MD)No.2 of 2010 1.Mariammal 2.Ramakrishnan ..
Appellants/Respondents 3 & 4 /Defendants 3 & 4 Vs 1.Subbuthai ..
Respondent/Appellant/Plaintiff 2.Ayyammal 3.Chellathiah ..
Respondents/Respondents 1 & 2/ Defendants 1 & 2 Second Appeal filed under
section 100 of CPC against the Judgment and decree dated 20.01.2009 passed in
Appeal Suit No.70 of 2007 by the Sub Court, Kovilpatti reversing the Judgment
and decree dated 12.03.2007 passed in Original Suit No.86 of 2005 by the District
Munsif Court, Kovilpatti. !For Appellant ... Mr.B.Rajesh Saravanan ^For R - 1 ...
Mr.T.V.Sivakumar For RR - 2 & 3 ... No appearance :

JUDGMENT

This Second Appeal has been directed against the Judgment and decree dated
20.01.2009 passed in Appeal Suit No.70 of 2007 by the Sub Court, Kovilpatti,

wherein the Judgment and decree dated 12.03.2007 passed in Original Suit No.86 of 2005 by the District Munsif Court, Kovilpatti are reversed.

2. The first respondent herein as plaintiff has instituted Original Suit No.86 of 2005 on the file of the trial Court for the reliefs of partition and separate possession of her half share in the suit property, wherein the present appellants and respondents 2 and 3 have been arrayed as defendants.

3. The contraction of the plaint is stated like thus: The plaintiff and defendants 1 and 2 are sisters and their father's name is Gurusamy Naicker. The suit property and some other properties are originally belonged to the said Gurusamy Naicker and his two brothers namely Kandasamy Naicker and Krishnasamy Naicker and prior to 40 years a partition has been effected amongst three brothers, wherein the suit property has been allotted to the share of the father of the plaintiff and defendants 1 and 2. The first defendant has been given in marriage in the year 1980 and the second defendant has got married in the year 1984. The marriage of the plaintiff has been performed on 08.09.2002. The suit property is a joint family property of the plaintiff, defendants 1 and 2 and their father, wherein the plaintiff is having half share as per the provisions of amendment made in the Hindu Succession Act. The father of the plaintiff without her knowledge and at the instigation of his brothers has executed a sale deed in respect of the suit property in favour of the third defendant. The fourth defendant has falsely created a power of attorney deed so as to execute a sale deed on behalf of the father of the plaintiff. Since the plaintiff is having half share in the suit property, the present Suit has been instituted for the reliefs sought for in the plaint.

4. In the written statement filed on the side of the defendants 1 and 2 it is averred that the defendants 1 and 2 are having equal share in the suit property and for the purpose of working out their share, the defendants 1 and 2 are ready to pay necessary Court fee and therefore, a preliminary decree may be passed in accordance with law.

5. In the written statement filed on the side of the defendants 3 and 4 it is averred that the suit property is originally belonged to the erstwhile Hindu joint family consisted of Gurusamy Naicker, Kandasamy Naicker and Krishnasamy Naicker.

But it is false to aver that prior to 40 years, a partition has been effected, wherein the suit property has been allotted to the share of father of the plaintiff. It is also equally false to aver that the plaintiff has been given in marriage on 08.09.2002. The father of the plaintiff and a son of his brother have executed a power of attorney deed in favour of the fourth defendant, whereby authorised him to sell the suit property. Under the said circumstances, the fourth defendant has sold the suit property in favour of the third defendant. The present Suit has been instituted without including all the joint family properties. The heirs of brothers of Gurusamy Naicker have not been impleaded in the present Suit and therefore, the same is liable to be dismissed for non joinder of necessary parties.

6. On the basis of rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence has dismissed the Suit simply on the ground that the present Suit is bad for non-joinder of necessary parties. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No.70 of 2007 on the file of the first appellate Court.

7. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the Appeal, whereby and whereunder set aside the Judgment and decree passed by the trial Court and ultimately decreed the Suit as prayed for. Against the Judgment and decree passed by the first appellate Court, the present Second Appeal has been preferred at the instance of the defendants 3 and 4 as appellants.

