



WEB COPY

S.A.(MD)No.377 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2021

CORAM:

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

S.A.(MD)No.377 of 2011

and

M.P.(MD)No.1 of 2011

1.Arumugakani
2.Muthulakshmi
3.K.Sumathi
4.B.Tamilselvi
5.Selvalakshmi
6.A.Muthusekar Achari
7.A.Palavesa Karthikeyan Achari
8.A.Appathurai ... Appellants/Appellants/Defendants

-Vs-

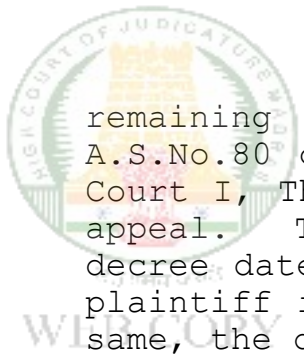
Subbulakshmi ... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the common Judgment and decree passed in A.S.No.80 of 2005 and Cross Appeal on the file of the Additional District Court (Fast Track Court-I), Thoothukudi, dated 27.05.2008 as modifying the Judgment and decree passed in O.S.No.255 of 2000 on the file of the Sub Court, Thoothukudi, dated 11.02.2005.

For Appellants : Mr.M.P.Senthil
For Respondent : Mr.P.Muthuvijaya Pandian

JUDGMENT

The defendants in O.S.No.255 of 2000 on the file of the Sub Court, Thoothukudi are the appellants in this second appeal. It was a suit for partition filed by the respondent herein namely Subbulakshmi. Subbu lakshmi sought passing of a preliminary decree for declaring her 1/8th share in the suit properties which are nine in number. It is not in dispute that items 1, 2, 3, 4 & 9 stood in the name of Arumuga Nainar @ Pandaram Achari. Items 6 & 7 stood in the name of the mother Arumugakani w/o. Arumuga Nainar @ Pandaram Achari. Items 5 and 8 stood in the name of brothers. Arumuga Nainar and Arumugakani had three sons and five daughters. Subbu Lakshmi is the second daughter. While the three brothers and the four sisters stand on one side, Subbu Lakshmi is on the other side. Father Arumuganainar @ Pandaram Achari passed away on 19.09.1995 intestate. The mother Arumugakani was also on the side of the other brothers and other sisters. The trial Court passed preliminary decree dated 11.02.2005 holding that the plaintiff is entitled to the relief of partition in respect of her 1/8th share in the items 1, 2 & 3 alone. The suit was dismissed as regards the



remaining items. Questioning the same, the defendants filed A.S.No.80 of 2005 before the Additional District Judge, Fast Track Court I, Thoothukudi. The plaintiff Subbu Lakshmi also filed cross appeal. The First Appellate Court by the impugned Judgment and decree dated 27.05.2008 granted preliminary decree in favour of the plaintiff in respect of the items 1, 2, 3, 4 & 9. Questioning the same, the defendants have filed this second appeal.

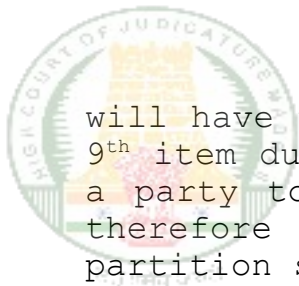
2.The second appeal was admitted on the following substantial questions of law:-

"1.Whether the Courts below are correct in holding that the respondent is entitled for 1/8th share inspite of the fact that the suit schedule properties were purchased by the late Arumuga Nainar @ Pandaram Achari out of his own income? And

2.Whether the Courts below is correct by granting 1/8th share in 9th schedule property while the same was sold by the 8th defendant on 05.09.1996 ?"

3.Heard the learned counsel on either side. It appears that the plaintiff filed cross appeal in this second appeal. The same was dismissed at the condone delay stage. There is no dispute that items 1, 2, 3 & 4 stood in the name of the father namely Arumuga Nainar. Arumuga Nainar also died intestate. Therefore, the said properties would devolve in equal shares on all the class I legal heirs. Class I legal heirs of Arumuga Nainar are none other than his wife Arumugakani, his two sons and five daughters. The first Appellate Court rightly granted 1/8th share in favour of the plaintiff in respect of those four items namely 1, 2, 3 & 4. The same cannot be interfered with. Therefore, the preliminary decree passed by the first Appellate Court in respect of these items does not call for any interference. There is also no dispute that items 5 & 8 stood in the names of the brothers of the plaintiff. The first Appellate Court had declined relief to the plaintiff in respect of these items. The cross appeal filed by the plaintiff was dismissed at the condone delay stage itself and the same has also become final. The plaintiff was denied share in respect of items 6 & 7 which stood in the name of the mother Arumuga kani and that has also become final.

4.That leaves us only with the 9th item. 9th item was sold by the mother and brothers of the plaintiff way back on 05.09.1996. Arumugakani was examined as D.W.1. She categorically deposed that her husband Arumuganainar was afflicted by paralysis and remained bedridden for almost a decade. All the sons had contracted debts for meeting out the medical expenses. She would also state that except for the two older daughters, the expenses for performing the marriages of the remaining daughters were borne only by the sons. The stand of the mother was that 9th item was sold only for family necessity. I see no reason to disbelieve her version. Therefore, the sale made in favour of 8th respondent need not be disturbed. The plaintiff is entitled to 1/8th share in the 9th item



will have to be accepted. But, she will only be paid owelty in the 9th item during the final decree proceedings. The plaintiff was not a party to the sale made in favour of the 8th appellant. She is therefore entitled to ignore the same and claim her share in the partition suit.

WEB COPY

5. Even though I answer the substantial questions of law against the appellants, taking note of the equitable circumstances pleaded by the appellants, instead of permitting the plaintiff to work out her rights in the final decree proceedings in respect of her undivided 1/8th share, I direct that she will be paid owelty. The judgment and decree of the first Appellate Court are modified to this extent.

6. The second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Additional District Judge (Fast Track Court-I),
Thoothukudi.

2. The Sub Judge,
Thoothukudi.

Copy to:

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

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-20191[F] dated 25/06/2021)

+1 CC to M/s.P.MUTHU VIJAYA PANDIAN, Advocate (SR-20377[F] dated 28/06/2021)

S.A.(MD)No.377 of 2011

and

M.P.(MD)No.1 of 2011

24.06.2021

RS (30.09.2021) 3P 7C

<https://hcservices.ecourts.gov.in/hcservices/>