

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.156 of 1999
and C.M.P.No.3237 of 2017

Selladurai

..Appellant/Appellant/
2nd Respondent

Vs.

1. Selvarani
2. Rameswari
3. Lakshmi

..Respondents 1to3/Respondents 1to3

4. Aruchamy Gounder

..4th Respondent/4th Respondent/
1st Defendant

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgement and decree dated 12.04.2016 made in A.S.No.60 of 2014 on the file of the learned V Additional District & Sessions Court, Coimbatore, confirming the judgment and decree dated 22.02.2012 made in O.S.No.92 of 2009 on the file of the learned Sub Court, Pollachi.

For Appellant : M/s.D.Selvaraju

JUDGMENT

The suit for partition was allowed by the trial Court and on appeal confirmed by the first appellate Court. The suit is filed by the daughters against her brother and father. The defence of the appellant in the trial Court was that, in the settlement deed executed by Palani Gounder through with the parties claim right over the suit property, there is a restriction on inheritance and alienation. The intention of the settlor was to give his property only to his male descendants excluding the female heirs.

2. The sole point for consideration, is that whether the term "Santhathi (சந்ததி)" in the settlement deed restricts to male descendent alone or it is gender neutral. This Court, on the insistance of the learned counsel for the appellant, had gone through the settlement deed and found that the settlor has given life interest to his sister's children namely Muthusamy,

Palanisamy, Aruchamy and Santhanalakshmi. He has given life interest to the four persons named in the settlement and thereafter the vested remainder to the descendants of the above named persons. He has also contemplated if of any one of them died without issue, in such circumstances, he has restricted the devolution to the descendants of the other life interest holder, except 4th defendant Santhanalakshmi. Further he has also restricted the right of alienating the property by the vested remainder. As per the settlement deed pre-emptive right of purchase to male descendant of the life interest holders is reserved.

3. The learned counsel for the appellant submitted that the intention of the settlor is to settle the property to his male descendant alone and that is the reason why even at the first incident he has excluded the female life interest holder i.e., Santhanalakshmi and also in the subsequent clause he has made explicitly the right of purchase vesting only with the male descendants. Hence submitted, the restricted meaning found in the latter part of the documents should be applied to the earlier portion of the settlement deed.

4. This Court is not in agreement with the above submission. The settlor was conscious of the difference between the words "Santhathi" and "Male descendants". In more than two occasions where ever he want to be gender neutral, he has used the word "Santhathi", only the right of pre-emptive purchase he has given to the male descendants. This may not be taken as the intention of the settlor that he intended to settle the property only to male descendants. If that is the intention of the settlor, he would be made it clear that after the life time of the four persons named in the deed, the property should devolve upon their male descendants.

5. This Court finds that there is no substantial question of law involved in this second appeal and therefore dismiss the second appeal. Accordingly the second appeal is dismissed. No order as to costs. Consequently connected miscellaneous petition is closed.

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Assistant Registrar(CS IV)

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Sub Assistant Registrar

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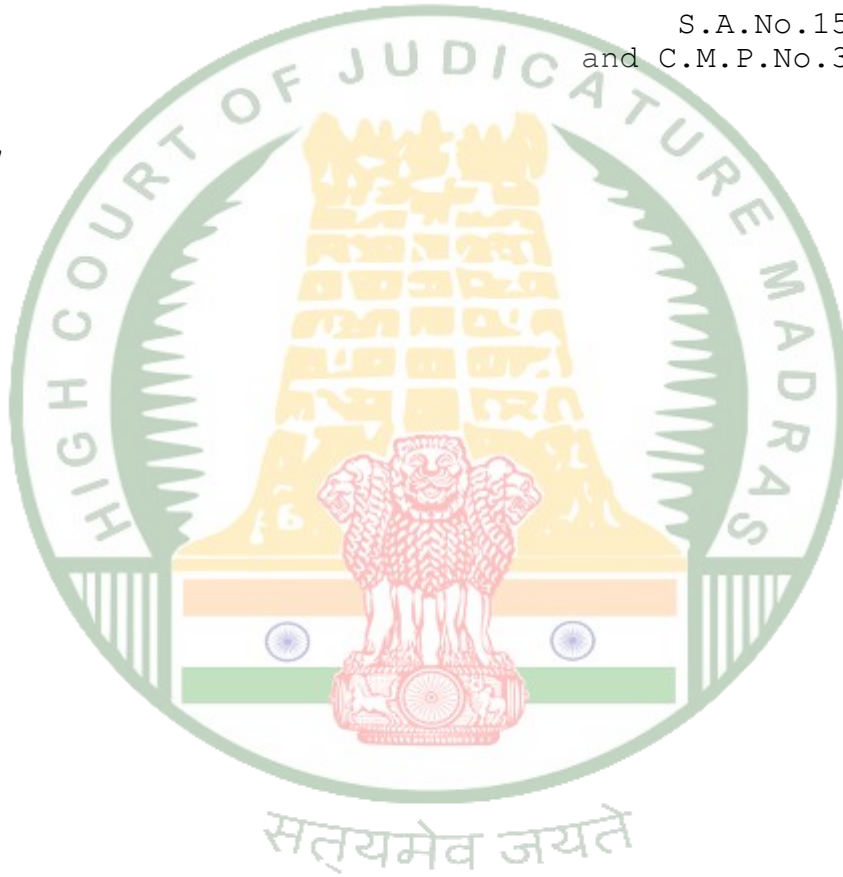
1. The V Additional District & Sessions Judge, Coimbatore.

2. The Sub Judge, Pollachi.

+ 1 cc to Mr.D. Selvaraju, Advocate Sr.11570

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RSY(CO)
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