8. At the time of admitting the present Second Appeal, the following substantial questions of law have been settled for consideration: (a) Whether the suit for partition is maintainable without including the other properties belonging to the joint family?. (b) Whether the suit is maintainable without impleading the other sharers?.

9. The sum and substance of the case of the plaintiff is that the suit property and some other properties are originally belonged to the erstwhile Hindu Joint family consisted of father of the plaintiff and his two brothers. Prior to 40 years, a partition has been effected, wherein the suit property has been allotted to the share of the

father of the plaintiff and defendants 1 and 2 are the sisters of the plaintiff and they got married before introduction of amendment made in the Hindu Succession Act and since the plaintiff has got married on 08.09.2002 and that too after commencing of the said Act, she is having half share in the suit property. But the father of the plaintiff and defendants 1 and 2 at the instigation of his brothers, has sold the entire suit property in favour of the third defendant and fourth defendant has falsely created a power of attorney deed as if he has been authorised to execute a sale deed in respect of the suit property and therefore, the present Suit has been instituted for the reliefs sought for in the plaint.

10. The defence put forth on the side of the defendants 3 and 4 are two- fold. The first and foremost defence put forth on their side is that no partition has been effected amongst three brothers mentioned in the plaint and the second defence put forth on their side is that since legal heirs of brothers of the father of the plaintiff have not been impleaded in the present Suit, the same is bad for non-joinder of necessary parties.

11. The trial Court has dismissed the Suit on the ground of non-joinder of necessary parties. But the first appellate Court has come to a definite conclusion to the effect that the suit property has been allotted to the share of father of the plaintiff and by virtue of amendment made in the Hindu Succession Act, the plaintiff is having half share in the suit property and ultimately decreed the suit as prayed for.

12. On the side of the first respondent /plaintiff, Exs.A1 and A2 have been filed, wherein it has been clearly stated that the marriage of the plaintiff has been performed on 08.09.2002. The present Suit has been instituted as per the provisions of Section 29-A, introduced by the Tamil Nadu Government in the Hindu Succession Act, 1956 (Act 1 of 1990). It is an admitted fact that the said Act has come into effect on 25.03.1989. As per Section 29-A of the said Act, daughters who remain unmarried as on 25.03.1989 (date of giving effect to the Amending Act 1 of 1990) are entitled to get shares as that of sons in Hindu Joint family properties.

13. The first and foremost contention put forth on the side of the appellants/defendants 3 and 4 in the written statement is that the plaintiff has got married even prior to introduction of Section 29-A of the said Act. But the said factual aspect has been proved on the side of the plaintiff by way of filing Exs.A1 and A2. Therefore, the first aspect put forth on the side of the appellants/defendants 3 and 4 is sans merit.

14. As stated earlier, the trial Court has dismissed the Suit on the ground of non-joinder of necessary parties. But the first appellate Court has negated the finding given by the trial Court and ultimately decreed the Suit as per provision of Section 29-A of the said Act.

15. The learned counsel appearing for the appellant/defendants 3 and 4 has attacked the Judgment and decree passed by the first appellate Court on the following grounds, apart from the substantial questions of law settled in the present Second Appeal. (a) The Union Government has passed an (Amendment) Act, 2005 in respect of Section 6 of the Hindu Succession Act, 1956, wherein an exception has been given with regard to applicability of (Amendment) Act, 2005 and the first appellate Court has failed to look into the same. (b) The suit property and some other properties are ancestrally belonged to erstwhile Hindu Joint family consisted of Gurusamy, Kandasamy and Krishnasamy and no partition has been effected and heirs of the said Kandasamy and Krishnasamy have not been impleaded in the present Suit. Since the present suit has been instituted for the relief of partition, the same is bad for non-joinder of necessary parties. (c) In the present Suit, the plaintiff has not included all the alleged joint family properties and therefore, the same is bad for partial partition.

