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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.257 of 2013
and M.P.No.1 of 2013

1.V.M.Thangaiyan (deceased) ...1st Appellant/1st Defendant
2.Vimala Devi
3.Malathi
4.Kavitha
5.Baskaran ...Appellants

(Appellants 2 to 5 were brought on record as legal representatives of the deceased sole appellant vide order of this Court dated 21.06.2017 by NKKJ made in C.M.P.No.4240 of 2016 in A.S.No.257 of 2013)

Vs.

1.Seenambaal ...1st Respondent/Plaintiff
2.V.V.Murugesan
3.V.V.Rayar
4.M.Lakshmi
5.Renuka Devi
6.Thamizhselvi
7.Minor Naveenkumar
represented by his father and guardian
Mr.V.V.Rayar ...Respondents 2 to 7/
Defendants 2 to 4 & 6 to 8

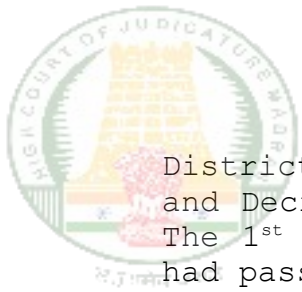
PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree of the learned II Additional District Judge, Erode dated 21.12.2012 in O.S.No.24 of 2004.

For Appellants : Mr.P.Valliappan
For Respondents : Mr.K.V.Shanmuganathan for R1

R2 to R6 - served
- No appearance
R7 -Minor rep.by R3

JUDGMENT

This First Appeal arises out of the Judgment and Decree in O.S.No.24 of 2004 on the file of the learned II Additional



District Judge, Erode, after the order of remand by the Judgment and Decree of this Court dated 07.09.2011 in A.S.No.546 of 2006. The 1st defendant had filed the appeal and pending the appeal he had passed away and his legal heirs have been brought on record.

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2.This Court by its above referred Judgment had passed the Judgment and the operative portion of the same is as follows:

"In fine, the appeal is partly allowed. The judgment and decree of the trial Court with regard to the allotment of shares alone is set aside and the matter is remitted back to the trial Court to give a clear finding with regard to allotment of shares. In all other respects, the finding of the trial Court is confirmed. No costs."

3.This Court had permitted the defendant to file an Additional Written Statement with regard to the allotment of shares since the remand was only for the purpose of determining the shares which each of the parties would be entitled to. After the remand, the 1st defendant had filed an Additional Written Statement dated 29.02.2012 in which he has calculated the shares that each party would be entitled to and the same is extracted below:

"3.Items 1,5,6,9 and 10 of the suit properties:

Father and two sons, son-1 and son-2 are entitled to common half share. So each of them were entitled to $1/6^{\text{th}}$ share.

Step No.1:

Son-1 died, leaving his widow (wife) i.e., plaintiff and mother each of them, widow (wife) and mother (M) getting $1/12^{\text{th}}$ share.

Step No.2:

Father dies, leaving sons's widow i.e., the plaintiff, the second son S-2 and M as his heirs.

Each getting $1/18^{\text{th}}$ share.

So Son-2 gets $1/6 + 1/18 = 4/18$

W (S-1) gets $1/12 + 1/18 = 5/36$

M gets $1/12 + 1/18 = 5/36$

Step No.3:

Mother (M) dies, she was entitled to $5/36$ share. Son-2 alone in her heir under section 15 Hindu Succession Act. So her entire $5/36$ goes to Son-2. Son-2 was already entitled to $4/18$. So total Son-2 share is $13/36$. So in Item 1,5,6,9 and 10 the plaintiff (wife) is entitled to $5/36$ and this defendant (Sons-2) is entitled to $13/36$.

4.Now coming to items 2,3,4,7 and 8:

The family consisting of father and two sons. (sons 1 and 2) were entitled to entire extent in



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these items and so each of them entitled to $1/3^{\text{rd}}$ share.

Step No.1:

Son-1 dies, leaving his heirs widow and mother each of them, get $1/6^{\text{th}}$ share.

Step No.2:

Father (F) dies, leaving son-2 wife of S-1 and mother (his own widow) as heirs.

So each of them $1/9^{\text{th}}$ share

So son-2 gets $1/3 + 1/9 = 4/9$

W (S-1) gets $1/36 + 1/9 = 5/18$

Plaintiff Mother gets $1/6 + 1/9 = 5/18$

Step No.3:

Mother (M) dies, her only legal heir is 1^{st} defendant (Son-2), so the 1^{st} defendant in addition to his own $4/9$ share gets mother's entire $5/18^{\text{th}}$ share, totally Son-2 become entitled to $13/18$ in the above items. The plaintiff (wife) has become entitled to $5/18$ in these items."

4. Per contra, the plaintiff has filed a Written Statement in which she has calculated the shares as follows:

"4. Regarding Items 1, 5, 6, 9 and 10 of the suit properties:

The joint family is entitled to common $\frac{1}{2}$ share in the aforesaid items and as such V.S.Muthusamy gounder and his two sons V.M.Periyathamni gounder and V.M.Thangaiyan were entitled to each $1/6$ shares in the aforesaid items.

