



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.04.2017

PRONOUNCED ON: 04.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

AS (MD) No.180 of 2011

1.N.Balalsubramanian
2.P.Varadharajan
3.P.Neelakantan

Appellants/Defendants

Vs

1.Lakshmi Krishnan
2.Sundaravalli
3.N.Krishnan
4.Gopalan
5.Sekaran
6.N.Saraswathy
7.Prabavathi
8.Muthu Narayanan
9.Bagyalakshmi
10.N.Neelakantan

Respondents/Plaintiffs

Prayer:- This Appeal Suit is filed against the judgement and decree dated 7.9.2010 made in OS.No.27 of 2006, by the Additional District Judge (FTC), Periyakulam

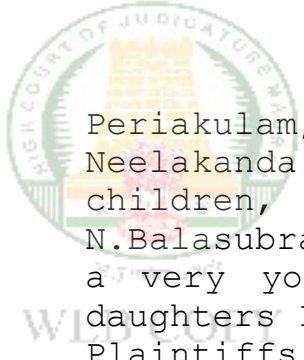
For Appellant : No Appearance

For Respondent : Mr.H.Lakshmishankar

JUDGEMENT

This appeal has been filed by the Defendants in OS.No.27 of 2006, on the file of the Additional District Judge (FTC), Periyakulam, aggrieved by the judgement and decree, dated 7.9.2010, granting a preliminary decree and allotting 10/11th share to the Respondents/ Plaintiffs and further relief of appointment of Advocate Commissioner to effect the said partition.

2. The Respondents herein are the Plaintiffs in OS.NO.27 of 2006. It is the case of both the parties that the property consisting of a building in New Door No.29, Old Door No.4019 in TS.No.4019 in Ward No.19, South Agraharam Street, Thenkarai,

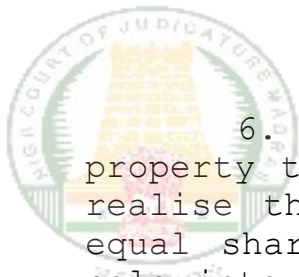


Periakulam, Theni District was the ancestral property of late Neelakanda Sharma. He married Chellammal. They had three children, namely, a daughter, Seethalakshmi and two sons, namely, N.Balasubramanian and N.Mahadevan. Mahadevan died as a bachelor at a very young age. Seethalakshmi also died, leaving behind her daughters Lakshmi Krishnan and Sundaravalli, who are the 1st and 2nd Plaintiffs in the suit. N.Balasubramanian is the 1st Defendant in the suit. His two sons Neelakandan and Varadharajan are the 2nd and 3rd Defendants in the suit and they are the Appellants herein. After the death of Chellammal, Neelakanda Sharma married Lakshmiammal. Through her, he had eight children, namely, the 3rd Plaintiff Krishnan, 4th Plaintiff Gopalan, 5th Plaintiff Sekaran, 6th Plaintiff Saraswathy, 7th Plaintiff Prabavathi, 8th Plaintiff Muthu Narayanan, 9th Plaintiff Bagyalakshmi and the father of the 10th Plaintiff, who died, by name, Seshan. The Plaintiff filed the suit, seeking undivided 9/10 share in the suit property. They claimed it on the basis that the property was ancestral in nature and the father Neelakanda Sharma died intestate. Consequently, they claimed that each one of his children was entitled to an undivided equal share in the suit property.

3. The 1st Defendant N.Balasubramanian, who is the 1st Appellant herein, has resisted the suit, stating that he, as the eldest son, became kartha of the joint family and thereafter, he and his two sons Neelakandan and Varadharajan had entered into a partition deed and the entire property had been allotted to the 3rd Defendant/3rd Appellant P.Varadharajan and it is therefore claimed that the suit should be dismissed.