16. In order to repel the contentions put forth on the side of the appellants/defendants 3 and 4, the learned counsel appearing for the first respondent/plaintiff has befittingly contended that Section 29-A has been introduced in the Hindu Succession Act, 1956 by the State Government of Tamil Nadu, wherein right of shares has been given to unmarried daughters equallant to that of sons in Hindu Joint family and the same has come into effect on 25.03.1989 and therefore, (Amendment) Act, 2005 introduced by the Union

Government in Section 6 of the said Act is not applicable and further amongst three brothers namely Gurusamy, Kandasamy and Krishnasamy, a partition has been effected prior to 40 years, wherein the suit property and some other properties have been allotted to the share of Gurusamy, father of the plaintiff and defendants 1 and 2 and therefore, the contentions put forth on the side of the appellants/defendants 3 and 4 with regard to partial partition and also non-joinder of necessary parties are not factually sustainable and the trial Court has erroneously dismissed the Suit on the ground of non-joinder of necessary parties. But the first appellate Court has rightly negatived the findings given by the trial Court and ultimately decreed the Suit and therefore, the Judgment and decree passed by the first appellate Court are not liable to be interfered with.

17. For considering the rival submissions raised on either side, the Court has to look into Article 254 of the Indian Constitution and the same reads as follows: Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

18. Even a cursory look of Article 254(2) would clearly go to show that if any law has been made by a State Government in respect of matters enumerated in the Concurrent List and if the President of India has given his assent, the law introduced by State Government would prevail.

19. It is an admitted fact that Section 29-A has been introduced by the State Government of Tamil Nadu and the same has come into effect on 25.03.1989 and subsequently amendment has been introduced by the Union Government in Section 6 of the said Act in the year 2005, wherein certain exceptions have been given to the effect that the provisions of (Amendment) Act, 2005 are not applicable to a partition which has been effected before 20th day of December, 2004.

20. As per Article 254(2) of the Indian Constitution, as pointed out earlier, if any law has been made by a State Government with regard to matters enumerated in Concurrent List and President of India has given his consent, the same would prevail over the subsequent laws enacted by the Union Government.

21. The learned counsel appearing for the respondent/plaintiff has drawn the attention of the Court to the following decisions: (a) In (2004) 3 M.L.J620(Alamelu Ammal and others V. Tamizh Chelvi and others), this Court has held that ".Section 29-A of Hindu Succession Act, 1956 is applicable to an unmarried daughter of Hindu co-parcener.". (b) In 2006 (3) CTC491(Nangammal and others V. N.Desiyappan), the very same view has been reiterated. Therefore, it is pellucid that even after Amendment made in the year 2005 by the Union Government in Section 6 of the said Act, section 29-A introduced by the State Government of Tamil Nadu is prevailing. Therefore, the first legal contention put forth on the side of the appellants/defendants 3 and 4 is sans merit.

22. In the written statement, as stated earlier it has been stated that the present suit is bad for non-joinder of necessary parties and also bad for partial partition.

23. The consistent case of the plaintiff is that the suit property and some other properties have been allotted to the share of her father and since the plaintiff has got married on 08.09.2002, as per section 29-A she is having half share in the suit property. But the defence put forth on the side of the appellants/defendants 3 and 4 is that no partition has been effected amongst the three brothers namely Gurussamy, Kandasamy and Krishnasamy prior to 40 years.

24. The power deed alleged to have been executed by the said Gurusamy, Rajagopal and Marichamy in favour of the fourth defendant by name

Ramakrishnan has been marked as Ex.B2. Likewise, the sale deed which stands in the name of fourth defendant in favour of third defendant has been marked as Ex.B3.

25. The plaintiff has been examined as PW1 and her specific evidence is that amongst his father and his brothers, a partition has been effected prior to 40 years, wherein the suit property has been allotted to her father. In order to disprove the aforesaid factual aspect put forth on the side of the plaintiff, no contra evidence is available on the side of the defendants 3 and 4. Therefore, the contention put forth on the side of the appellants/defendants 3 and 4 to the effect that the present suit is bad for non-joinder of necessary parties cannot be accepted.

26. In Ex.B3 two Survey Numbers viz., 495/2A2 and 495/2A1 have been conveyed in favour of the third defendant. The present Suit has been instituted only in respect of Survey No.495/2A2. At this juncture, it would be condign to look into the evidence given by the plaintiff (PW1) and her specific evidence is that other properties which have been allotted to the share of her father are available.

