

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.04.2019

PRONOUNCED ON:24.04.2019

CORAM:

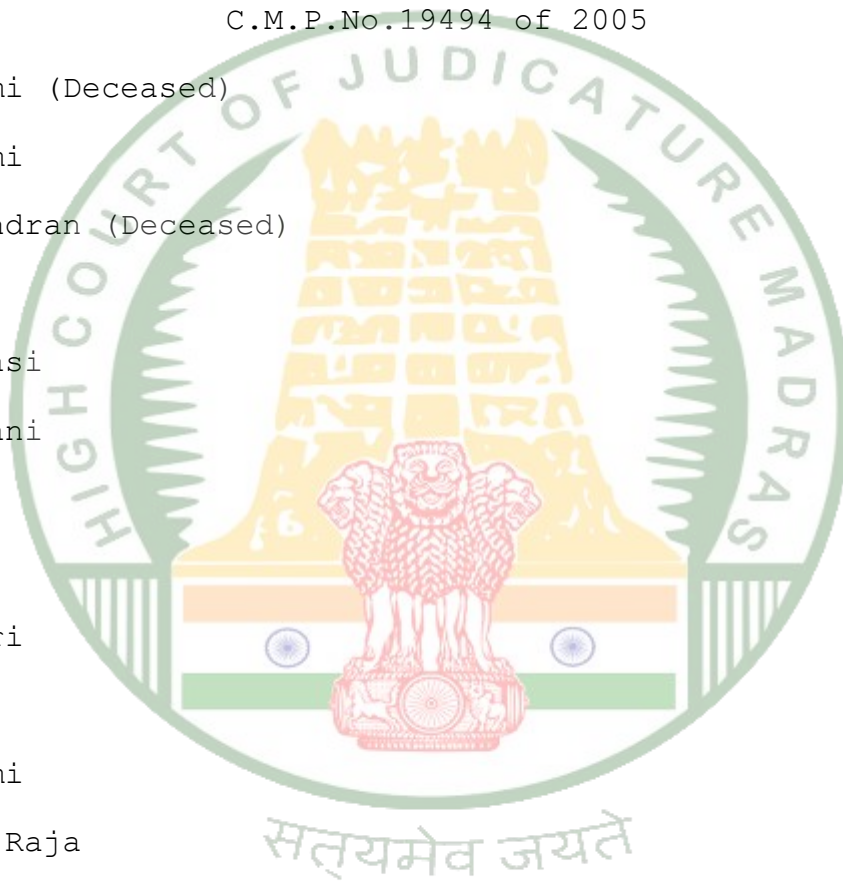
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1497 of 2005

and

C.M.P.No.19494 of 2005

- 1.Kannusami (Deceased)
- 2.Rangasami
- 3.Ramachandran (Deceased)
- 4.Saroja
- 5.Ezhilarasi
- 6.Vijayarani
- 7.Latha
- 8.Ashok
- 9.Rajeswari
- 10.Selvi
- 11.Sivagami
- 12.Kumara Raja
- 13.Selvakumar



[Appellants 4 to 8 and appellants 9 to 13 brought on record as LRs of the deceased 1st appellant and 3rd appellant respectively vide order of Court dated 11.02.2011 made in C.M.P.No.1943 to 1948 of 2010]

... Appellants

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Vs.

1.The District Collector,
Cuddalore District,
Cuddalore.

2.The Deputy Collector,
Land Acquisition,
Mantharakuppam,
Neyveli - 2.

3.The Special Tahsildar,
No.3, Land Acquisition,
Mantharakuppam,
Neyveli - 2.

4.The Secretary,
Neyveli Lignite Corporation Ltd.,
Corporate Office,
Neyveli -1.

5.Chief Engineer,
Land Acquisition Cell,
N.L.C Limited,
Neyveli.

6.Ramalingam
S/o, Amavasai

7.Ramalingam
S/o, Kumaran

... Respondents

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Principal District Judge, Cuddalore in A.S.No.139 of 2003, dated 30.12.2004 confirming the judgment and decree of the Principal Subordinate Judge of Virudhachalam in O.S.No.204/98, dated 01.07.2003.

For Appellants: Mr.S.Ambigapathi

For RR1 to R3: Mr.N.Manikandan,
Government Advocate (CS)

For RR4 and R5 : Mr.N.Nithyanandam

For RR6 and R7 : No appearance
Set exparte
vide order dated 01.04.2019

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 30.12.2004 passed in A.S.No.139 of 2003 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree dated 01.07.2003 passed in O.S.No.204 of 1998 on the file of the Principal Subordinate Court, Virudhachalam.

2. The second appeal has been admitted on the following substantial questions of law:

1. Whether the Courts below are right in holding that the plaintiffs are not entitled to the 3/4th share in the suit property?
2. Whether the Courts below are right in giving importance to the Exhibits B7 to B24?
3. Whether the Courts below have given any importance to Exhibit A2 and Evidence of P.W.5?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiffs for partition.

6. From the materials placed on record, it is found that the suit property had been acquired by the Government and an award has been passed in Award No.1 of 1990 for Rs.3,854.55/-. Subsequently, an additional award of Rs.50,895/- was granted in the matter in the Lok Adalat on 21.12.1998.