(I) On the civil death of V.S.Periyathambi gounder, his wife Smt.Seenambal, the plaintiff herein his mother Smt.Kaliammal are his legal heirs and as such his $1/6$ share in the aforesaid items was inherited by them and they each have become entitled to $1/12$ share in the aforesaid items on his death.

(II) On the death of Smt.Kaliammal, her son the 1^{st} defendant herein and her husband V.S.Muthusami gounder are her legal heirs as per section 15(1)(a) of Hindu Succession Act. Hence, her $1/12$ share in the aforesaid items was inherited by them equally and they became entitled to each $1/24$ shares in the aforesaid items. Thus V.S.Muthsami gounder and the 1^{st} defendant became entitled to $5/24$ shares ($1/24 + 1/6 = 5/24$) in the aforesaid items.

(III) On the death of V.S.Muthusamy gounder, his aforementioned $5/24$ shares in the aforesaid items was inherited by the 1^{st} defendant and the plaintiff equally between them as Class I heirs as per Section 8 of Hindu Succession Act. As such the plaintiff and the 1^{st} defendant have become entitled to each $5/48$



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shares in the aforesaid items.

Thus, the plaintiff has become entitled to $3/16$ shares ($1/12 + 5/48 = 3/16$) in the aforesaid items and the 1st defendant has become entitled to $5/16$ shares ($5/24 + 5/48 = 15/48$) in the aforesaid items. The defendants 2 to 8 have become entitled to the remaining $8/16$ shares in the aforesaid items 1,5,6,9 and 10 of the suit properties.

5.Regarding items 2,3,4,7 and 8 of the suit properties:

The joint family owned the entire aforesaid items. As such V.S.Muthusami Gounder and his two sons V.M.Periyathambi gounder and V.M.Thangaiyan, the 1st defendant herein were become entitled each $1/3$ share in the aforesaid items.

(I)On the Civil death of V.S.Periyathamni gounder, his wife Smt.Seenambal, the plaintiff herein and his mother Smt.Kaliammal, inherited his $1/3$ share in the aforesaid items and as such they had become entitled to each $1/6$ share in the aforesaid items on his death.

(II)On the death of Smt.Kaliammal, her son the 1st defendant herein and her husband V.S.Muthusamy gounder are her legal heirs as per section 15(1)(1) of Hindu Succession Act. Hence, her $1/6$ share in the aforesaid items was inherited by them equally and they became entitled to each $1/12$ share in the aforesaid

items. They both already had $1/3$ share in the aforesaid items. Thus V.S.Muthusamy gounder and the 1st defendant became entitled to $5/12$ shares ($\frac{1}{2} + 1/3 = 5/12$) in the aforesaid items.

(III)On the death of V.S.Muthusamy gounder, his aforementioned $5/12$ shares in the aforesaid items was inherited by the 1st defendant and the plaintiff equally between them as Class I heirs as per Section 8 of Hindu Succession Act. As such, the plaintiff and the 1st defendant have become entitled to each $5/24$ shares in the aforesaid items.

Thus the plaintiff has become entitled to $3/8$ shares ($1/6 + 5/24 = 9/24 = 3/8$) in the aforesaid items and the 1st defendant has become entitled to $5/8$ shares ($5/12 + 5/24 = 15/24 = 5/8$) in the aforesaid items 2,3,4,7 and 8 of the suit properties."

5.Admittedly, the mother of the 1st defendant Kaliammal had predeceased her husband and therefore, her share would devolve equally on the 1st defendant and his father Muthusami Gounder.



6.The 1st defendant has filed this appeal stating that the allotment of the shares by the Appellate Court is erroneous. The Appeal has been filed only with reference to the shares.

7.Heard the learned counsel appearing on either side and perused the papers.

8.On perusing the Additional Written Statement and the Reply Statement, it is clearly evident that the 1st defendant has calculated the shares on the premises that the entire shares of his mother would devolve upon himself whereas the plaintiff has taken note of the fact that her mother-in-law had pre-deceased her husband and therefore, her share would devolve equally on her husband as well as her son the 1st defendant herein. Therefore, on the death of her father-in-law, the plaintiff would also become entitled to that portion of the mother-in-law share that had fallen to the share of Muthusami Gounder. Therefore, the calculation submitted by the plaintiff in her reply statement which has been adopted by the learned II Additional District Judge, Erode, in its order does not call for any interference.

Consequently, this First Appeal is dismissed and the Judgment and Decree of the learned Additional District Judge, Erode in O.S.No.24 of 2004 dated 21.12.2012 is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1. The II Additional District Judge,
Erode.
2. The Section Officer,
V.R.Section,
High Court, Madras-104.

+1CC to Mr.P.Valliappan, Advocate, Sr.No.44622

+1CC to Mr.K.V.Shanmuganathan, Advocate, Sr.No.44323

A.S.No.257 of 2013 and
M.P.No.1 of 2013

NRL (CO)

A.SK. (26.11.2021)