

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.45 of 2000

- 1.Peria Kaliappa Nadar (Deceased)
- 2.Kamaraj
- 3.K.Neethipathi
- 4.K.Nagarasu

... Appellants

Appellants 3 & 4 brought on record as Legal representatives of the deceased 1st appellant vide order of court dated 12.01.2018 made in CMP.No.640 to 642 of 2008 in S.A.No.45 of 2000 (MDIJ)

Versus

- 1.Peria Palaniappan (Died)
- 2.Sadayan @ Palaniappan
- 3.Chinna Palaniappan S/O Peria Thillaiappan
- 4.Chinna Palaniappan S/o Chinna Thillaiappan
- 5.Kamatchi
- 6.Karthi
- 7.Moorthi
- 8.Kaliappan
- 9.T.K.Subramanian
- 10.Palanisamy
- 11.Thenpalani
- 12.Sellamuthu
- 13.Thambi @ Palaniappan
- 14.Krishnasamy
- 15.Ramasamy
- 16.Venkidusamy Gounder
- 17.Vadivel Shanmugam
- 18.Chandra
- 19.Lakshmi
- 20.Mariammal
- 21.Valliammal
- 22.Gopalan
- 23.Kumar

24.Sahadevan
25.Krishnamoorthy
26.Janaki
27.Annapoorani
28.Lokanayaki
29.Sivakalai
30.Bharathi
31.Thillaiammal
32.M.Ravanan
33.Tamilarasi Gandhi
34.M.Kalaivanan
35.M.Mahadevan
36.M.Manivannan
37.M.Kalaimathi
38.M.Kolandairaj
39.Dhanalakshmi
40.Minor.Sivanandan
41.Minor.Divya
42.Thillaiammal
43.lakshmi
44.Vasuki
45.Valliammal
46.Shanmugavel

... Respondents

RR45 & 46 are brought on record as legal representatives of the deceased 1st respondent vide order of court dated 15.11.2002 made in CMP.Nos.9046 to 9048 of 2002 (MKVJ) .

Prayer:The Second Appeal is filed under Section 100 of CPC, against the judgment and decree made in A.S.No.33 of 1995 dated 23.07.1998 on the file of the learned I Additional District Judge-cum-Chief Judicial Magistrate, Erode, confirming the judgment and decree made in O.S.No.144 of 1989 dated 23.09.1994 on the file of the learned Sub Judge, Dharapuram.

For Appellants : No appearance
For R2,R4,R9 & R15 : Mr.M.V.Krishnan
For R14 & R17 : Mr.S.Jaganathan
For R5,R11,R12,R19 : Mr.G.Thangavel
For R2, RR23 to 25 : Not ready in notice
R3,R6,R7,R9,R10,R13,R16 : No appearance
R18,R20,R21,R22,R26,R27
R28,R29,RR30 to R46

JUDGMENT

The first plaintiff in O.S.No.144 of 1989 on the file of the Sub Court, Dharapuram and the fifth appellant in A.S.No.33 of 1995 on the file of the learned I Additional District Judge-cum-Chief Judicial Magistrate, Erode, are the appellants herein. By judgment dated 23.09.1994, the suit was partly decreed and a preliminary decree was passed granting 2/30th share to the plaintiffs. Challenging that preliminary decree, the plaintiffs filed A.S.No.33 of 1995. By judgment and decree dated 23.07.1998, the learned I Additional District Judge-cum-Chief Judicial Magistrate, dismissed the appeal and confirmed the preliminary decree of the Trial Court.

2.It must be mentioned that pending the first appeal, the second plaintiff Chinna Kaliappa Nadar died and his legal heirs were brought on record as appellants 3 to 6. Challenging the judgment and decree in A.S.No.33 of 1995, the first plaintiff Peria Kaliappa Nadar and the fifth appellant in the first appeal Kamaraj who was one of the legal heirs of the deceased second plaintiff have filed the present Second Appeal.

3.The Second Appeal has been filed in the year 1999 and numbered in the year 2000. It has not yet been admitted. Pending the Second Appeal, the first appellant Peria Kaliappa Nadar died and his legal heirs were brought on record as appellants 3 and 4. Similarly, the first respondent Peria Palaniappan also died but his legal heirs were already on record. Pending the Second Appeal, it has been represented that the respondents 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 30, 32, 33 and 36 have also died, apart from the 1st respondent. Steps have not been taken to bring on record their legal heirs.

4.The learned counsel for the appellants, relied on the Genealogy table which had been given in the judgment of the Trial Court. The suit property was the self-acquired property of Palaniammal, wife of Thenpalani Murugan. She died on 19.08.1953. She had executed a Will on 24.01.1927. She had five sons. Kolathur Nadar, Periathillaiappa Nadar, Chinnathillaiappan, Chellappa Moopan and Patta Mooppanar. In the Will, she had stated that the 12 grand children born through her five sons would inherit the property in 5 equal shares and they should enjoy it along with their respective male sons. The dispute in the suit was with respect to the shares of the fifth son Patta Mooppanar. He had two wives Iyyammal and Parvathi. The plaintiffs Peria Kaliappa Nadar and Chinna Kaliappa Nadar were born through Iyyammal. They therefore claimed exclusive 1/5th share in the suit property. Defendants 13, 14, 15 and 18 were Palanisamy, Then Palani, Sellamuthu and Ramasamy. They

were the sons of Patta Mooppanar, through his second wife Parvathi. Both the Courts below have granted an undivided 1/5th share to all the grand son of Patta Mooppanar born through both his wives and among the grand children, the plaintiffs were granted 2/30th share. This was because both the Courts below recognized that defendants 13, 14, 15 and 18 also have a share in the 1/5th undivided share allotted to the grand children of Patta Mooppanar. This is the only issue raised in the Second Appeal.

5.It is the grievance of the appellants that the sons of the second wife of Patta Mooppanar should not have been allotted any share since at the time the Will was executed, they were not born and also since when a codicil was written in 1942, though they were born, the testatrix had not included them as her grand sons.

6.Both the Courts below, on facts held that the plaintiffs are entitled to a preliminary decree of 2/30th share and have also held that the sons of the second wife of Patta Mooppanar are also entitled to claim a share equivalent to that of the sons born through the first wife. I find no infirmity in the finding. The suit property was the self acquired property of Palaniammal, and in her Will, she stated that the grand children born to her 5 sons would share the property in 5 equal parts. The illegitimate children would also be entitled to a share in the said property. I hold that no question of law arises for consideration in the Second Appeal. Accordingly, the Second Appeal is rejected. No costs.

Sd/-
Assistant Registrar(CCC)

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सत्यमेव जयते
Sub Assistant Registrar

smv/arb

To

1.The learned I Additional District Judge
cum-Chief Judicial Magistrate,
Erode.

2.The learned Sub Judge,
Dharapuram.

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3.The Section Officer, VR Section,
Madras High Court.

+1cc to M/S.G.Thangavel, advocate Sr.5277

S.A.No.45 of 2000

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srg 15/03/2019



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