27. The learned counsel appearing for the first respondent/plaintiff has contended that with regard to other properties, already a partition has been effected amongst the plaintiff and defendants 2 and 3 and since there is no dispute with regard to those properties, the same need not be included in the present Suit. In fact this Court has scanned the entire averments made in the plaint. No where it has been stated to the effect that amongst the plaintiff and defendants 2 and 3, partition has been effected with regard to those properties. Therefore, it is quite clear that the present Suit has been instituted only to attack the sale effected by the father of the plaintiff under Ex.B3 and since the remaining properties, allotted to the share of father of the plaintiff have not been included, this Court is of the view that the present Suit is really bad for partial partition.

28. The first and foremost substantial question of law is as to whether the present Suit is maintainable without including the other properties belonged to joint family. It has already been discussed on the basis of the evidence given by the plaintiff and also the averments made in the plaint and ultimately found that the present

Suit has been instituted only for the purpose of attacking the sale made under Ex.B3 and therefore, the first substantial question of law settled in the present Second Appeal is decided in favour of the appellants/defendants 3 and 4.

29. The second substantial question of law settled in the present Second Appeal is as to whether the present Suit is legally maintainable without impleading other sharers.

30. It has already been discussed in detail that already a partition has been effected amongst three brothers namely Gurusamy, Kandasamy and Krishnasamy and to that effect un-controverted evidence is available on the side of the plaintiff and further the learned counsel appearing for the appellants/defendants 3 and 3 has taken exception available under (Amendment) Act, 2005 on the basis that already a partition has been effected. Therefore, the second substantial question of law settled in the present Section Appeal is decided against the appellants/defendants 3 and 4.

31. It has already been decided that the marriage of the plaintiff has been performed on 08.09.2002 and since section 29-A of the Hindu Succession Act, 1956 has come into effect on 25.03.1989, the plaintiff has become a co-parcener of the Hindu Joint Family consisted of her and her father. The father of the plaintiff has acted as Manager of the said Hindu Joint family.

32. In the plaint it has been simply stated that at the instigation of brothers of the father of the plaintiff, he sold the suit property in favour of third defendant. Therefore, execution of Ex.B3, the sale deed, which stands in the name of third defendant has been clearly admitted on the side of the plaintiff. At this stage, a nice legal question arises as to whether the father of the plaintiff, as Hindu Joint Manager can sell the suit property so as to bind the plaintiff.

33. It is an everlasting principle of law that it is the duty of the Court to give effect to the inference to be drawn from the evidence on record even if the finding is not consistent with the pleadings of either party.

34. In the written statement filed on the side of the defendants 3 and 4 it has not been specifically averred that the father of the plaintiff has executed Ex.B3 as a joint family manager. But the law presumes that he executed Ex.B3 only as a joint family manager.

35. In AIR1998 Supreme Court 3118 (Full Bench) [K.Muthuswami Gounder Vs. N.Palaniappa Gounder) the Hon'ble Apex Court has held that ".Order 41 Rule 33 of the Code of Civil Procedure, 1908 enables the appellate Court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though; (i) the appeal is as to part only of the decree; and (ii) Such party or parties may not have filed any appeal."

36. It is an archaic principle of law that by invoking the provisions of Order 41 Rule 33, the appellate Court can pass any suitable decree or order so as to render justice.

37. In the instant case, in the written statement filed on the side of the defendants 3 and 4, no averments have been made to the effect that Ex.B3 has been executed by the father of the plaintiff as a Hindu Joint family manager. But as per law, the Court can easily discern that in the erstwhile Hindu Joint family consisted of the plaintiff and her father, her father has acted as Manager.

38. In Hindu Law Mulla 15th Edition, paragraph-256 it is stated as follows: Alienation by father.- A Hindu father as such has special powers of alienating coparcenary property which no other coparcener has. In the exercise of these powers- (1) he may make a gift of ancestral movable property to the extent mentioned in Section 225, and even of ancestral immovable property to the extent mentioned in Section 226; (2) he may sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt and was not incurred for immoral or illegal purposes (S.295). Except as aforesaid, a father has no greater power over coparcenary property than any other manager (o), that is to say, he cannot alienate coparcenary property except for legal necessity or for the benefit of the family (S.242).

39. From a close reading of the said provision, it is made clear that a Hindu father can very well sell or mortgage ancestral property whether movable or immovable including interest of his sons, grandsons and great-grandsons for the payment of his own debt, provided, the debt is an antecedent debt and the same has not been incurred for immoral or illegal purposes. Further he can make such kind of disposal for the benefit of family. Further, power of alienation conferred upon father manager under Hindu Law cannot be meddled nor muddled by the Court.

