



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.808 of 2008

1.Packiam Ammal
2.Nagarajan
3.Lingam

... Appellants/Appellants 1 to 3
Defendants 1 to 3

Vs.

1.Meenal

... Respondent / Respondent /
Plaintiff

2.Solai Murugan

... Respondent / 4th Appellant/
4th defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S No.1 of 2007 dated 26.03.2008 on the file of the Principal District Judge, Ramanathapuram confirming the judgment and decree of the Subordinate Judge, Paramakudi in O.S No.3 of 2006 dated 10.11.2006.

For Appellants : Mr.K.Govindarajan
Mr.C.Murali

For Respondents : Mr.S.Ramesh for R1

JUDGEMENT

The defendants 1 to 3 in O.S No.3 of 2006 on the file of the Sub Judge, Paramakudi are the appellants in this appeal. The said suit was filed by the first respondent herein, namely, Meenal. The case of Meenal is that the suit properties originally belonged to one Ramasamy Thevar and Lakshmana Thevar who were the sons of Gurusamy Thevar. After the demise of the younger brother Lakshmana Thevar, his wife Packiam Ammal, who is the mother of the plaintiff and shown as the first defendant, married Ramasamy Thevar. The other defendants, namely, Nagarajan and Lingam were born to Ramasamy Thevar through the first defendant. One other son Solai Thevar was also born but he passed away prior to the filing of the suit. The fourth defendant Solai Murugan is none other than the son of the said Solai Thevar. The case of the plaintiff is that Ramasamy Thevar died some time in 1989. According to her, she has 1/4th share in the suit properties. Since the defendants refused to partition the suit properties by metes and bounds, she was left with no other option but to file the aforesaid suit. The suit schedule comprised 14 items. The defendants filed their written statement contending that except item 5 which is an ancestral property, in the other items, the plaintiff has no right or share. Based on the divergent



pleadings, the trial court framed the necessary issues. The plaintiff examined herself as PW.1. Two other witnesses were examined on her side. Exs.A1 to A12 were marked. The first defendant examined herself as DW.1. Exs.B1 to B8 were marked. After considering the evidence on record, the learned trial court passed preliminary decree granting 1/4th share in the suit properties in favour of the plaintiff. Aggrieved by the same, the defendants filed AS No.1 of 2007 before the Principal District Judge, Ramanathapuram. The first appellate court by judgment and decree dated 26.03.2008, dismissed the appeal and confirmed the judgment and decree passed by the trial court. Questioning the same, this second appeal has been filed. Even though this second appeal was filed way back in the year 2008, till date, it has not been admitted.

2. There is no dispute regarding the relationship between the parties. The plaintiff is none other than the daughter of the first defendant. Of course, the defendants 2 and 3 as well as the father of the fourth defendant were born to the first defendant through Ramasamy Thevar. The plaintiff on the other hand was born to the brother of the Laksmana Thevar through the first defendant. In the written statement, the defendants admitted that the suit items are ancestral in character. Therefore, the court below held that the plaintiff is also entitled to 1/4th share in the suit properties. In view of the decision of the Hon'ble Supreme Court reported in **(2020) 9 SCC 1 (Vineeta Sharma vs. Rakesh Sharma and Ors.)**, the entitlement of the daughter to equal share in the ancestral properties cannot be in doubt. The Hon'ble Supreme Court in the above said decision held as follows :

"129.....

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was



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coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v)....."

3. In this view of the matter, I do not find any merit in this second appeal. The second appeal is dismissed accordingly. No substantial question of law arises for consideration in this second appeal. The judgment and decree passed by the courts below are confirmed. It is seen that one of the suit items is a residential property. Therefore, when the final decree is passed, the court below will bear equitable considerations in mind. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

skm

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To:

- 1.The Sub Judge, Paramakudi.
- 2.The Principal District Judge, Ramanathapuram.

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+3 CC to M/s.V.RAHAVACHARI, Advocate (SR-22406[F] dated
13/07/2021)

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