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S.A.(MD)No.461 of 2014



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD) No.461 of 2014

and

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

1. T.Selvi
2. Minor Prema
3. Minor Shiyam ... Appellants / Respondents 5 to 7/
Defendants 5 to 7

*(Minors 2 and 3 appellants are represented
through their mother & guardian 1st appellant
herein)*

vs.

1. Murugan ... 1st Respondent / Appellant /
1st Defendant
2. Aramvalartha Nayagi @ Renuka ... 2nd Respondent / 1st Respondent /
Plaintiff
3. Kamala @ Deivanai
4. Lakshmi
5. Valli ... Respondents 3 to 5 / Respondents 2 to 4 /
Defendants 2 to 4

PRAYER: Second Appeal filed under Section 100 r/w. Order 42 Rule 1 & 2 of the Civil Procedure Code, against the judgment and decree dated 12.12.2013 passed in A.S.No.21 of 2012 on the file of the Principal District Court, Tirunelveli, modifying the judgment and decree dated 29.10.2010 passed in O.S.No.12 of 2006 on the file of the Principal Sub Court, Tenkasi as far as the 4th and 5th items of the suit schedule properties.



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S.A.(MD)No.461 of 2011.

For Appellants : Mr.V.Meenakshisundaram

For Respondents : Mr.R.J.Karthick for R1 and R2

Mr.T.S.Mohamed Mohideen for R3 to R5

JUDGMENT

The second appeal arises out of a partition suit. One Aramvalartha Nayagi @ Renuka filed O.S.No.12 of 2006 on the file of Principal Sub Court, Tenkasi for partition and separate possession of 29/168th share in the suit properties. Separate written statements were filed by the first defendant, defendants 2 to 4 and defendants 5 to 7. Issues were framed.

2.On the side of the plaintiff, the plaintiff examined herself as P.W.1. Exs.A1 to A5 were marked. On the side of the defendants, five witnesses were examined and Exs.B1 to B16 were marked.

3.The learned trial Judge passed preliminary decree on 29.10.2010 holding that the plaintiff is entitled to 1/6th share in suit items 1 to 3 and 7/36th share in suit items 6, 7 and 8. It was also decreed that the first defendant was entitled to half share in items 4 and 5 and 1/6th share in items 1 to 3 and 7/36th share in items 6 to 8. Challenging the same, the first defendant filed A.S.No.21 of 2012 on the file of Principal District Court,



Tirunelveli. The first appeal was allowed and the judgment and decree of the trial Court in respect of items 4 and 5 was set aside. The preliminary decree of partition of 5/7th share in respect of the said items was passed in favour of the first defendant. Challenging the same, the defendants 5 to 7 filed this second appeal.

4.This second appeal was admitted on 29.04.2014 on the following substantial questions of law:

“1.Whether the lower appellate court is correct in rejecting the petition yadhast Ex.B6 (07.03.2001) by misinterpreting and misleading the same as the document needs compulsory registration under Section 17 of Registration Act and needs stamp duty and thus the judgment and decree of the lower appellate court warrants interference under Section 100 of Civil Procedure Code ?

2.Whether the appellants herein/legal heirs of late Thangapandian established their ½ share in 4th and 5th items of the suit properties by virtue of Ex.B6 dated 07.03.2001 which is a partition list recording the past oral partition and the same is evident from Ex.B4 and the deposition of DW-3, whether the lower appellate court is correct in rejecting Ex.B6 as the same is invalid for want of registration and stamp duty and thus the judgment and decree of the lower appellate court warrants interference under Section 100 of Civil Procedure Code ?”