40. The learned counsel appearing for the first respondent/plaintiff has made various abortive attempts by way of contending that the sale under Ex.B3 has not been effected for legal necessity nor for the benefit of the joint family and the plaintiff has not been consulted by her father before effecting sale under Ex.B3 and therefore, the sale effected under Ex.B3 is not binding upon the plaintiff so far as her half share is concerned.

41. In order to buttress the aforesaid contentions, the following decisions are relied upon: (a) In 1994 L.W. 273 (Sonnappa Iyer V. K.R.Ramuthaiammal and 6 others), the Division Bench of this Court has held that ".in case of alienation by joint family manager, adult members of joint family in existence, must be consulted."

42. It is a pristine principle of law that each case has to be looked into on the basis of its factual situation.

43. In the case referred to supra, the plaintiff therein has introduced a sale agreement as if the same has been executed by father manager. The evidence available is that at the time of execution of the sale agreement in question, sons of the executant are also available and they have not taken part in its execution. Under the said circumstances, the Division Bench of this Court has held that adult members also be consulted/consented in the execution of alleged sale agreement. The factual situation mentioned in the case referred to supra, is not identical to the facts of the present case. But the Division Bench of this Court has not in any way curtailed the powers of alienation of father manager conferred upon him under Hindu Law. Therefore, the decision referred to supra is not applicable to the facts of the present case. (b) In 1964 Supreme Court 1385 (Balmukand V. Kamla Wati and others) it has been held that ".manager agreeing to sell property of joint family,

the Court has to analyse as to whether the said transaction is beneficial to joint family and further, all adult members must be consulted."

44. In fact, this Court has perused the entire facts and also circumstances available in the decision and ultimately found that the sale transaction in question has been effected by brother manager and his brother has not been consulted. Under the said circumstances, The Hon'ble Apex Court has held that all adult members must be consulted at the time of sale transaction.

45. At this juncture, it would be more useful to look into the decision reported in AIR1992 Madras 203 (Sarangapani V. K.V.Parthiban and others), wherein this Court has held that ".under Hindu Law, in case of alienation of Hindu undivided family properties for payment of debts, no doubt the debts incurred by brother manager will stand on a different footing from the debts incurred by a father manager, but only to this limited extent, namely, in the case of a brother manager, the debts have to be for the benefit of the family before they are said to be binding on the other members of the family. In case of a father manager, even if the debts are not for the benefit of the family, they are binding on the members of the family if they are antecedent debts, which are not tainted by illegality or immorality. But for that, there is no other difference between the two sets of debts.

46. On the basis of the decision referred to supra, it is easily discernible that if a transfer is made in respect of property of Hindu Joint Family by brother manager a legal necessity must be in existence, whereas, if a transfer is made by father manager, legal necessity need not be proved and at the same time, the said transfer is binding upon other members of the joint family. Therefore, it is quite clear that father manager is having vast power of alienation of Hindu joint family properties. The only limitation is that the so- called antecedent debt should not be tainted with immorality or illegality. In the instant case, such allegation have not been made against the father of the plaintiff in the plaint.

47. In (2000) 7 Supreme Court Cases 409 (Thimmaiah and others V. Ningamma and another), the Hon'ble Apex Court has held as follows: ".Karta may dispose of suit property if (i) disposition is of a reasonable portion and is for a recognised ".pious purpose".; or (ii) permission has been taken of other persons having an

interest in the property, whether inchoate or otherwise."

48. The Hon'ble Apex Court has rendered its verdict on the basis of a gift executed by Kartha of Hindu Joint family. Under the said circumstances, the Hon'ble Apex Court has culled out the said positions of law. Even in paragraph 256 of Hindu Mulla, 15th Edition, it has been stated that father manager can make a gift of movable property to an extent mentioned in paragraph 225 and even of an ancestral immovable property to an extent mentioned in paragraph 226.

49. In paragraph - 226, it is stated like thus: ".Gift by father or other managing member of ancestral immovable property within reasonable limits.- A Hindu father or other managing member has power to make a gift within reasonable limits of ancestral immovable property for ".pious purpose".. But the alienation must be by an act inter vivos, and not by will."

