



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No.126 of 2008 and

M.P. (MD) No.1 of 2008

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1. Lekshmi
2. Paul Devaraj
3. C.Thankappan
4. C.Sarojini
5. C.Anitha
6. C.Vijaya
7. Devanesam
8. C.Selvin
9. Jothi Basu
10. Paul Sundar Raj

... Appellants /Appellants/
Defendants / Respondents

Vs.

1. C.Velayutha Perumal (Died)
2. Selvaraj
3. Issac Raj
4. Dharma Raj
5. Sam Raj
6. D.Kanagam
7. Mohanraj
8. Akila

... Respondents/Respondents/
Plaintiffs 2 to 9/Petitioners

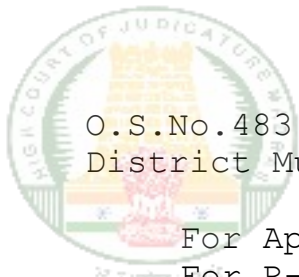
9. Swarnappan
10. Rosammal
11. Velappan
12. Vijayakumar
13. Stella
14. Premakala
15. Vijaya

(Respondents 9 to 15 are brought on record as LR's. Of
the deceased 1st respondent vide Order dated 12.04.2016
made in M.P. (MD) No.1 of 2015)

... Respondents

Prayer: Second appeal filed under Section 100 of C.P.C.,
against the judgment and decree in A.S.No.170 of 2004 dated
04.01.2007 on the file of the Subordinate Judge, Padmanabhapuram,
reversing the judgment and decree in I.A.No.663 of 2003 in

<https://hcservices.ecourts.gov.in/hcservices/>



O.S.No.483 of 1983 dated 19.11.2004 on the file of the Principal District Munsif, Padmanabhapuram.

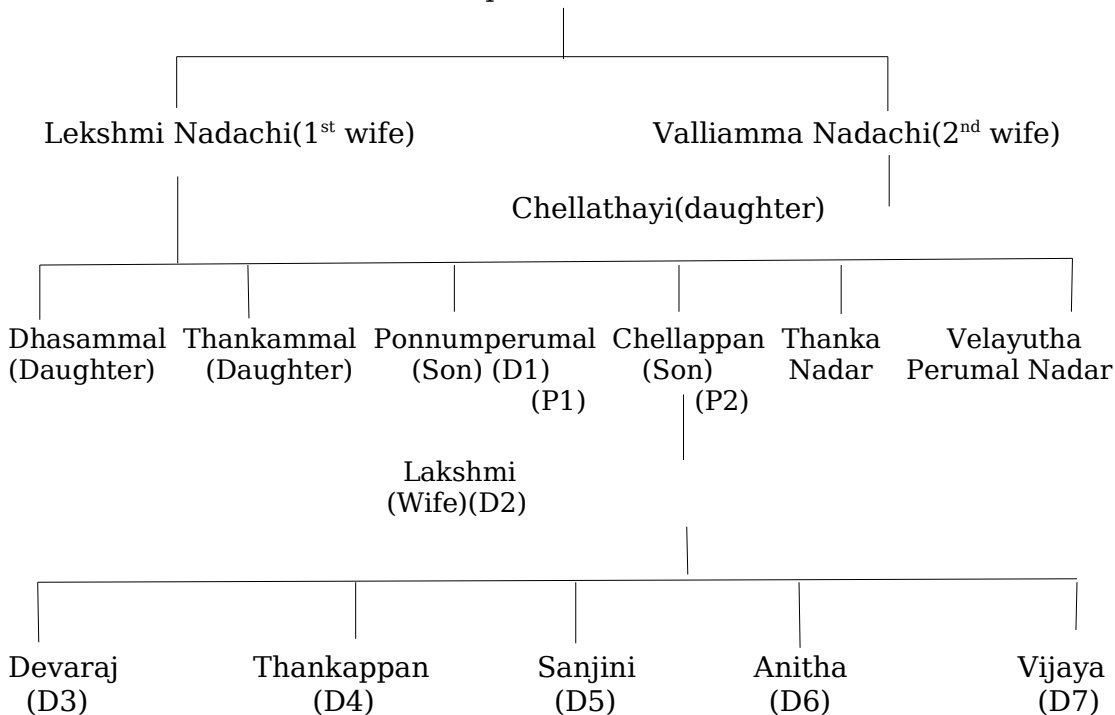
For Appellant : Mr.K.Sreekumaran Nair
For R-3 to R-15 : Mr.Raja,
for Mr.K.N.Thampi.
For R-2 : No appearance.

* * *

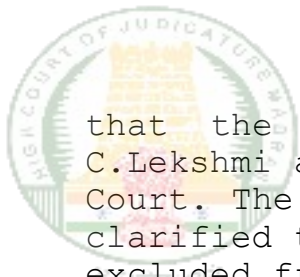
J U D G M E N T

This second appeal arises out of the final decree proceeding in a suit for partition. The genealogy is as under:

Chellaperumal Nadar



2. O.S.No.483 of 1983 on the file of Principal District Munsif, Padmanabhapuram was filed by the aforesaid Thanga Nadar and Velayutha Perumal against their brother Ponnumperumal and the legal representatives of the other deceased brother, namely, Chellappan. The plaintiffs sought partition of their half share in the suit property by metes and bounds. The trial Court passed preliminary decree as prayed for. Aggrieved by the same, the wife and two sons of the deceased Chellappan filed A.S.No.3 of 1985 on the file of Sub Court, Padmanabhapuram. By judgment and decree dated 29.04.1985, the appeal was dismissed and the decree of the trial Court was confirmed. While doing so, the first appellate Court had noted that each of the sons of Ponnumperumal will be entitled to 1/4th share in the suit property. It was further noted that one of the sons, namely, Chellappan had constructed a house in the suit property and



that the same should not be amenable to partition. However, C.Lekshmi and her two sons filed S.A.No.1262 of 1985 before the High Court. The second appeal was dismissed on 02.03.2001. It was however clarified that the house and the site in the suit property should be excluded from the purview of the partition decree.

