



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twelfth day of November Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
and
The Hon`ble Mr.Justice C.SARAVANAN

CMP(MD) No.10862 of 2018

IN

AS(MD) No.179 of 2018

1 S.RATNADEVI

2 M/S.LAKSHMI TRADERS REPRESENTED BY
ITS PARTNER, RATHNA DEVI
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI,
KUMBAKONAM

3 M/S.VASAVI TRADERS REPRESENTED BY ITS
PARTNER RATHNA DEVI
VALLAM TO ORATHANADU MAIN ROAD,
MARUNGULAM, THANJAVUR

... APPELLANTS/PETITIONERS

Vs

1 M.HARIHARAN

2 H.LAVANYA

3 R.GANESAN

4 M/S.GROWL FERTILIZERS,
REPRESENTED BY PROPRIETOR NATARAJAN
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI, KUMBAKONAM

5 M/S.MOHAN AGRO CENTRE,
REPRESENTED BY ITS PROPRIETOR
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI, KUMBAKONAM

6 M/S.TVS & SONS,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI, KUMBAKONAM

7 M/S.ARUL AGENCIES,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI, KUMBAKONAM

8 M/S.ATRC TYRE RETREADING COMPANY,
REPRESENTED BY ITS MANAGER,
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI, KUMBAKONAM

9 THIRUMALAI TILES AND GRANITES,
REPRESENTED BY ITS PROPRIETOR
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM



10 S.S.PAUL TREE FORUM,
REPRESENTED BY ITS PROPRIETOR
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

11 GREEN STAR FERTILIZERS LIMITED,
REPRESENTED BY ITS PROPRIETOR
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

12 B.NATARAJAN

13 B.RAVI

14 RAMCO CEMENT LTD.,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

15 ARC PARCEL SERVICE LTD.,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

16 ARUL AGENCIES,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

17 K.R.R.MOTORS & TATA MOTORS
PRIVATE LIMITED,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

18 GLOBAL INDUSTRIES,
REPRESENTED BY PROPRIETOR
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

19 GROWEL FERTILIZER,
REPRESENTED BY PROPRIETOR A.NATARAJAN
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

20 MAHALAKSHMI TILES,
REPRESENTED BY ITS MANAGER
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM

21 J.RAMAN

22 ARUL SELVAM

23 RAJARAMAN

24 JAYA VILAS SILVER SHOP,
REPRESENTED BY PROPRIETOR,
NO. 14, SARANGAPANIKOVIL STREET, KEELVEDHI, KUMBAKONAM

25 MOHAN AGRO GODOWN,
REPRESENTED BY ITS MANAGER

<https://hcservices.ecourts.gov.in/hcservices/>
NO.58, NEEDAMANGALAM ROAD, SAKKOTAI POST, KUMBAKONAM



26 MUTHUKUMAR

27 RANGASAMY

28 RAJKUMAR CERAJEM ACUPUNCTURE,

REPRESENTED BY PROPRIETOR

NO. 14, SARANGAPANIKOVIL STREET, KEELVEDHI, KUMBAKONAM

29 S.ABINESH

30 M.DANALAKSHMI

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to direct the first and second respondent to deposit from out of the admitted rental income derived from the suit "A" Schedule property being a sum of Rs.1,50,000/-, proportionate 1/3rd share of the 1st plaintiff for the period July 2007 till October 2018 for a consecutive period of 136 months amounting to Rs.68,00,000/- together with the proportionate damages for use and occupation of the B Schedule property at the rate of Rs.5000/- for the period July 2007 to October 2018 for a continuous period of 136 months amounting to the sum of Rs.6,80,000/- to the credit of the above appeal forthwith and continue to pay the proportionate share every month till the disposal of the suit.

