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S.A.(MD)No.463 of 2008 and Cross Objection (MD)No.35 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2021

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A.(MD)No.463 of 2008

and

Cross Objection (MD)No.35 of 2009

In S.A. (MD)No.463 of 2008

1.Deivathal

2.Gomathy

3.Kokila

4.Karthika ... Defendants / Respondents 1 to 4 / Appellants

(4<sup>th</sup> appellant is declared as major and guardianship of her mother/first

appellant is discharged vide order dated 13.08.2021 in C.M.P. (MD) Nos.6561 & 6562 of 2001)

-Vs-

1.K.Mayilathal ...Plaintiff/Appellant/1<sup>st</sup> REspondent

2.Thirumanalaisamy Gounder

3.Krishnamurthy

4.Chinnadurai

5.Natarajan

6.Kalimuthu

7.Kumaravel (Died)

8.Velathal

9.Thangaraj ... Defendants 5 to 12 / Respondents 5 to 12/  
Respondents 2 to 9

10.Thangathal

11.Jeyashree

(Respondents 10 & 11 are brought on record as Lrs of the deceased 7<sup>th</sup> respondent vide Court order dated 06.08.2021 made in C.M.P. (MD)Nos.5962 to 5964 of 2021)

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree in A.S.No.33 of 2002 and Cross Appeal No.43 of 2002, dated 24.09.2004 on the file of the Subordinate Judge, Palani, setting aside the judgment and decree in O.S.No.47 of 1993 on the file of the District Munsif Court, Palani, dated 18.12.2001.





2. Kuppanna Gounder and Ponnammal @ Karuppayee Ammal had a son Kalimuthu and three daughters. The plaintiff was one of the three daughters. When the plaintiff filed O.S.No.47 of 1993, her siblings had passed away. Their legal heirs were shown as defendants. The suit schedule is in two parts. According to Mayilathal, she is entitled to 1/4<sup>th</sup> share in both the schedules. The defendants controverted the claim of the plaintiff. The wife and the children of Kalimuthu (D1 to D4) alone contested the suit, while the other defendants remained exparte.

3. The stand of the contesting defendants was that the first schedule though ancestral in nature, was enjoyed exclusively by Kalimuthu. Even during the life time of Kalimuthu, the plaintiff had relinquished her share in suit item No.1. They further contended that the second schedule belonged to the mother Ponnammal @ Karuppayee Ammal who had executed a Will in favour of Kalimuthu. Therefore, according to them, the suit has to be dismissed in toto. The plaintiff also filed O.S.No.535 of 1992 claiming damages from the defendants. Both the suits were tried together. The plaintiff examined herself as P.W.1 and two others on her side. EX.A1 to Ex.A12 were marked. The first defendant examined herself as D.W.1 and two others on her side. Ex.B1 to Ex.B8 were marked. After a consideration of the evidence on record, the trial Court, by judgment and decree dated 18.02.2001, dismissed O.S.No.535 of 1992 and granted preliminary decree allotting 1/4<sup>th</sup> share in favour of the plaintiff in respect of the first schedule, but dismissed her claim as regards the second schedule. Aggrieved by the dismissal of her claim in respect of the second schedule, the plaintiff filed A.S.No.33 of 2002 before the Sub Court, Palani. The appellants herein filed cross objection No.43 of 2002 questioning the dismissal of O.S.No.535 of 1992. A.S.No.40 of 2002 was also filed by the plaintiff. The appeals and the cross objection were taken up together and given a disposal by the impugned judgment and decree dated 24.09.2004. A.S.No.40 of 2002 was dismissed confirming the dismissal of the claim for damages made in O.S.No.535 of 1992 and it has become final. While Cross Objection No.43 of 2002 was dismissed, A.S.No.33 of 2002 was partly allowed. While affirming the preliminary decree granted in favour of the plaintiff in respect of the first schedule and sustaining the stand of the contesting defendants that Ponnammal @ Karuppayee Ammal had indeed executed a Will dated 05.08.1974 (Ex.B1) in favour of Kalimuthu, it noted that the Will did not cover Survey No.127/1 that is finding place in the second schedule. Therefore, preliminary decree was granted in favour of the plaintiff in respect of the said Survey No.127/1 found in the second schedule. Challenging the same, this second appeal has been filed by the contesting defendants. The plaintiff has also filed cross objection.



4. Though the learned counsel on either side reiterated their respective contentions, I am clearly of the view that no substantial question of law arises for consideration. The Courts below have concurrently found that the first schedule is an ancestral property and the said finding has not been shown to be perverse. In fact, the contesting defendants themselves had conceded the ancestral character of suit item No.1 in the first schedule and their claim was that the plaintiff had relinquished her share in the first schedule. The Courts below had disbelieved the said defence taken by the appellants. I do not find any ground to take a different view. The first appellate Court had rightly noted that Ex.B1-Will propounded by the defendants does not cover Survey No.127/1. Therefore, the said finding also deserves to be affirmed. No substantial question of law arises for consideration. The second appeal as well as the cross objection are dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Palani.

2. The District Munsif Court, Palani.

3.The Section Officer, (2C)  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.R.NANDAKUMAR, Advocate ( SR-26286[F] dated 13/08/2021 )

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate ( SR-26540[F] dated 17/08/2021 )

S.A. (MD)No.463 of 2008  
and  
Cross Objection (MD)No.35 of 2009  
13.08.2021

AC (CO)  
KB (01.10.2021) 4P 7C