



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.09.2017

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD)No.62 of 2016

1.Chinnammal

2.Palaniappan

3.Muthulakshmi

4.SarojaAppellants/Appellants /1,2,4 and 5 Defendants

Vs.

PeriyakalRespondent/ Respondent/Plaintiff

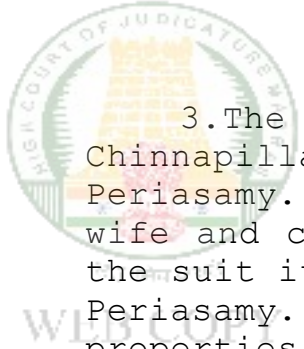
Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 01.11.2014 made in A.S.No.25 of 2013 on the file of the II Additional Sub Judge, Tiruchirappalli, confirming the Judgement and Decree of the District Munsif Court, Musiri, in O.S.No.103 of 2003, dated 25.01.2012.

For appellants : Mr.T.Vadivelan
For respondent : No appearance

JUDGMENT

The unsuccessful defendants 1, 2, 4 and 5 in the suit for partition are the appellants herein. The suit was filed by the plaintiff claiming ½ share in the suit item Nos.1 to 8.

2.The case of the plaintiff is that her father, namely, Chinnapillai had two wives. The first wife of Chinnapillai is one Poonjolai and her son is Periasamy. The first defendant is the wife of Periasamy and the other defendants were born through the first defendant. The second wife of Chinnapillai is one Vanathayee, who was married Chinnapillai, after the death of the first wife - Poonjolai. Out of the said wedlock, the plaintiff was born. As the Chinnapillai died intestate, the plaintiff and the defendant have equal rights in the suit properties. Hence, the suit has been filed by the plaintiff.



3.The defendants had contested the suit stating that the said Chinnapillai had no second wife and his only heir is one Periasamy. The first defendant and the other defendants are the wife and children of the said Periyasamy. It is also stated that the suit item Nos.5, 6 and 7 are in the exclusive name of the said Periasamy. The plaintiff cannot claim any right over the suit properties.

4.Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as PW1 and one Logambal was examined as P.W.2 and Exs.A1 to A7 were marked. On the side of the defendants, the second defendant was examined as DW1 and another witness was examined as DW2 and Exs.B.1 to B.25 were marked.

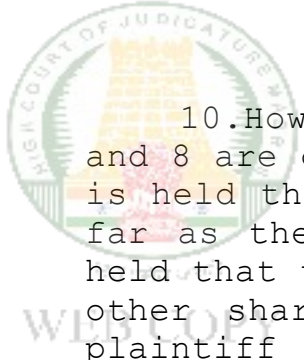
5.After consideration of oral and documentary evidence, the trial Court had decreed the suit in favour of the plaintiff only with respect to $\frac{1}{2}$ share of the properties in the suit item Nos. 3,4 and 8. On appeal, the same was confirmed. Aggrieved by the same, the above appeal has been filed by the defendants.

6.At the time of admission, only notice was ordered to the respondent.

7.Heard the learned counsel appearing for the appellants. Though the respondent served with notice, she did not appear either in person or through a counsel.

8. The learned counsel for the appellants contended that the plaintiff is not the daughter of Chinnapillai and she had not proved her legal heirship. It is also contended by the learned counsel for the appellants that there is a discrepancy in Ex.A1 and Ex.A7 about the date of death of the second wife, namely, Vanathayee, who is the mother of the plaintiff.

9.Ex.A1 is the legal notice issued by the plaintiff to the first defendant and Ex.A7 is the death certificate of the deceased Vanathayee. The lower appellate Court had held that the date of death of Vanathayee has been wrongly mentioned in Ex.A1 and the same was rightly mentioned in Ex.A7. Though the defendants denied the same, they had not produced any contra evidence to disprove the same. Accordingly, the said objection was overruled by the first appellate Court. When it is proved that the plaintiff is the daughter of the second wife of Chinnapillai and the marriage of Vanathayee was only after the death of the first wife, she also became equally entitled to the suit properties, apart from Periyasamy, who is the son of Chinnapillai born through Poonjolai. Therefore, the Courts below had rightly held that the plaintiff is also entitled to $\frac{1}{2}$ share in the properties owned by Chinnapillai.



10. However, it is found that the properties in item Nos. 3, 4 and 8 are only in the name of the plaintiff's father and hence, it is held that the plaintiff is entitled to $\frac{1}{2}$ share in the same. So far as the other properties are concerned, the Courts below had held that they are standing in the name of Periasamy and also some other sharers. Hence, the decree was passed in favour of the plaintiff only with respect to $\frac{1}{2}$ share of the properties in item Nos. 3, 4 and 8 and the first appellate Court also confirmed the same.

11. There is nothing projected in the appeal to reverse the concurrent findings passed by the Courts below. In the absence of any evidence or any question of law arising for consideration, in the above said of facts, this Second appeal is liable to be dismissed.

12. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge, Tiruchirappalli.

2. The District Munsif, Musiri.

3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.T.VADIVELAN, Advocate SR.No.78732

msa

MAS/JC/SAR2:04.10.2017:3P-5C

S.A. (MD) No. 62 of 2016

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