

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAM

A.S.No.121 of 2003

Katheeja Natchial

... Appellant/Petitioner

Vs.

1.Haji M.K.Sheik Dawood Maraicar

2.L.H.Nazirudeen

3.Shahul Hameed Nachial

4.Asma Natchial

5.L.H.Hidayatullah

6.L.H.Haja Moiudeen

7.L.H.Mustaffa Maraicar

8.Arif maraicar

... Respondents/Respondents

Appeal suit has been filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 14.03.2002 in I.A.No.423 of 1983 in O.S.No.14 of 1982, of the file of Additional District Judge, Karaikal.

For Appellant : Mr.R.Sunil Kumar
For Respondents : No appearance

J U D G M E N T

This appeal has been filed by the plaintiff in O.S.No.14 of 1982 against the final decree passed in the said suit.

2. It is seen that the respondents 1 and 2 are dead and the 8th respondent viz., Arif Maraicar has been served. The other respondents have not been served, despite of several attempts. It is seen that all of them remained exparte even before the Trial Court. The requirement to bring on record the legal heirs of the respondents 1 and 2 as well as notice to other respondents is dispensed with. The eighth respondent though served, is not appearing either in person or through counsel.

3. The suit in O.S.No.14 of 1982, was filed by the plaintiff for a direction to the first defendant or any other person who may be appointed as receiver to transfer the extent of one Veli of Nanja land from and out of A and B schedule property or from B Schedule property alone and to pay the plaintiff a sum of

Rupees 18,000/- for marriage expenses as per the Will executed by the father of the plaintiff viz., Hameed Maraikair. In the suit also, the defendants 2-7 remained exparte and the eighth defendant endorsed that he is not letting in evidence.

4. The preliminary decree came to be passed, directing the first defendant to transfer one Veli of Nanja land to the plaintiff and also pay a sum of Rupees 18,000/- towards the marriage expenses. The Court has also granted permission to the administrator to sell a portion of the land for payment of Rs.18,000/-. It is not in dispute that a portion of the land was sold and a sum of Rupees 18,000/- has been paid to the plaintiff. The plaintiff sought for final decree, seeking allotment of one Veli of land as per the preliminary decree in I.A.No.423 of 1983. Several reports were filed by the administrator and the Trial Court considered the report dated 18.01.1991, allotting the following extent of land to the appellant.

SR No.	Re survey No.	Old Survey No.	Nateve	Extent Ha.Ca.	Patta V.Ma.k.	
1.	52/2	138/PT	Wet	0.93.0	0.06.95	260
2.	93/2A	3pt,4	Wet	0.36.0	0.02.69	260
3.	166/3	360PT	DVY	0.68.0	0.05.08	260
4.	166/4	628PT 629	Wet	0.86.0	0.06.42	36
					0.21.14	

Aggrieved by the above said allotment, the plaintiff is on appeal.

5. Heard Mr.Sunil Kumar, learned counsel appearing for the appellant. The contention of the learned counsel for the appellant is that Item Nos.2 and 3 which were allotted to the appellant as per the report of the administrator dated 18.01.1991, have already been acquired by the Government and the compensation has been disbursed to all, including the appellant. Therefore, the Court could not have allotted those two items to the appellant. Pending this appeal, it is seen that defendants 3,4,6 and 7 have executed a release deed on 02.07.1990 and on 25.04.2002, releasing their rights over certain extent of suit properties measuring about 9 Mahs and 67 Kulis in favour of the appellant.

6. The appellant has expressed her consent to take this extent of 9 Mahs and 67 Kulis and adjust the same towards her entitlement of one Veli i.e., equivalent to 20 Mahs. As per the allotment made by the Trial Court, the appellant has got 6 Mahs and 95 Kulis in R.S.No.52/2 and she has got another extent of 9

Mahs and 67 Kulis, under the two release deeds executed by the defendants 3,4,6 and 7. Therefore, the total extent that is in possession of the appellant is 16 Mahs and 62 Kulis and she is entitled to further extent of 3 Mahs and 38 Kulis, to make up the deficit.

