



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.311 of 2013

and

M.P. (MD)No.1 of 2013 &

M.P. (MD)No.1 of 2014

1.Dixon Raj
2.M.Sundaram

... Appellants/Appellants/Defendants 2 & 6

-Vs-

1.Prema (Died)

... 1st Respondent/1st Respondent/Plaintiff

2.Lalitha
3.Davidson
4.Simson
5.J.Androse

... Respondents 2-5/Respondents 2-5/Defendants 1,3,4 & 5

6.Rukman
7.Sowmiya

(R6 & R7 are brought on record as Legal heirs of the first respondent vide order dated 28.02.2019)

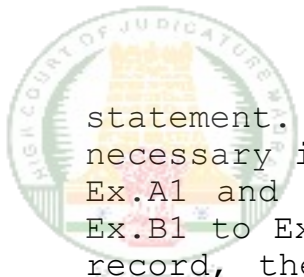
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 20.09.2012 passed in A.S.No.26 of 2009 on the file of the Subordinate Judge, Kuzhithurai, confirming the judgment and decree dated 16.07.2009 passed in O.S.No.269 of 2003 on the file of the Principal District Munsif Court, Kuzhithurai.

For Appellants	: Ms.J.Anandhavalli
For R2	: given up
For R3 & R4	: batta with due
For R5	: No appearance
For R6 & R7	: Mr.K.Jeyamohan

JUDGMENT

The second appeal arises out of a partition suit. O.S.No.269 of 2003 was filed by the deceased first respondent herein namely Prema.

2.The case of the plaintiff is that the suit property belonged to her father late Phanuvel. He died on 10.12.1975. According to the plaintiff, she was born with four siblings (one sister and three brothers). The plaintiff therefore claimed 1/5th share in the suit property. The second defendant filed written statement controverting the plaint averments. The other brothers adopted the said written



statement. Based on the rival pleadings, the trial Court framed the necessary issues. The plaintiff examined herself as P.W.1 and marked Ex.A1 and A2. The second defendant examined himself as D.W.1 and Ex.B1 to Ex.B14 were marked. After consideration of the evidence on record, the trial Court passed preliminary decree dated 16.07.2009 granting 1/5th share in the suit properties in favour of the plaintiff. Aggrieved by the same, the second defendant and the 6th defendant / subsequent purchaser filed A.S.No.26 of 2009 before the Sub Court, Kulithurai. The first appellate Court by the impugned judgment and decree dated 20.09.2012, dismissed the suit. Challenging the same, this second appeal came to be filed. The second appeal was admitted on the following substantial questions of law:-

(a) Is not the suit is bad for non-joinder of necessary party?

(b) Is not the suit is bad for partial partition decree granted in favour of the appellants?

(c) Whether the rejection of Ex.B5-Partition deed by the Courts below is sustainable in law?

3.The learned counsel appearing for the appellants fairly stated that she would confine her argument to the third substantial question of law alone. After reiterating the contentions set out in the memorandum of grounds, she called upon this Court to answer the same in favour of the appellants and modify the judgment and decree passed by the first appellate Court.

4.The learned counsel appearing for the legal representatives of the deceased first respondent 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. There is no dispute that the suit property belonged to the father, namely, Phanuvel. The suit property measures 1 acre and 10 cents. The defendants have specifically pleaded that Phanuvel died leaving behind his wife Kamalabai and the plaintiff and the defendants 1 to 4. The parties are Christians. Therefore, the widow Kamalabai would be entitled to 1/3rd of the suit property. Kamalabai and the sons entered into a partition on 04.01.1991 (Ex.B5) whereby she bequeathed the property in favour of the sons after retaining life estate. Of-course, neither the plaintiff nor the other daughter/D1 were parties to the said partition dated 04.01.1991. The Courts below rightly held that Ex.B5 dated 04.01.1991 will not affect the share of the plaintiff. But as rightly pointed out by the learned counsel for the appellants, Kamalabai's 1/3rd share in the suit property will devolve in equal shares on the three sons. So calculated, what would be available for partition will only be 73.33 cents.



6.The learned counsel appearing for the appellants would fairly state that the plaintiff will be entitled to 1/5th share in 73.33 cents. In other words, the plaintiff will be entitled to 14.66 cents. The third substantial question of law is answered accordingly. The impugned judgment and decree passed by the first appellate Court is modified as indicated above. The second appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Kuzhithurai.

2.The Principal District Munsif, Kuzhithurai.

Copy to:

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

+1 CC to M/s.K.PRABHU, Advocate (SR-26826[F] dated 19/08/2021)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-26874[F] dated 19/08/2021)

Judgment made in
S.A. (MD) No.311 of 2013
and
M.P. (MD) No.1 of 2013 &
M.P. (MD) No.1 of 2014
19.08.2021

RS/JGB (18.11.2021) 3P 7C