



WEB COPY

S.A.(MD)No.211 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.211 of 2014

and

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

R.Anantha Raman

... Appellant/Appellant/Petitioner

-Vs-

1.R.Mahadevan

2.Sivakami (died)

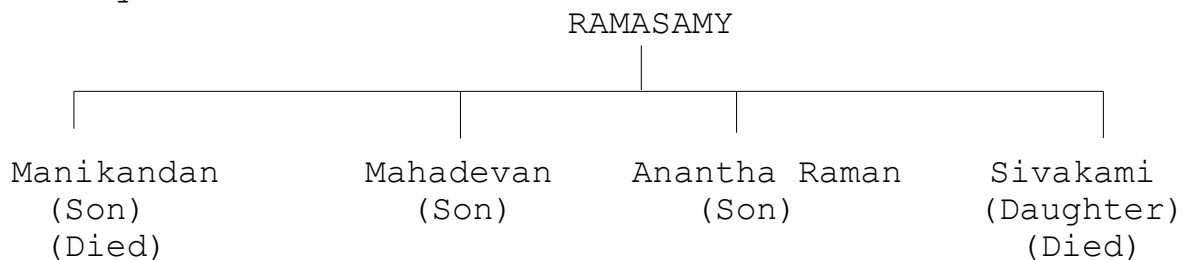
... Respondents/Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 05.10.2013 made in A.S.No.46 of 2013 on the file of the Subordinate Court, Nagercoil, which was confirming the judgment and decree dated 03.04.2013 made in I.A.No.126 of 2013 in O.S.No.295 of 2004 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant	: Mr.J.Barathan for Mr.T.R.Jeyapalam
For R1	: Mr.Mahadevan for Mr.S.Balakarthick

JUDGMENT

For easy appreciation of the facts, the following genealogy is necessary.



2. There is no dispute that Mahadevan filed O.S.No.295 of 2004 on the file of the Principal District Munsif Court, Nagercoil seeking the relief of partition. In the suit, he arrayed his brother Manikandan and Anantha Raman as defendants. He left out his sister Sivakami. Only at a later point of time, she was also impleaded as defendant. The suit items are six in number. Except item No.4, the other items admittedly belonged to the father Ramasamy. After both sides adduced the evidence, the learned trial Judge passed a preliminary decree granting 1/4th share to each of the parties in all the suit items. Aggrieved by the same, Manikandan and Anantha Raman filed A.S.No.139 of 2007 before the

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



Principal Sub Court, Nagercoil. The contention urged before the first appellate Court was that the fourth item in the suit schedule was the absolute and exclusive property of Manikandan, since it was purchased by him under three sale deeds. This contention was eventually accepted and preliminary decree granting shares in favour of the plaintiff Mahadevan and the third defendant Sivakami was confined to other items namely 1,2 3, 5 & 6. During the pendency of the appeal, Manikandan passed away. Manikandan was a bachelor and he was also said to be suffering from some physical ailments. The other appellant/Anantha Raman filed Ex.B5 Will dated 28.09.1999 executed by Manikandan in his favour. The marking of the said Will-Ex.B5 was not opposed by Mahadevan or Sivakami. Since the contesting defendants did not have any opposition, the Will came to be marked and on the strength of the averments set out in the Will, the first appellate Court, by judgment and decree dated 24.11.2010, set aside the decision of the trial Court as regards the fourth item. In respect of the other items, the decision of the trial Court was confirmed. The first appellate Court gave a further finding that the share of Manikandan in respect of the other items would also devolve on Anantha Raman. It is relevant to mention here that this judgment and decree dated 24.11.2010 passed by the Principal Sub Court, Nagercoil in A.S.No.139 of 2007 was not challenged by Mahadevan or Sivakami. In other words, it became final. In terms of the aforesaid decision of the judgment and decree passed by the first appellate Court, Anantha Raman, filed I.A.No.126 of 2013 in O.S.No.295 of 2004 before the trial Court for passing supplementary preliminary decree. It was opposed by the respondents. The trial Court, by judgment and decree dated 03.04.2013, dismissed the said I.A. Challenging the same, Anantha Raman filed A.S.No.46 of 2013 before the Principal Sub Court, Nagercoil. The first appeal was also dismissed. Questioning the same, this second appeal came to be filed. The second appeal was admitted on the following substantial questions of law:-

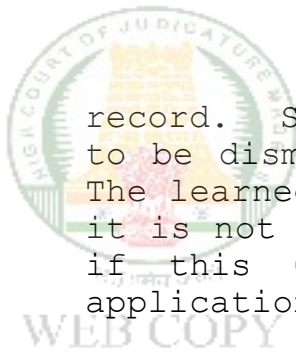
"1.Whether the Courts below is justified in law in holding that the second defendant is not the legal heir of the first defendant, even though the second defendant was recorded as legal heirs of the deceased first defendant on the basis of the will executed by the deceased 1st defendant?