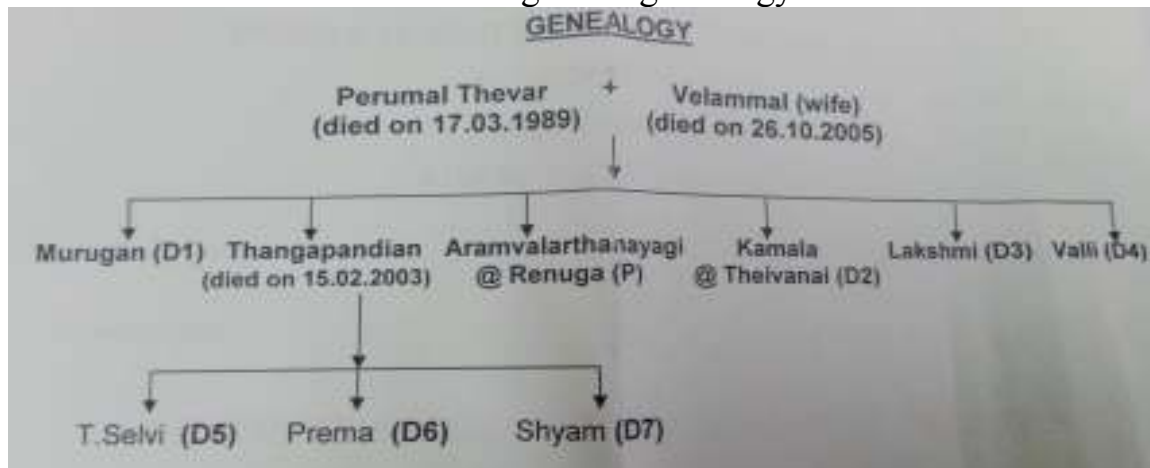
5.After hearing counsel on either side, the following additional substantial question of law was also framed:

“Whether the courts below ought to have held that Ex.B11 Will dated 14.02.2003 executed by Thangapandian was proved by the appellants herein ?”

6.The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and restore the decision of the trial Court.

7.The learned counsel for the contesting respondents on the other hand submitted that the impugned judgment and decree do not warrant interference.

8.I carefully considered the rival contentions and went through the materials on record. The following is the genealogy:-





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9.The suit items are eight in number. There is no dispute that items 1 to 5 are the self-acquired properties of Perumal Thevar. Items 6 to 8 are ancestral properties. The scope of this second appeal is confined to items 4 and 5. The stand of the first respondent herein who filed A.S.No.21 of 2012 on the file of Principal District Court, Tirunelveli is that Ex.B1 / release deed dated 04.03.2003 in respect of the said two items was executed in his favour by Velammal (mother) and three siblings (plaintiff and defendants 3 and 4). Thus $\frac{4}{7}$ th share in these two items became vested in him in addition to his $\frac{1}{7}$ th share. The trial Court had dismissed the suit in respect of suit items 4 and 5 and granted half share in favour of the first defendant in respect of those two items. The first defendant however claimed that he is entitled to $\frac{5}{7}$ th share and that is why, he filed appeal before the first appellate Court.

10.The trial Court had granted only half share in favour of the first defendant by taking into account Ex.B6 / partition document. Ex.B6 was executed on 07.03.2001. It was signed by Velammal, W/o.Perumal Thevar and all the six children. It is true that the fourth item was divided into eastern and western portion and one half was assigned in favour of Murugan while the other half was assigned in favour of P.Thangapandian.



Thangapandian had passed away on 15.02.2003. The appellants are the legal heirs of Thangapandian. They stake their claim on the strength of Ex.B16 / settlement deed dated 13.02.2003. Vide Ex.B16, Thangapandian had settled his half share in items 4 and 5 in favour of the first appellant herein/ his wife. But under Ex.B16, title could have passed from Thangapandian to fifth defendant / first appellant herein only if Ex.B6 is taken as valid. Admittedly, Ex.B6 partition yadast is not a registered document. If the document is the mere recording of an antecedent event, then it does not require registration. But Ex.B6 does not read so. Only under Ex.B6, items 4 and 5 had been partitioned between the first defendant / Murugan and Thangapandian. The first appellate Court elaborately went into this aspect. It noticed that the partition was effected only under Ex.B6 and hence, it requires compulsory registration and proper stamping. But in this case, Ex.B6 was written on ten rupees stamp papers. The first appellate Court has given substantial reason for differing from the view taken by the trial Court. Paragraph Nos.11 to 14 contain solid reasons and I have no reason to take a contra view. I endorse the approach taken by the learned Principal District Judge, Tirunelveli.

