



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA (MD)No.964 of 2007

and

MP (MD)No.2 of 2007

WEB COPY

1.S.Thangavel

2.S.Murugesan

3.Kowsalya

4.Saraswathi

5.Ponnuthayammal

... Defendants 1, 2, 4 to 6 /  
Appellants 1, 2, 4 to 6 /  
Appellants

6.V.Saraswathi

7.Minor Karthikeyan

8.Minor Ajithkumar

... LR's of the deceased 3<sup>rd</sup>  
defendant / Appellants 7 to 9  
/Appellants 6 to 8

(Minors 7 & 8 are represented by their mother & natural guardian/  
6<sup>th</sup> appellant)

**Vs.**

Palaniammal

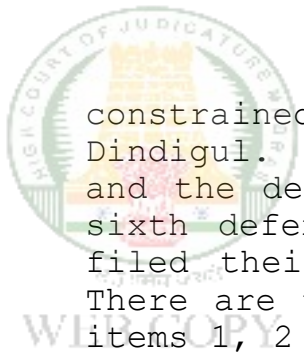
...Plaintiff /Respondent/Respondent

**Prayer :** Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S No.6 of 2002 on the file of the Additional District & Sessions Judge, (Fast Track Court), Dindigul dated 17.11.2004 confirming the judgment and decree passed in O.S No.1 of 1996 on the file of the Principal Subordinate Judge, Dindigul dated 28.02.2001.

For Appellants : Mr.R.Nandakumar  
For Respondent : No appearance

#### JUDGEMENT

This second appeal arises out of partition suit proceedings. The suit was filed by the sole respondent Palaniammal. Palaniammal is the daughter of Subbiah Maniyam and Ponnuthayammal. Subbiah Maniyam passed away on 19.11.1987. The case of the plaintiff is that the suit properties are the self acquired properties of Subbiah Maniyam and since he died intestate, the plaintiff as one of the legal heirs is entitled to 1/7<sup>th</sup> share in the suit properties. Since the defendants did not come forward for amicable partition, she was



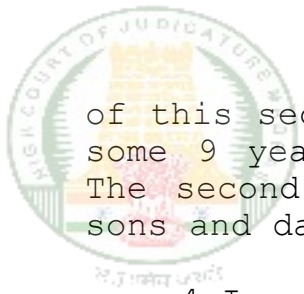
constrained to file O.S No.1 of 1996 before the Principal Sub Court, Dindigul. The defendants 1 to 3 are the brothers of the plaintiff and the defendants 4 and 5 are the sisters of the plaintiff. The sixth defendant is the mother of the plaintiff. The defendants filed their written statement controverting the plaint averments. There are two suit schedules. The case of the defendants was that items 1, 2 and 4 in the second schedule were purchased by the mother Ponnuthayammal and that the plaintiff cannot have any share thereon. Based on the divergent pleadings, issues were framed. The plaintiff examined herself as PW.1 and marked Exs.A1 to A4. The mother was examined as DW.1. Exs.B1 to B32 were marked. The trial court by judgment and decree dated 28.02.2001, granted preliminary decree in favour of the plaintiff declaring that she is entitled to 1/7<sup>th</sup> share in the suit items. Aggrieved by the same, the defendants filed A.S No.6 of 2002 on the file of the Additional District cum Sessions Judge, (Fast Track Court), Dindigul. In the meanwhile, the 3<sup>rd</sup> defendant Thiru.Vadivel had passed away and his legal heirs had come on record as appellants 8 and 9 before the first appellate court. The first appellate court by judgment and decree dated 17.11.2004 confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. It was admitted on the following substantial questions of law :

"1.Whether the courts below have committed an error in law in holding that the properties purchased in the name of fifth appellant/6<sup>th</sup> defendant were that of the self acquisitions of her husband Subbiah Maniam/father of the respondent in the absence of any plea to the said effect ?.

2.Whether the finding of the courts below that all the suit properties were the self acquisitions of deceased Subbiah Maniam is perverse ?."

2.None appears for the respondent. The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and allow this appeal. He submitted that the mother Ponnuthayammal had examined herself as DW.1 and Ex.B18 dated 15.12.1969 was marked through her. It can be seen therefrom that items 1, 2 and 4 in the second schedule are the properties that were purchased by the 6<sup>th</sup> defendant/mother of the plaintiff. The property taxes were also being remitted only by her and in her name as evidenced by Exs.B19 to B21. The learned counsel for the appellants therefore submitted that during the lifetime of the mother, the said suit items cannot be available for partition.

3.It is also submitted that the first appellant Thangavel and fifth appellant Ponnuthayammal have passed away during the pendency of the appeal.



of this second appeal. It appears further that Ponnuthayammal died some 9 years ago. Even death certificate has not been produced. The second appeal cannot be dismissed as abated because the other sons and daughters of Subbiah Maniyam are very much on record.

4.I carefully considered the rival contentions and went through the evidence on record. The trial court framed a specific issue (Issue No.6) as to whether items 1, 2 and 4 in the second schedule belong to the 6<sup>th</sup> defendants Ponnuthayammal. The trial court had given a specific finding that there was nothing to show that the mother was possessed of sufficient funds to buy the aforesaid items. She was only a home maker. She did not have any capacity to earn on her own. Therefore, on a balance of probabilities, the trial court has given a finding that it was Subbiah Maniyam who had purchased these item of properties in the name of his wife Ponnuthayammal vide Ex.B18. The said finding had been confirmed by the first appellate court. I am only exercising jurisdiction under Section 100 of CPC. By no stretch of imagination can this finding be characterized as perverse. Therefore, the substantial questions of law are answered against the appellants.

5.The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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To:

1.The Additional District & Sessions Judge, (Fast Track Court), Dindigul.

2.The Principal Subordinate Judge, Dindigul.

Copy to :

The Record Keeper, V.R. Section, (2C)  
Madurai Bench of Madras High Court, Madurai.



+1 CC to M/s.R.NANDAKUMAR, Advocate ( SR-22976[F] dated 16/07/2021 )

SA (MD) No.964 of 2007  
and  
MP (MD) No.2 of 2007  
14.07.2021

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