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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.11.2019
CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

Appeal Suit (MD) No.304 of 2008

and

M.P.(MD).Nos.1 & 2 of 2008 and

CMP(MD)Nos.11061, 11065 & 11068/2019

1.R.Petchiammal (died)
2.R.Azhagurani
3.J.Vinothkumar

... Appellants /Plaintiffs

Vs.

1.Yashodhai
2.Minor Jeyaratchahan

3. Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Sembatty,
Dindigul District.

4. Engineering Supervisor,
Tamil Nadu Electricity Board,
Dindigul District.

... Respondents 1 to 4/Defendants

5.R.Alagu
6.R.Vasagar
7.R.Raja
8.J.Dhivya
9.R.Vinothini

... Respondents 5 to 9 /
LRs of the deceased 1st appellant

(This cause title was accepted, vide order of the Court dated 23.10.2007 in M.P.(MD).No.1 of 2007 in A.S.SR.No.39601 of 2002)

(The minor 2nd respondent is represented by his mother / the first respondent herein)

(The respondents 5 to 9 were impleaded as per the order of this Court dated 28.11.2019 passed in C.M.P.(MD).Nos.11061, 11065 and 11068 of 2019)

PRAYER: Appeal filed under Section 96 C.P.C., against the judgment and decree, dated 18.12.2006, passed in O.S.No.34 of 2004 by the Additional District cum Fast Track Court No.IV, Periyakulam.

For appellants

... Mr.K.Senthilkumar
for S.Chandrasekaran

For respondents 1 & 2

... Mr.C.B.Senthil Kumar

For respondents 3 & 4

... Mr.S.M.S.Johny Basha



JUDGMENT

This appeal suit has been filed by the appellants/plaintiffs challenging the judgment and decree passed by the trial Court in O.S.No.34 of 2004, whereby and whereunder the trial Court has dismissed the suit.

2. When the matter came up for hearing today, the learned counsel appearing for the respondents 1 and 2 / defendants 1 and 2 submitted that that the defendants 1 and 2 appeared before this Court today and that they have no objection in allowing this appeal by granting the decree to the effect that the appellants 1 to 3 / plaintiffs 1 to 3 and the 1st and 2nd respondents/1st and 2nd defendants are each entitled to 1/5 share of the suit properties as well as the death benefits of the deceased Jeyabalan and that the respondents 5 to 9 may get 1/5 share of the deceased 1st appellant/1st plaintiff. He would further submit that so far as the relief sought for by the plaintiffs in respect of mesne profits is concerned, the appellants/plaintiffs may file separate application before the Court below. The learned counsel appearing for the defendants 1 and 2 and the defendants 1 and 2 have made an endorsement to that effect in the appeal memorandum. The above submission and endorsement made by the defendants 1 and 2 are recorded.

3. The learned counsel appearing for the appellants / plaintiffs on instructions submitted that the appellants/plaintiffs have no objection in decreeing the suit as conceded by the defendants 1 and 2.

4. As the defendants 1 and 2 agreed to allow the suit, this Court is of the view that no prejudice would be caused to the respondents 5 to 9, who are the legal heirs of the deceased first appellant, in allowing this appeal without notice to them.

5. In view of the above, this Court is inclined to allow this appeal holding that the appellants/Plaintiffs 1 to 3 and the defendants 1 and 2 are each entitled to 1/5 share in respect of the suit properties as well as the death benefits of deceased Jeyabalan. The respondents 5 to 9 are entitled to get 1/5 share of the deceased 1st appellant. In respect of the relief of mesne profits, the appellants/plaintiffs are at liberty to work out their remedy before the Court below by filing separate application. The respondents 3 and 4 shall disburse the death benefits of the deceased Jeyabalan as stated above.



6. Accordingly, this appeal suit is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

The Additional District Judge,
The Additional District cum Fast Track Court No.IV,
Periyakulam, Theni District.

Copy to:

1. R. Alagu, S/o. Rama Thevar,
Door No. A /15, Cheran Street,
Gandhi Nagar, Batlagundu, Dindigul District.
2. R. Vasagar, S/o. Rama Thevar,
Door No. 10-1/D-14,
Manthaiamman Kovil Street,
Uthamapalayam Taluk, Gudalur - 518, Theni District.
3. R.Raja, S/o. Rama Thevar,
Door No. 10-1/D-14,
Manthaiamman Kovil Street, Uthamapalayam Taluk,
Gudalur- 518, Theni District.
4. J. Dhivya, D/o. Late R. Nandha
W/o. Jeyachandran, Door No.96/a,
Ambal Garden, Ayyampalayam,
Uthukuli, Tirupur.
5. P. Vinothini, W/o. Prabhakaran,
Door No. 10-1/4b, Arasamaram Street,
Subbathevar Street, Gudalur, Theni District.
- 6 The Record Keeper,
V.R. Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.



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+1 CC to Mr.S.CHANDRASEKARAN, Advocate (SR-102087[F] dated
28/11/2019)
+3 CC to Mr.C.B. SENTHILKUMAR, Advocate (SR-102267[F] dated
28/11/2019)

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