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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2021

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

S.A (MD)No.747 of 2007

1. K.N.Asan (Died)

2. Mydeen Beevi

3. Sintha Mathar Beevi

4. Nagoor

5. Dhilsath Miya

6. Meha Banu

... Appellants

(Appellants 2 to 6 are brought on record as
Legal heirs of the deceased sole appellant
vide order dated 27.04.2010 made in
M.P.(MD).No.1 of 2007 in
SA(MD)No.747 of 2007)

Vs.

1. Maraikken

2. P.K.Mohaideen

3. Jamal Beevi

... Respondents



...

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 11.11.2002 made in A.S.No.63 of 2002 on the file of the Subordinate Court, Ambasamudram confirming the judgment and decree dated 09.11.1998 made in O.S No.8 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmadevi.

For Appellants : Mr.S.Sethuraman

For Respondents : Mr.V.Meenakshisundaraman
For Mr.D.Nallathambi for R1 & R3

Mr.M.P.Senthil For R2

JUDGMENT

This Second Appeal arises out of a suit for partition. K.N.Asan and his mother Miyapillai Beevi filed O.S No.8 of 1996 on the file of the District Munsif Cum Judicial Magistrate Court, Cheranmanmadevi for partition of 19/40th share in the suit schedule properties. According to the plaintiff, the suit schedule properties are originally belongs to Nagoor Rowther and he died intestate before 15 years even at the time of filing the suit and the 2nd plaintiff is the 2nd wife of above said Nagoor Rowther. The first plaintiff is the son born to Nagoor Rowther and the second



...

plaintiff. The first wife of Nagoor Rowther by name Malukkammal Beevi pre-deceased Nagoor Rowther. K.N.Chinthamathar Rowther and Vavoo Beevi are the legal heirs of Nagoor Rowther through his first wife. The respondents herein/defendants have purchased the property vide Exs.P5 to P7 from the said Chinthamathar and that they have 61/80 share in the suit property. The defendants state that the plaintiffs have only 19/80th share in the suit properties.

2.Based on the rival pleadings, the trial court framed necessary issues. One of the issues framed is that whether the suit is liable to be dismissed for non-joinder of necessary parties. The plaintiffs examined themselves as PW1 & PW2 and Exs.A1 to A4 were marked. K.N.Chinthamathar Rowther/Son of Nagoor Rowther was examined as DW.1 on the side of the defendants. Exs.B1 to B12 were marked on the side of the defendants. The trial Court vide judgment and decree dated 09.11.1998 held that the plaintiffs are entitled for 19/80th share in the suit property. Yet the suit came to be dismissed on the ground of non-joinder of K.N.Chinthamathar Rowther.



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3. Aggrieved by the same, the plaintiffs filed A.S.No.63 of 1999 before the Sub Court, Ambasamudram. The First Appellate Court upheld that the decision of the trial Court and dismissed the appeal. Challenging the same, the Second Appeal came to be filed.

4. This second appeal can be disposed of on the basis of admitted facts. The courts below have rightly found that K.N.Chinthamathar Rowther retained 1/80th share after alienating 60/80th share in favour of the first defendant who in turn alienated the same in favour of the second and third defendants. Therefore, failure to implead K.N.Chinthamathar Rowther is fatal. But, Chinthamathar was very much in the picture. He was examined on the side of the defendants. He could have been suo motu impleaded. The suit was filed way back in 1996. More than twenty five years have elapsed. The parties need not be driven to filing a fresh partition suit.

5. The impugned judgements and decrees are set aside. Preliminary decree is granted declaring that the appellants are entitled to



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19/80th share in the suit properties and the defendants 2 and 3 are entitled to 60/80th share in the suit properties and K.N.Chinthamathar Rowther is entitled to 1/80th share. The appellants can file final decree petition on this basis but in the final decree petition, K.N.Chinthamathar Rowther/his legal heirs have to be impleaded.

6.This second appeal is allowed accordingly. No costs.

19.07.2021

Index : Yes / No
Internet : Yes/ No
kmm

To:

1.The Sub Judge, Ambasamudram.

2.The District Munsif cum Judicial Magistrate Court, Cheranmadevi.

Copy to:

The Record Keeper, V.R. Section, Madurai Bench of Madras High Court, Madurai.



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G.R.SWAMINATHAN, J.

kmm/skm

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