11.Following the demise of Perumal Thevar, the property devolved in equal measure on his wife / Velammal and six children. Thangapandian was



one of the six children. The appellants are the legal heirs of Thangapandian who died on 15.02.2003. It has been established that the plaintiff / Velammal and two daughters of Perumal Thevar had released their in items 4 and 5 in favour of the first defendant. The first defendant was already having $1/7^{\text{th}}$ share. Thus, he was obviously entitled to $5/7^{\text{th}}$ share in items 4 and 5. This finding rendered by the first appellate Court is perfectly sound. The substantial questions of law 1 and 2 are answered against the appellants.

12.The relationship among the parties is admitted. After the demise of Perumal Thevar, each of the legal heirs got $1/7^{\text{th}}$ share in the suit properties. Thangapandian also got $1/7^{\text{th}}$ share. He passed away on 15.02.2003. He pre-deceased his mother / Velammal. The case of the appellants is that before his demise, Thangapandian had executed settlement deed / Ex.B16 dated 13.02.2003 and Ex.B11 / Will dated 14.02.2003. I have already agreed with the view taken by the first appellate Court that under Ex.B16, the appellants will not get any right. The question that calls for consideration is whether Ex.B11 has been proved. It is true that Ex.B11 is an unregistered document. It is well settled that a Will does not require registration. It has to be proved as laid down in Section 68 of the Indian Evidence Act, 1872. The Will was attested by two persons namely, Nalla



Sivan and Seetharaman. Under the Will, Thangapandian had bequeathed the property in favour of his wife / Selvi / first appellant. Seetharaman was examined as one of the witnesses (D.W.4). Selvi examined herself as D.W.2. There is nothing suspicious about the Will. When Thangapandian could execute a registered document two days prior to his death, there is something improbable about the execution of the Will one day earlier. When the Will was executed, the children were aged seven years and six months. Therefore, it is understandable that Thangapandian wanted to secure his wife's rights. I, therefore, hold that on his demise, his entire $1/7^{\text{th}}$ share went in favour of Selvi and Velammal did not inherit any share. The additional substantial question of law is answered in favour of the appellants.

13.Vellammal had $5/28^{\text{th}}$ share in suit items 1 to 3. She passed away on 26.10.2005. Her $5/28^{\text{th}}$ share would devolve upon her son / first dependant / Murugan, the daughters and the legal heirs of the pre-deceased son Thangapandian. As such, the plaintiff and the defendants 1 to 4 will inherit $5/168^{\text{th}}$ share each and defendants 5 to 7 jointly inherit $5/168^{\text{th}}$ share.

Calculation of share of parties to the suit in 1 to 3 items are as follows:-

$$\text{“Plaintiff} - 1/7 + 5/168 = 29/168$$

$$1^{\text{st}} \text{ defendant} - 1/7 + 5/168 = 29/168$$

$$2^{\text{nd}} \text{ defendant} - 1/7 + 5/168 = 29/168$$



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3rd defendant – $1/7 + 5/168 = 29/168$

4th defendant – $1/7 + 5/168 = 29/168$

Defendants 5 to 7 – $3/28 + 5/168 = 23/168$ ”

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14.As regards items 4 and 5 are concerned, the appellants are entitled to $1/7^{\text{th}}$ share therein. As regards items 6 to 8 are concerned, the appellants will be entitled to $1/6^{\text{th}}$ share. The judgment and decree passed by the Courts below are accordingly modified and this second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.08.2021

Internet : Yes/No

Index : Yes/No

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To:

- 1.The Principal District Court,
Tirunelveli.
- 2.The Sub Court,
Tenkasi
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

ias/kmm

Judgment made in
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