7. The plaintiffs claiming right in the property acquired on the footing that they and the 6th defendant are the legal heirs of Thaiyal Nayagi to whom the property belonged to and accordingly, claimed share in the subject matter proportionate to their entitlement. The contesting defendant resisted the plaintiffs' suit contending that only the 8th defendant Samboornam Ammal is the legally wedded wife of Chinnapaiyan to whom the property originally belonged to and Thaiyal Nayagi is only the second wife and accordingly, the 7th defendant born to the 8th defendant Samboornam would be entitled to the award passed in the matter and the plaintiffs are not entitled to claim any share in the award amount. The plaintiffs prays

their claim of share in the award amount on the footing that they are the legal heirs of Thaiyal Nayagi and according to the plaintiffs, Thaiyal Nayagi is the sister of their mother Sivakami and Thaiyal Nayagi married Chinnapaiyan and the daughter Chellammal born to Chinnapaiyan and Thaiyal Nayagi had died and accordingly it is put forth that the plaintiffs and the 6th defendant who are the sister's children of Thaiyal Nayagi being her legal heirs as well as the legal heirs of Chinnapaiyan entitled to the award amount. Further it has also been put forth that the defendants 7 and 8 are not the family members and the 7th defendant was born to Samboornam, 8th defendant through another person namely Thailan and therefore not entitled to the award amount involved in the matter.

8. For sustaining the suit, the plaintiffs mainly rely upon Ex.A2, Legal Heir Certificate. Insofar as this matter is concerned, the passing of the award amount are all not in dispute in respect of the suit property.

9. From the materials placed on record, it is found that the 8th defendant Samboornam had married Chinnapaiyan and thereafter left the family and according to the defendants, due to the ill treatment of Thaiyalnayagi, Samboornam and her son namely the 7th defendant had set up a separate family. It is thereafter noted that the 7th defendant subsequently joined in the family and in fact, he married one Lokanayaki, the sister of Kumaran's sister-in-law. Thus, it is found that the defendants 7 and 8 are not strangers to the family and on the other hand, they have also connection with the family of Chinnapaiyan. To establish that they are the legal heirs of Chellammal born to Chinnapaiyan, Ex.B7 legal heir certificate has been produced. Per contra, according to the plaintiffs, they are only the legal heirs of Chellammal and in this connection, rely upon Ex.A2 legal heir certificate. By way of way of Ex.A2 legal heir certificate, the authority concerned had cancelled the legal heir certificate marked as Ex.B7. However, there is no material placed on the part of the plaintiffs as to how Ex.B7 could be validly cancelled by way of Ex.A2 certificate. The plaintiffs have not placed any material to evidence that before the cancellation of Ex.B7 certificate, the defendants 7 and 8 were put on notice, examined and after inviting their objections, Ex.B7 certificate had come to be cancelled by the authority concerned. On the other hand, from Ex.B8, it is found that the 7th defendant had been found to be entitled to receive the death benefits of Chellammal and accordingly inasmuch as the defendants 7 and 8 are the legal heirs of Chellammal, it is found that they had been issued the legal heir certificate marked as Ex.B7 and also granted the death benefits of Chellammal and when the plaintiffs have failed to establish that Thaiyal Nayagi is the legally wedded wife of Chinnapaiyan, on the other hand, the materials

placed on record go to show that the 8th defendant Samboornam is the first wife of Chinnapaiyan, in such view of the matter, the 7th defendant born to 8th defendant and Chinnapaiyan would be the legal heir of Chinnapaiyan as well as Chellammal and in such view of the matter, the Courts below had rightly appreciated the materials placed on record and rejected the plaintiffs' case for claiming share in the award amount passed in respect of the property involved in the matter. As rightly determined by the Courts below, the plaintiffs had been all along not raising any objections to the award amount passed in the matter. In fact, the plaintiffs' father is found to have acquired the benefit of the award passed in the matter and thereafter it is seen that the plaintiffs have come forward making certain claim to the remaining award amount as if, they are the only legal heirs of Chellammal. However the plaintiffs having failed to establish the same other than marking Ex.A2 and when prior to the same the defendants 7 and 8 are declared as the legal heirs of Chellammal and when before the issuance of Ex.A2 certificate, the defendants 7 and 8 are not shown to be issued notice and heard, in such view of the matter, the Courts below in the nature of preponderance of probabilities, on the available materials, rightly determined that the plaintiffs are not entitled to the reliefs prayed for and in such view of the matter, in my considered opinion, the judgment and decree of the Courts below do not warrant any interference.

10. Considering the materials placed on record, particularly when the plaintiffs placed main reliance only upon Ex.A2 and when the plaintiffs have miserably failed to establish the validity of Ex.A2, legal heir certificate and also that Ex.B8 legal heir certificate had been duly and validly cancelled as per law and when the other materials projected by the defendants go to show that they are associated with the family of Chinnapaiyan and accordingly the death benefits of Chinnapaiyan's daughter Chellammal had been granted only in favour of the 7th defendant and not to the plaintiffs and in such view of the matter, in all, considering the available materials, in the light of the preponderance of probabilities, the Courts below are found to be justified in not acceding to the plaintiffs' case.

11. For the reasons aforestated, I do not find involvement of any substantial question of law in the matter. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

12.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge,
Principal District Court,
Cuddalore.
2. The Principal Subordinate Judge,
Principal Subordinate Court,
Virudhachalam.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

- +1 CC to The Special Government Pleader sr 39499
+1 CC to Mr.N.Nithyanandam, Advocate sr 40430.
+1 CC to Mr.J.Shanmuga Sundar, Advocate sr 40224.

सत्यमेव जयते

S.A.No.1497 of 2005
and
C.M.P.No.19494 of 2005

RR(CO)
SP(20/02/2020)

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