50. As stated earlier, the Hon'ble Apex Court has decided its dictum only on the basis of restrictions imposed upon kartha of Hindu joint family in Hindu Law. The Hon'ble Apex Court has not culled out any legal position to the effect that a father manager cannot sell immovable property of joint family without expressed consent of other members. Therefore, the facts mentioned in the decision referred to supra are not similar to that of the present case.

51. It has already been discussed in detail that Ex.B3, sale deed has been executed by the father of the plaintiff as manager of Hindu joint family consisted of the plaintiff and her father. At this juncture, the Court has to look into as to whether the sale effected under Ex.B3 is binding upon the plaintiff with regard to her half share in the suit property.

52. In 1997 L.W217(Sampoorna Ammal V. Asokan and others) the Division Bench of this Court has held as follows: The manager or kartha of joint Hindu family has the power to alienate the joint family property for value so as to bind the interest of adult and minor coparceners in the property provided the alienation is made for legal necessity or for the benefit of the estate. A Hindu father has also the special power to sell or mortgage ancestral property including the interest of his sons to discharge a debt contracted by him for his own personal benefit and that such

alienation will be binding on the sons provided the debt was antecedent to the alienation and it was not incurred for any immoral purposes.

53. In (1996) 8 Supreme Court Cases 54 (Sri Narayan Bal and others Vs. Sridhar Sutar and others), the Hon'ble Apex Court has held that ".Karthā of Hindu joint family is having unfettered right of alienation of joint family property and the same is binding upon other members."

54. In 1971 Supreme Court 776 (Raghubanchmani Prasad Narain Singh V. Ambica Prasad Singh (dead) by his legal representatives and others) the Hon'ble Apex Court has held that ".alienation by father manager of joint Hindu family even without legal necessity is voidable and not void."

55. From the conjoint reading of the decisions referred to supra, it is made clear that a karthā/father manager is having enormous powers of alienation with regard to Hindu Joint family either for discharging his own debt or for the benefit of the estate and the same is binding upon other members of Hindu joint family. Further even if a sale is effected by a Manager without legal necessity, the same is nothing but voidable and not void.

56. The present case has been instituted for the reliefs of partition and separate possession of half share of the plaintiff in the suit property. It has already been pointed out that the plaintiff without including the entire properties alleged to have been allotted to the share of her father, has chosen to file the present Suit only in respect of the suit property which has been conveyed in favour of the third defendant. Therefore, it is quite clear that the plaintiff has instituted the present Suit with oblique and sinister motive. In the plaint there is no pleading to the effect that the father of the plaintiff has had immoral life and only for that purpose he effected the sale under Ex.B3.

57. Even at the risk of repetition, the Court would like to point out that the joint family consisted of plaintiff and her father, her father has acted as its Manager. The Court has already culled out various powers of father manager, given in Hindu law. The Court can very well presume that Ex.B3 has been executed by father of the plaintiff as joint family manager. As per Section 29-A of Hindu Succession Act,

1956, the plaintiff has virtually become a coparcener from the date of her birth. Since the plaintiff has virtually become a coparcener/joint family member, the acts of the manager are binding upon her. Under the said circumstances, the sale effected under Ex.B3 by the father of the plaintiff is also binding upon her with regard to her half share.

58. The trial Court as pointed out earlier, has dismissed the Suit on the ground of non-joinder of necessary parties. But the first appellate Court even though it has enormous powers under Order 41 Rule 33 to decide the present lis, has erroneously found that Ex.B3, sale is not binding upon the share of the plaintiff and ultimately decreed the Suit. In the light of the foregoing enunciation of both the factual and legal aspects, this Court is of the considered view that the Judgment and decree passed by the first appellate Court are not factually and legally sustainable and the same are liable to be set aside.

59. In fine, this Second Appeal is allowed without cost. The Judgment and decree passed in Appeal Suit No.70 of 2007 by the Sub Court, Kovilpatti are set aside and the Judgment and decree passed in Original Suit No.86 of 2005 by the District Munsif Court, Kovilpatti are restored. Connected Miscellaneous Petition is closed.
mj To 1.The Sub Court, Kovilpatti 2.The District Munsif Court, Kovilpatti

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