



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.939 of 2009 and

M.P. (MD)No.1 of 2009

WEB COPY

Thomaiammal

... Appellant/Appellant/
Plaintiff

Vs.

1. Savariyayee @ Savariammal
2. Arul Irudhayamary
3. Velankanni
4. Innasimuthu
5. Suvakin Amaldass
6. Xevier Aruldass

(R-3 to R-6 were already exparte in both
the Courts. Hence, notice is not necessary.)

... Respondents/Respondents/
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., to allow the second appeal and set aside the Decree and Judgment dated 22.01.2009 passed in A.S.No.185 of 2007 on the file of the Principal Subordinate Court, Tiruchirappalli, thereby confirming the decree and Judgment dated 24.01.2006 passed in O.S.No.154 of 2002 on the file of the District Munsif Court, Manapparai.

For Appellant : Mr.N.R.Balaji Srinivasan,
for M/s.Hallmark Associates.

For R-1 & R-2 : Mr.V.Shathurthi Raja,
for Mr.G.Vasudevan.

For R-3 to R-6 : Exparte.

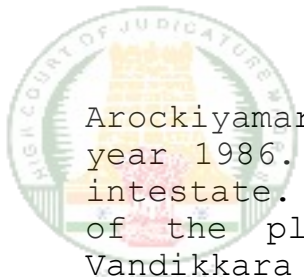
R-1 : Died.

* * *

J U D G M E N T

The plaintiff in O.S.No.154 of 2002 on the file of the District Munsif Court, Manapparai, is the appellant in this second appeal.

2. The suit was for partition. The case of the plaintiff is that the suit properties belonged to her father Vandikkara Arockiyam. Vandikkara Arockiyam was married to Gnanapoo. They had one son Sebastian and three daughters, namely, Thomaiammal,



Arockiyamary and Velankanni. Vandikkara Arockiyam passed away in the year 1986. Gnanapoo passed away in October 1989. Both of them died intestate. The son Sebastian had passed away in July 1988. The case of the plaintiff is that as one of the four legal heirs of Vandikkara Arockiyam and Gnanapoo, she is entitled to 1/4th share in the suit properties. The Courts below dismissed the suit on the ground that the claim was time barred. Challenging the same, this second appeal came to be filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to reverse the decision of the Courts below and pass preliminary decree granting 1/4th share to the plaintiff in the suit properties.

4. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The learned counsel appearing for the respondents pointed out that under Ex.B.5, Vandikkara Arockiyam had executed a deed of settlement conveying 28 cents of land in Survey No.61/3, 80 cents in Survey No.61/5 and 5½ cents in Survey No.6/7 in Vadugapatti Village. He pointed out that the right to sue for partition would start running from the date of the denial of right. The plaintiff had made a demand for partition in October 1989 and the same was rejected. The plaintiff had in fact filed O.S.No.380 of 1990 for the very same relief and later withdrew the same with liberty. The suit in question was filed only on 28.06.2002. It was clearly beyond the period of twelve years from the date when her right to sue accrued. The Courts below have correctly applied the principles of law and non-suited the plaintiff. I do not find any ground to interfere.

7. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

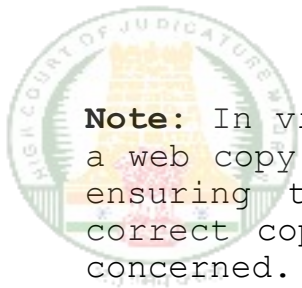
Assistant Registrar (CO)

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/ /2021

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.

WEB COPY

To:

1. The Principal Subordinate Judge,
Tiruchirappalli.
2. The District Munsif,
Manapparai.

Copy to

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

+1 CC to M/s.G.VASUDEVAN, Advocate (SR-25928[F] dated 11/08/2021)

S.A. (MD) No.939 of 2009
09.08.2021

RK (07.09.2021) 3P 6C