2.Whether the Courts below are right in holding that the plaintiff, 2nd and 3rd defendants are legal heirs of the deceased 1st defendant having recorded the second defendant as legal heirs of the deceased 1st defendant on the basis of the Will executed by the deceased 1st defendant?

3.Whether the Courts below are right in negative the claim of the 2nd defendant for supplementary preliminary decree on the basis of the rights derived from the deceased first defendant?

"

3. During the pendency of the appeal, Sivakami passed away. The learned counsel appearing for the first respondent strongly contended that the legal heirs of Sivakami should be brought on



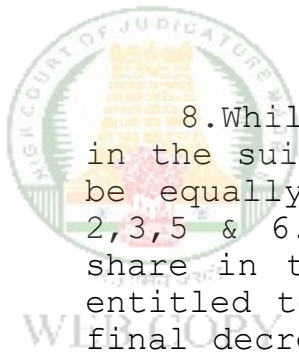
record. Since the appellant had not done so, this appeal may have to be dismissed as abated as against the second respondent herein. The learned counsel appearing for the appellant submitted that while it is not necessary to bring the legal heirs of Sivakami on record, if this Court so feels, the appellant is ready to file an application to bring the legal heirs of Sivakami on record.

4.I carefully considered the rival contentions and went through the evidence on record. It is too well settled that in a partition suit, there can be passing of more than one preliminary decree. In the case on hand, there is no dispute as regards the fourth item of the suit schedule that it belonged to Manikandan. The contest was only regarding the remaining five items. When the preliminary decree was originally passed, Manikandan was very much alive. Therefore, the trial Court granted 1/4th share to each of the parties namely Mahadevan, Manikandan, Anantha Raman and Sivakami. Subsequently, Manikandan passed away. He had executed Ex.B5-Will. In Ex.B5-Will, Manikandan had nominated Anantha Raman as his universal legatee. He was specifically given the suit item No.4 and also shares in all other items which may devolve on Manikandan later. That is why, the first appellate Court, while partly allowing A.S.No.139 of 2007, had categorically given a finding that share of Manikandan in the suit items 1,2, 3, 5 & 6 would also devolve on Anantha Raman. I.A.No.126 of 2013 had been filed only in terms of the aforesaid decree passed by the first appellate Court. A.S.No.139 of 2007 had become final.

5.The appellant was only seeking to work out his rights in terms of the aforesaid judgment and decree passed by the first appellate Court which became final and accepted by both Mahadevan and Sivakami. I am of the view that it is not necessary to bring the legal heirs of Sivakami on record. The Courts below have omitted to give effect to what was directed in A.S.No.139 of 2007. The Courts below could not have gone against what was specifically directed to be allotted to the share of the appellant herein. The substantial questions of law are answered in favour of the appellant. The judgment and decree passed by the first appellate Court is set aside. I.A.126 of 2013 is allowed as prayed for.

6.The learned counsel for the first respondent submitted that the appellant herein is seeking to drag on the proceedings and deny the fruits of the decree.

7.The learned counsel for the appellant gives an undertaking before this Court that the appellant would extend his fullest co-operation for concluding the final decree proceedings. The plaintiff/R1 had already filed I.A.No.1441 of 2012 before the Principal District Munsif, Nagercoil. It is stated that children of Sivakami had already come on record in the final decree proceedings also.



8.While the plaintiff Mahadevan will be entitled to 1/4th share in the suit items 1, 2, 3, 5 &6, the legal heirs of Sivakami will be equally entitled to another 1/4th share in the suit items 1, 2,3,5 & 6. The appellant Anantha Raman will be entitled to 1/2 share in the suit items 1, 2, 3, 5 & 6, while he will be fully entitled to the suit item No.4. The trial Court will conclude the final decree proceedings within six months from the date of receipt of a copy of the decree.

9. The second appeal is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

To

1.The Subordinate Judge,
Nagercoil.

2.The Principal District Munsif,
Nagercoil.

Copy to:

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

+1 CC to M/s.S.BALAKARTHICK, Advocate (SR-26194[F] dated 12/08/2021)

+1 CC to M/s.T.R.JEYABALAM, Advocate (SR-25981[F] dated 11/08/2021)

Judgment made in
S.A. (MD)No.211 of 2014
and
M.P. (MD)No.1 of 2014
11.08.2021

VR (CO)

RS/SKN (17.11.2021) 4P 7C

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