



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.366 of 2014

WEB COPY

Manonmoni

... Appellant / Appellant /Plaintiff

-Vs-

1.A.Ramakrishnan
 2.E.Chandrasekar
 3.E.Krishnamoni
 4.E.Sasi
 5.A.Kalyani
 6.A.Rosammal
 7.T.Renchithabai
 8.T.Sarojam
 9.T.Rajan
 10.T.Savithiri

... Respondents / Respondents / Defendants

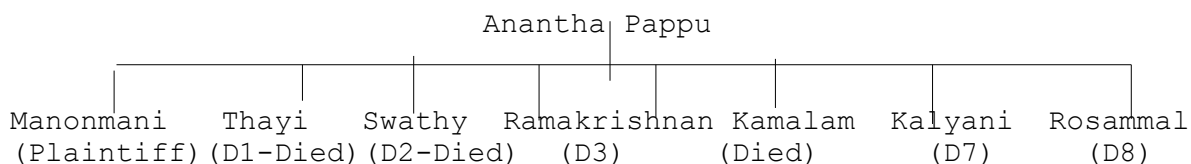
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.122 of 2007 dated 30.07.2013 on the file of the Subordinate Judge, Kuzhithurai confirming the judgment and decree passed in O.S.No.436 of 1997 dated 19.04.2007 on the file of the II Additional District Munsif, Kuzhithurai.

For Appellant	: Mr.G.Ramanathan for Mr.K.Sreekumaran Nair
For R1	: Died
For R2, R3, R5 & R6	: Mrs.J.Anandhavalli
For R4	: exparte
For R7 to R10	: Mr.S.Titus

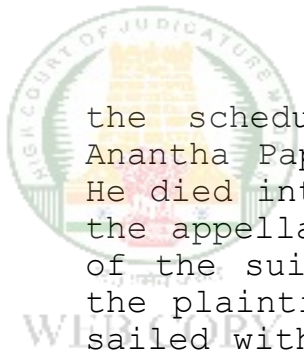
JUDGMENT

The plaintiff in O.S.No.436 of 1997 on the file of the second Additional District Munsif, Kuzhithurai is the appellant in this second appeal.

2.The appeal arises out of a partition suit. The genealogy is as under:-



3. The suit properties are in two schedules namely "A" schedule and "B" schedule. The plaintiff proceeded on the footing that both



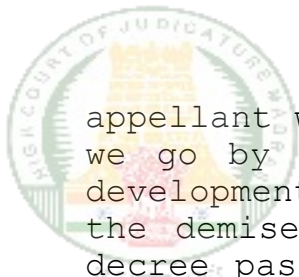
the schedule properties belonged to her father Anantha Pappu. Anantha Pappu's wife as well as daughter Kamalam pre-deceased him. He died intestate. Claiming her 1/7th share in the suit properties, the appellant herein filed O.S.No.436 of 1997. During the pendency of the suit, the second defendant Swathy passed away. Therefore, the plaintiff amended her claim to 1/6. The first defendant Thayi sailed with the plaintiff. She also paid the court fee with regard to her share. The other defendants filed the written statement opposing the suit claim. The stand of the contesting defendants was that "B" schedule properties is the exclusive property of the third defendant Rama Krishnan. As regards "A" schedule properties which belong to Anantha Pappu, he had executed Ex.B9-Will dated 12.06.1995 bequeathing the same in favour of the second defendant Swathy, third defendant Ramakrishnan, legal heirs of the deceased daughter Kamalam and 8th defendant Rosammal. As per the said Will, D2, D3 & D8 were to take 1/4th share in "A" schedule properties. D4 to D6 were given 1/4th share in "A" schedule properties. The plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A4. On the side of the defendants, as many as eight witnesses were examined. Ex.B1 to Ex.B10 were marked. The trial court, after considering the evidence on record, by judgment and decree dated 19.04.2007, rendered a finding that "B" schedule belonged exclusively to Rama Krishnan and it is not amenable for partition at the instance of the plaintiff. The trial Court also sustained Ex.B9-Will and dismissed the partition suit in toto. Aggrieved by the same, the plaintiff filed A.S.No.122 of 2007 before the Sub Court, Kuzhithurai. By judgment and decree dated 30.07.2013, the first appellate court confirmed the decision of the trial Court and dismissed the appeal. Aggrieved by the same, the second appeal came to be filed. The second appeal was admitted on the following substantial question of law:-

"Whether the genuineness and validity of exhibits B9 Will were proved by the propounder of the Will in accordance with Section 68 of the Evidence Act and Section 63 of the Indian Succession Act?"

4.Heard the learned counsel on either side.

5. Certain subsequent developments will have to be taken note of. During the pendency of this appeal, the third defendant Rama Krishnan died a bachelor. The third defendant figured as the first respondent in the appeal. The other parties to the appeal are his legal representatives. None of the parties herein have claimed that Rama Krishnan executed any Will. If any Will had been executed by him, it could have definitely surfaced by now. Therefore, I have to necessarily proceed on the premise that Rama Krishnan died intestate.

6. In this view of the matter, I am of the view that there is no need to go deeply into the issue as to whether the suit Will was proved by the defendants or not. As rightly pointed out by the counsel on either side, the second defendant Swathy who was one of the defendants herein, also passed away. She died a spinster. Hence, the



appellant will be entitled to her share in the suit property even if we go by the terms of the suit Will. Taking note of these two developments namely the demise of the second defendant Swathy and the demise of the third defendant Rama Krishnan, the judgment and decree passed by the Courts below are modified. The second appeal is allowed in the following terms:-

1.The appellant will be entitled to 1/5th share in "B" schedule property. Swathy and Rama Krishnan had been granted 1/4th share each in "A" schedule under the suit Will. Since they have passed away intestate, the plaintiff will be entitled to 1/5th of 1/2 share of their "A" schedule property.

2. The first defendant Thayi had passed away. Her legal heirs will be entitled to 1/10th share in "A" schedule and 1/5th share in "B" schedule.

3. The legal heirs of the deceased daughter Kamalam will be entitled to 1/5th share in "B" schedule and 1/10 + 1/4th share in "A" schedule property.

4. The 7th defendant Kalyani will be entitled to 1/10th share in "A" schedule property.

5.The 8th defendant Rosammal will be entitled to 1/5th share in "B" schedule property and 1/4+1/10th share in "A" schedule property.

The parties who have not earlier paid the court fee in respect of their share will have to pay the court fee. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Kuzhithurai.

2.The II Additional District Munsif, Kuzhithurai.

Copy To

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

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-28626[F] dated 08/09/2021)

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