

Sellammal Vs. Periammal

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Court : Chennai

Decided On : Sep-01-1961

Reported in : AIR1962Mad144; (1962)1MLJ147

Judge : Ramakrishnan, J.

Appeal No. : Second Appeal No. 658 of 1959

Appellant : Sellammal

Respondent : Periammal

Judgement :

(1) One periaswami Gurukkal had a son Guruswami by his first wife. Periaswami married the plaintiff Sellammal in the suit when he was old and when plaintiff was about 18 years of age. At the time of his second marriage to the plaintiff, he executed in her favour a registered sale deed Ex. A. 1 dated 20-6-1947, reciting a consideration of Rs. 200 in cash, and conveying items 1 to 4. Subsequently he fell out with the plaintiff and there were misunderstandings between them. Thereafter under Ex. A. 4 dated 6-10-1954 he cancelled Ex. A. 1. He followed this up by executing on 9-10-1954 a document Ex. A. 5 a settlement deed in favour of Guruswami Gurukkal his first wife's son conveying all his properties including the properties covered by Ex. A. 1 Under Ex. A. 6 dated 18-7-1955 Periaswami Gurukkal proceeding on the footing that Ex. A. 5 had become inoperative, executed another settlement deed giving items 5 to 18 to the plaintiff and some

other items to his daughter-in-law. Guruswami's wife. Guruswami died on 3-8-1955 leaving behind him surviving his widow (defendant) as his sole heir.

(2) The plaintiff filed the suit out of which this second appeal has arisen seeking for declaration of her title to the suit properties, for possession and for future mesne profits and costs, the suit properties being items 1 to 18 mentioned above. The plaintiff relied upon the sale deed Ex.A. 1 in her favour and the subsequent settlement deed Ex. A. 6 dated 18-7-1955 executed in her favour by her husband. The defendant urged that Ex. A. 1 was an invalid sale deed, because the properties were worth much more than the consideration therefor, that it was really an alienation of joint family properties by Periaswami Gurukkal his second wife, in consideration of her marriage, and that such a document would not be binding on the other coparceners. Next, she contended that Ex. A. 5 was a valid settlement deed giving the entire properties to Guruswami. She also contended that Ex. A. 6 was an invalid document.

The trial court found that Ex. A. 1 was supported by consideration by was not supported by necessity, and that therefore it would be valid only to the extent of Periaswami Gurukkal's share in items 1 to 4. The trial Court also found that Ex. A. 5 was valid and that Ex. A. 6 was inoperative. After observing that the plaintiff has succeeded only in respect of her getting half rights in the suit items 1 to 4 as per the sale deed and has failed in all other respect, and that her position was therefore that of an alienee from a coparcener of an undivided right in certain specific properties, the trial court found that since the suit had not been filed as a suit for a general partition of plaintiff's share either as a heir of Periaswami or an alienee from Periaswami, no relief could be given to the plaintiff in the suit. The suit was therefore dismissed with half costs.

The plaintiff appealed to the learned Subordinate Judge of Tiruchirapalli. The learned subordinate Judge confirmed the trial court's view that Ex. A. 1, though it was supported by consideration was not supported by necessity, and therefore it would not bind the half share of Guruswami. He also supported the trial court's finding that Ex. A. 5 was acted upon and that Ex. A. 6 was inoperative. However he was filed for declaration and possession, having regard to the circumstances of

the case and in particular the relationship between the parties, it was property as a measure of equity to allow the plaintiff half a share in items 1 to 4 and he directed partition and separate possession of his half share.

(3) Against this decision, the present second appeal is filed by the plaintiff. The learned counsel for the plaintiff-appellant urged that even assuming that the plaintiff was not entitled to succeed to all the plaintiff items 1 to 18, she could, within the frame of this suit, claim relief as an alienee from Periaswami Gurukkal and ask for a partition of the entire coparcenary property, and seek for the equitable relief that items 1 to 4 should be allotted to Periswami's share and by that process her title be declared and possession given in respect of the entirety of items 1 to 4. After hearing both sides, I am of opinion that this contention is right and has to be accepted.