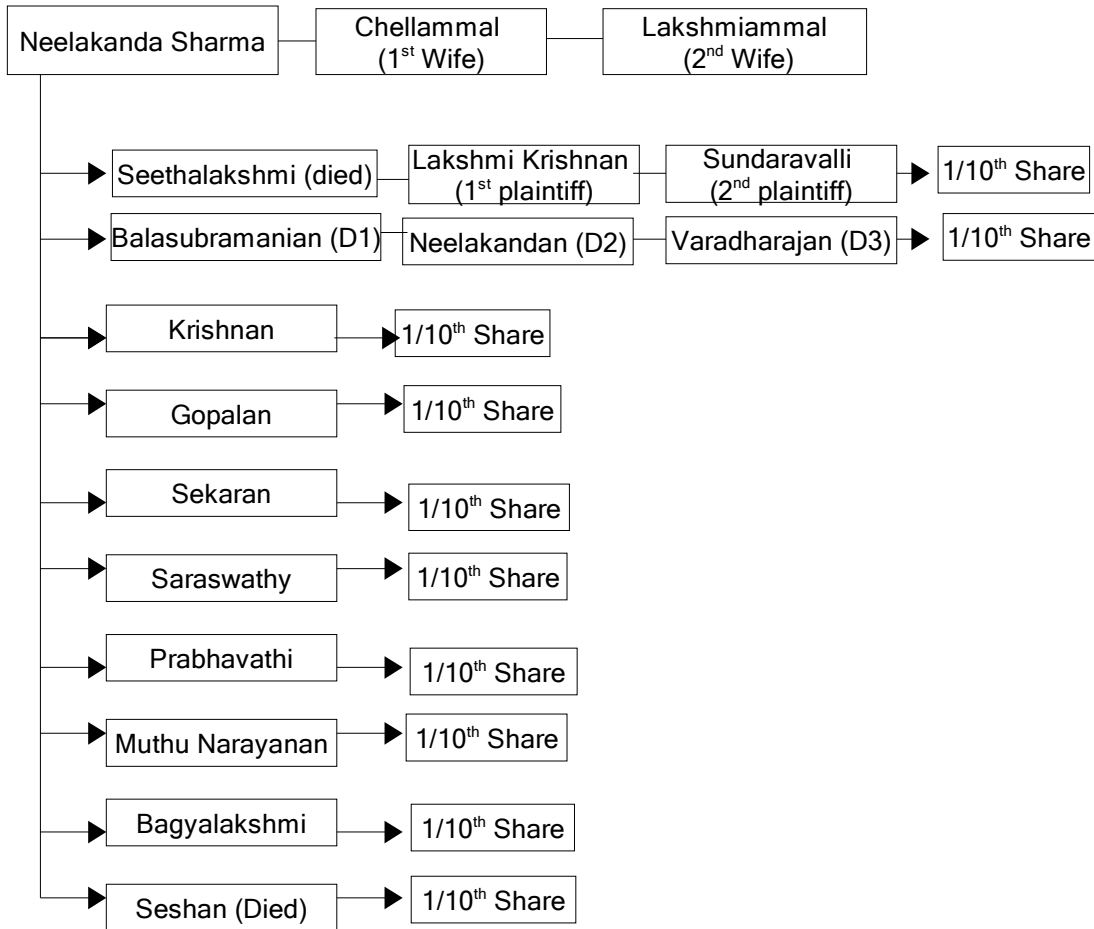
4. The Trial Court, by judgement and decree dated 7.9.2010, had granted a preliminary decree, granting partition and separate possession. However, the Trial Judge had made an elementary mistake while granting partition and separate possession. He calculated the shares of the first two Plaintiffs, Lakshmi Krishnan and Sundaravalli as having independent shares, forgetting that they had one share, which had been devolved on to their mother Seethalakshmi. The reasoning given by the Trial Judge that under the amendment to Hindu Succession Act, daughters have equal shares is correct. But, the fundamental premise that partition has to be given per stripe had been overlooked by the Trial Court. Accordingly, the judgement and decree deserves interference to that minimal extent.

5. The relationship among the parties being admitted and the nature and character of the property being admitted and the further fact that Neelakanda Sharma died intestate also being admitted, all his children have equal undivided shares in the suit property. The contention of the Appellants that they alone are entitled to a share in the property to the exclusion of their sisters has no legal ground and has to be rejected. It was also rejected by the Trial Court and it is also rejected by me.



6. A brother, in a suit property, cannot usurp the entire property to himself and then, reallocate it to his sons. He must realise that he gets one share and his brothers and sisters get equal shares. The pleading with respect to division of jewels, pale into insignificance. Accordingly, I hold that in accordance with the following genealogy, the Appellants are entitled to an undivided $1/10^{\text{th}}$ share and the Plaintiffs are entitled to an undivided $9/10^{\text{th}}$ share.

7. **The genealogy is as follows:-**



7. In the result, this appeal suit is partly allowed. No costs. There shall be a preliminary decree for dividing the property into 10 (ten) equal shares and allotting one share to the 1st and 2nd Respondents and one share to the 3rd to 10th Respondents each and one share to the Appellants. The parties have to approach the Trial Court to initiate final decree proceedings, in accordance with law.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To:

1.The Additional District Judge (FTC), Periyakulam.

2.The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.H.Lakshmi Shankar, Advocate, SR.No.55611

Scrm

AE/MMS/SAR3/19.05.2017/4P/4C

Pre-Delivery Judgement in
AS (MD) No.180 of 2011
04.05.2017