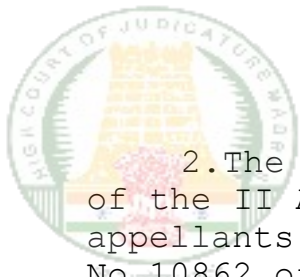
PRAYER IN AS (MD) . 179/ 2018 :

To set aside the Judgment and Decree made in O.S.No.13 of 2008 on the file of the Second Additional District and Sessions Judge, Thanjavur.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.SUBBARAJ, Advocate for the petitioner and of 1st respondent (Caveator) not appeared either in person or by an Advocate, the court made the following order:-

[Order of the Court made by **S.S.SUNDAR, J.**]

This petition has been filed to direct the first and second respondents to deposit the amount from and out of the admitted rental income derived from the suit 'A' schedule property being a sum of Rs.1,50,000/-, proportionate to 1/3rd share of the first plaintiff from the period July'2007 till October'2018 for a consecutive period of 136 months amounting to Rs.68,00,000/- together with the proportionate damages for use and occupation of the 'B' schedule property at the rate of Rs.5,000/- for the period from July'2007 to October'2018 for a continuous period of 136 months amounting to a sum of Rs.6,80,000/- to the credit of the above appeal and continue to pay the proportionate rent every month till the disposal of the suit.



2.The plaintiffs in the suit in O.S.No.13 of 2008 on the file of the II Additional District and Sessions Court, Thanjavur, are the appellants in the above appeal and the petitioners in C.M.P.(MD) No.10862 of 2018.

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3.It appears that the contesting respondent, namely, the first defendant in the suit, who is the first respondent in the main appeal, has filed caveat. However, there was no representation for the caveator, when the matter was listed earlier on 31.10.2018. Even today, there is no one to represent the caveator. Hence, this Court proceeded to hear this petition.

4.The appellants / petitioners filed a suit in O.S.No.13 of 2008 before the II Additional District and Sessions Court, Thanjavur, for partition of half share in all the properties of (Late)R.S.Munirajan and for consequential reliefs. The first petitioner herein is the daughter of R.S.Munirajan and also the sister of the 30th defendant. The first defendant in the suit is the brother of the first petitioner. The defendants 2 to 29 are the tenants of the properties, which are the subject matter of the suit. However, the trial Court granted 1/3 share to the three children of Late R.S.Munirajan in respect of all the properties.

5.The first petitioner's claim for half share in the suit properties is on the basis of a holographic Will, stated to have been executed by her father in favour of the first plaintiff and the 30th defendant. However, the trial Court relying upon certain circumstances, disbelieved the holographic Will and granted equal share to all the three children of Late.R.S.Munirajan. The first plaintiff's right to 1/3 share is not disputed. The main appeal has been filed by the plaintiffs for 1/2 share based on the holograph Will. Stating that the first plaintiff has been deprived of her right to enjoy the property right from the date of the death of her father, the present petition has been filed.

6.The learned Counsel for the petitioners submitted that some of the immovable properties were sold by the first defendant, even during the pendency of the suit. It is also her case that a Rice Mill, which was a partnership concern, was also dismantled and the machineries were taken away by the first defendant to his place, where he set up another Rice Mill in his name. It is further stated that the first plaintiff was not in enjoyment of any of the properties or not getting any income from any of the properties right from the date of the suit property. It is also pointed out that the first defendant has admitted in his evidence that he is collecting a sum of Rs.1,50,000/- per month as rent from the immovable properties through the tenants. It is also stated that the first defendant did not prefer any appeal.

7.It is under these circumstances and having regard to the peculiar facts that the first plaintiff is totally deprived of her



legitimate share, this Court is of the view that the first plaintiff is entitled to get atleast the benefit of the decree. Accordingly, this petition is allowed with the following directions:

"1)The first respondent / first defendant is directed to deposit a sum of Rs.30,00,000/- to the credit of A.S. (MD)No.179 of 2018 within a period of eight weeks from the date of receipt of a copy of this order before the Indian Bank, Madurai Bench of Madras High Court, Madurai. Upon such deposit being made by the first respondent / first defendant in compliance of this order, the first petitioner / first appellant is entitled to withdraw the entire amount by filing necessary applications.

2)The first respondent is also directed to pay of sum of Rs.50,000/- directly to the first petitioner / first appellant every month towards the 1/3 share towards future rental income on or before 10th of every month, commencing from December'2018.

sd/-
12/11/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THANJAVUR

COPY TO:- THE MANAGER,
INDIAN BANK,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1. C.C. to MR.P.SUBBARAJ Advocate SR.No. 21433

ORDER
IN
CMP (MD) No.10862 of 2018
IN
AS (MD) No.179 of 2018
Date :12/11/2018