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3. After the dismissal of the second appeal, I.A.No.663 of 2003 was filed by the second plaintiff and the legal representatives of the deceased first plaintiff before the Principal District Munsif, Padmanabhapuram. Evidence was adduced on either side. An Advocate Commissioner was also appointed and his report and sketches were marked as Court Exhibits 1 to 3. After considering the evidence on record, the trial Court by judgment and decree dated 19.11.2004 passed final decree allotting the portion marked as ' A ' measuring 5½ cents for the first petitioner and the portion marked as ' B ' measuring 5 ½ cents in the Advocate Commissioner's report for petitioners 2 to 8. (Court Exhibit 3 the sketch drawn by the Advocate Commissioner was treated as part of the final decree). Aggrieved by the same, the appellants herein filed A.S.No.170 of 2004 before Sub Court, Padmanabhapuram. The first appellate Court also by the impugned judgment and decree dated 04.01.2007 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

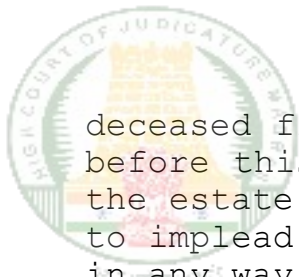
4. The second appeal was admitted on the following substantial question of law:-

" Whether the final decree passed by the Court below is perverse on account of its non-consideration of the directions as contained in the preliminary decree whereby the house in the possession of the appellant was excluded from partition and the house obviously includes the kitchen? "

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellants. He would also point out that two of the respondents, namely, respondents 4 and 5 are no more and that the particulars regarding the legal representatives have not been furnished to the appellants and hence the appellants have not been able to take steps. He in fact wanted this Court to defer the proceedings.

6. Per contra, the learned counsel appearing for the respondents submitted that he is also not in a position to furnish the details regarding the legal representatives of respondents 4 and 5.

7. After hearing the learned counsel on either side, I am of the view that the second appeal need not be adjourned on this ground. Respondents 4 and 5 were none other than the sons of the



deceased first plaintiff Thanga Nadar. Their siblings are very much before this Court and they are represented by their counsel. Thus, the estate of the deceased Thanga Nadar is well represented. Failure to implead the legal representatives of respondents 4 and 5 will not in any way vitiate or affect the proceedings.

8. The suit property belonged to Chellaperumal Nadar. He had two wives. The second wife branch is nowhere in the picture. The dispute arose only among the children born through the first wife. Through the first wife, Chellaperumal Nadar had begotten two daughters and four sons. The daughters are not in the picture. The partition suit was instituted only by two of the sons. On the other side were arrayed one son and the legal representatives of the deceased son. The property totally measured an extent of 27 cents. Therefore, each of the sons would be entitled to $5\frac{1}{2}$ cents. In the preliminary decree, the trial Court granted $5\frac{1}{2}$ cents each to the first plaintiff and second plaintiff. Ponnumperumal was allotted $5\frac{1}{2}$ cents, while the legal representatives of Chellapan were allotted $5\frac{1}{2}$ cents. It was also clarified that the site on which Chellappan had put up a house will not be subjected to partition. By the time the final decree petition was filed, the first plaintiff passed away and his legal representatives had come on record. Each branch had been allotted only $5\frac{1}{2}$ cents by metes and bounds. An Advocate Commissioner was appointed and the report and sketch submitted by him were marked as Court Exhibits 1 to 3. Court Exhibit 3 is the sketch and it forms part of the decree. The property had been divided into four portions. The house occupied area was excluded from partition. ' A ' and ' B ' alone had been allotted to the petitioners. The mode of allotment is very much in consonance with the terms of the preliminary decree. No substantial question of law arises for consideration.

9. The Courts below concurrently found against the appellants herein. I do not find any merit in this appeal. A simple suit for partition in respect of the property measuring just 27 cents had been dragged on for almost 40 years. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

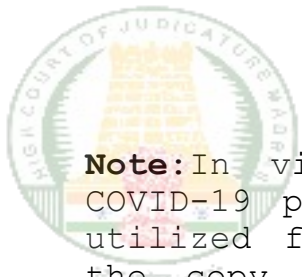
Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

PMU



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Munsif,
Padmanabhapuram.
2. The Subordinate Judge,
Padmanabhapuram.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.SREE KUMARAN NAIR, Advocate (SR-27967[F] dated 02/09/2021)

+1 CC to M/s.K.N.THAMPI, Advocate (SR-28091[F] dated 03/09/2021)

S.A.(MD)No.126 of 2008
01.09.2021

MGJ(27.09.2021) 5P 7C