7. It is seen from the decree of the Trial Court that in item 4, the appellant has been allotted 6 Mahs and 42 Kulis of land in R.S.No.166/4, out of the said extent of 6 Mahs and 42 Kulis, the appellant would be entitled to 3 Mahs and 38 Kulis. The final decree passed by the lower appellate Court is accordingly modified and the appellant will be allotted the extent of 20 Mahs i.e., equivalent to one Veli, as follows:-

S.No	R.S. No	O.S. No	Village	Patta No	Extent V.Ma.K
1	52/2	138 Pt	*Pollagam	260	0.06.95
2	111/4	295/3	Akkaravattam	1037	0.09.67
3	166/4	628 Pt to 629	*Polagam	36	0.03.38

8. Accordingly, the final decree passed by the Trial Court is modified and the appellant would be entitled to the above extent of land towards the extent of one Veli that was directed to be allotted to her as per the Will of her father. The appeal is accordingly disposed of.

s/d-
Assistant Registrar(CO)
Dated: 31.10.2017

* Corrected as per order
dated 09.11.2017 made in A.S. No 121/03.
Sd/- Assistant Registrar(CO)
Dated: 14.11.2017

True Copy

Sub-Assistant Registrar

gsk

To

1.The Additional District Judge,
Karaikal.

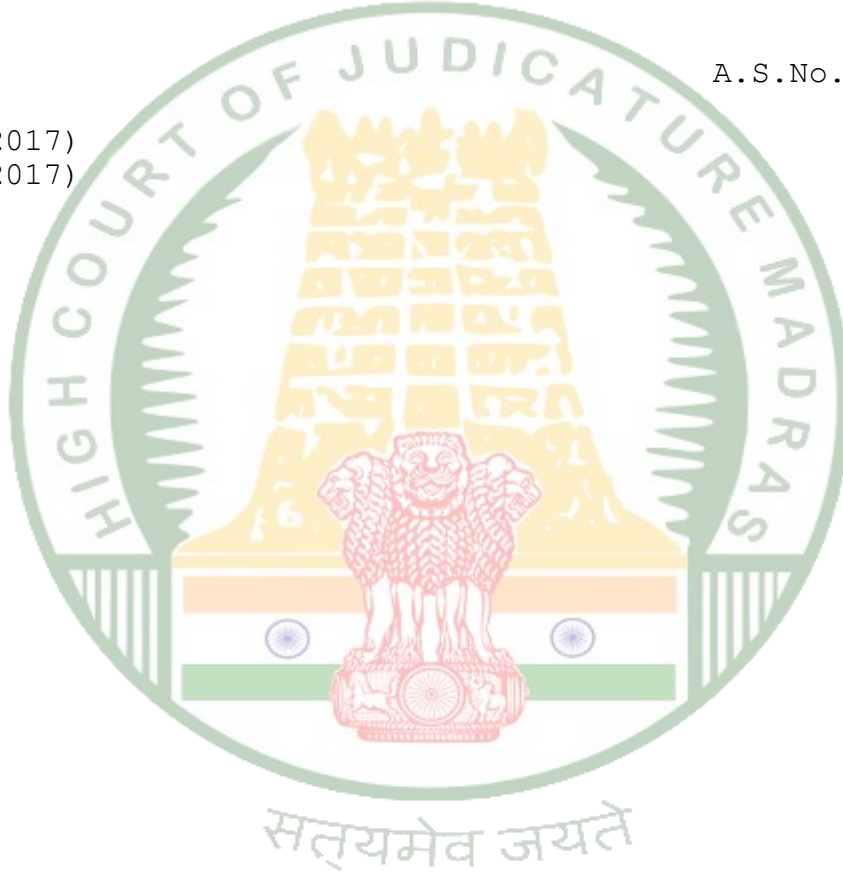
2.The Section Officer,
V.R.Section,
High Court, Madras.

To be substituted in the
place of order despatched
on 03.11.2017.

+1 CC to Mr.R. SunilKumar, Advocate sr 75344.

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SP(01/11/2017)
SP(14/11/2017)



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