I think the legal propositions on which learned counsel for the appellant-plaintiff relies are well established. The initial proposition is that an alienee from a coparcener can sue for partition standing in the shoes of the alienating coparcener and in that suit pray for the allotment of the alienated property to the alienor's share, and thereby obtain title and possession in the alienated property. I think that both the courts were not right in proceeding on the footing that the alienee gets only a half share in the alienated items because in every item of joint family property alienated, all the members of the coparcenary have got interest; the alienee in such case gets only an equity; the equity can be extended to a full interest in the items alienated if it is possible to work out the equity in that manner. This aspect of the case has not been considered by the courts below.

(4) The next proposition is that when a coparcener parts with his entire interest in the coparcenary property it is not material whether he describes the alienation as a gift or a surrender. The effect of both is the same and it extinguishes the right of the coparcener in the coparcenary property. Even if the alienation is in favour of one coparcener it is settled law in Madras, after the decision of the Full Bench in Subbanna v. Balasubba Reddi, ILR (1945) Mad 010: (AIR) 1945 Mad 142, that the remaining body of the coparceners can take advantage of the relinquishment or surrender.

The further proposition is that the property so surrendered or relinquished does not change its character of coparcenary property; it still remains coparcenary property in the hands of the remaining coparceners and in it, children subsequently born take right by birth. Therefore Ex. A-5 is not a case of an invalid alienation by a coparcener of property, which can be brought back to the hotchpot in a partition suit at the instance of an earlier alienee, on his showing that the subsequent alienation is invalid and not binding on the coparcenary. The position is similar to what happens when a coparcener dies and his interests in the coparcenary property devolves on the surviving coparceners. It is well established that an alienee from such a deceased coparcener can sue for partition by standing in the shoes of the alienating coparcener & claim that partition be so effected as to allot the alienated items to the alienee's share and thereafter claim the alienee's relief on that basis. The proper way to deal with this case of complete surrender by one coparcener of his interests in the coparcenary is to follow a similar course. If this is done, there will be no impediment to permit the plaintiff to stand in the shoes of Periaswami Gurukkal so far as items 1 to 4 are concerned, ask for the partition of the entire coparcenary properties, then apply for the equitable relief of allotment of items 1 to 4 to Periaswami's share, and get her title declared to those items and recover possession. Of course this will be contingent upon it being found that such a division of properties can be made, and this will again depend upon the relative value of the items, and also the quantum of the debts of the family. There is a reference to such debts in Ex. A-5.

(5) The further question is whether the suit having been filed for declaration and possession, relief of the above kind can be granted in the suit itself. For this, an authority has been cited before me by the learned counsel for the appellant. *Peramanayakam Pillai v. Sivaraman*, : AIR1952 Mad419 (FB), where it is observed:

'This right of the alienee can be worked out in any suit to which he is a party and which is of sufficient amplitude to allow a general stock taking of the family assets as a whole and an adjustment of the rights of the coparceners. It is not necessary for an alienee to sue as a plaintiff himself.'

In this particular case, the only two people who are entitled to share the properties of this family are the plaintiff and the defendant, the former being the mother-in-law and the latter the daughter-in-law. They have before them the entirety of the family properties and there is a dispute between them as to how these properties should be divided. In view of this, there appears to be no impediment in following the Full Bench decision and granting relief to the plaintiff in the manner directed above.

Therefore I allowed the appeal and set aside the decree and judgment of the lower appellate court. The suit is remanded to the trial court for fresh disposal in the light of the above observations. A proper valuation of the plaint schedule properties should be made and Periaswami's share in them calculated after taking into account the debts if any. If it is found possible to allot items 1 to 4 to Periaswami's share then those items should be allotted to the plaintiff, with relief of declaration of her title and possession. But if it is not possible to allot the entire items 1 to 4 to Periaswami's share on such stocktaking, then such portion of those items 1 to 4 as can be equitably allotted to Periaswami should first be earmarked and then allotted to the plaintiff. There will be no costs in this second appeal and the court fee paid on the memorandum of second appeal will be refunded. No leave.

(6) Appeal allowed.