



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.59 of 2010
and
CMP.No.1 of 2010

- 1.Sasikala
- 2.Minor Punitha
- 3.Minor Santhosh

... Appellants

Vs

- 1.Baby Ammal
- 2.Selvaraj
- 3.Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Nethaji Road, Cuddalore,
Cuddalore Taluk.
- 4.Life Insurance Corporation of India
rep. by its Branch Manager,
Kumbakonam Road,
Panruti.

- 5.Arumugam

... Respondents



The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.65 of 2007 dated 26.08.2009 on the file of the District Court, Cuddalore partly allowing the appeal and setting aside the judgment and decree made in O.S.No.104 of 2004 dated 31.07.2007 on the file of the Sub Court, Panruti.

For Appellants : Mr.R.Gururaj

For Respondents : No Appearance

JUDGMENT

The 1st 2nd and 3rd defendants in O.S.No.104 of 2004 on the file of the Sub Court, Panruti, are the appellants herein. The said suit in O.S.No.104 of 2004 has been filed by the 1st respondent Baby Ammal, with respect to three immovable properties which were shown as item Nos.1, 2 and 3 in the schedule to the plaint and a Life Insurance Corporation policy which was shown as item No.4 in the plaint and also with respect to the death benefits of her son shown as item No.5. The son was employed in the Tamil Nadu Electricity Board and unfortunately died in an accident. She had impleaded in the said suit, the widow of the son and his minor daughter and minor son



as the 1st, 2nd and 3rd defendants and her husband as the 4th defendant. The 5th defendant in the suit was Tamil Nadu Electricity Board and the 6th defendants in the suit was the LIC and the 7th defendant in the suit was said to be the sister's husband of the 1st defendant and he had been impleaded since the document relating to item Nos.2 and 3 stood in his name.

2.As a matter of fact, the document with respect to item No.1 stood in the name of the 4th defendant / husband of the plaintiff / father of the deceased. The suit was filed seeking a preliminary decree and to partition into four shares the aforementioned items as shown in the schedule to the plaint and to allot one share to her.

3. This suit came up for consideration before the Sub Court, Panruti and by judgment dated 31.07.2007, after analyzing evidence recorded the suit was dismissed.

4.The following were the issues and additional issues framed in the said suit for consideration.



“1. Whether the plaintiff is entitled to 1/4 share in the suit properties?

2. Whether the 5th defendant is not a necessary party to the suit?

3. To what relief the plaintiff is entitled to?”

Additional Issues:-

“1. Whether the 1st item of property was purchased by the 4th defendant out of his own income in the name of his son Somasundaram?

2. Whether the plaintiff is entitled to 1/4 share in 2nd and 3rd items?

3. Whether the plaintiff has valued the suit property and paid the correct court fees?”

5. During Trial, the 1st respondent herein / plaintiff had examined herself as PW-1 and she marked one document as Ex.A1, a copy of a Sale Deed dated 27.03.2002. The defendants appear to have contested the claim of the plaintiff seeking 1/4 share in the suit schedule property and on behalf of the defendants two witnesses were examined. The 1st defendant / widow was examined as DW-1 and another witness was examined as DW-2. On the side of the defendants Exs.B1 to B15 were marked. The Sale Deed



which was marked by the plaintiff dated 27.03.2002 was also marked as Ex.B1. Another sale deed dated 07.08.2003 was marked as Ex.B2. Letters and statement issued by the LIC were marked as Exs.B6, B7 and B8. The correspondences with the Electricity Board were marked as Exs.B11 and B12. The exchange of Advocate notices were marked as Exs.B13 and B14.

6. On analysis of the oral and documentary evidence adduced, the learned Sub Judge, Panruti held that the plaintiff was not entitled to 1/4 share in item Nos.1, 2 and 3. With respect to item Nos.4 and 5 the plaintiff was given a right to file a fresh suit on the same cause of action. The reasoning of the learned Sub Judge, with respect to item Nos.1, 2 and 3 are quite obvious. Item Nos.1 and 2 stood in the name of the 7th defendant, Arumugham and item No.1 was in the name of the husband of the plaintiff / Selvaraj. It is quite obvious that unless the plaintiff had let in substantial evidence to prove that consideration under the said sale deeds had been provided by her and that owing to various circumstances, she had permitted the names of the purchasers to be 3rd parties, a written document can never be re-examined by the Court, on the basis of oral evidence. The Indian Evidence Act, 1872, is quite clear on that. Section 92 of the Act, which



provides that no amount of oral document can be let in overriding the covenants in a written document.

7. With respect to the amounts which are receivable from LIC, it is stated by the learned counsel for the appellant that the 1st appellant herein had received the said amount quite long back in her capacity as widow and therefore permitting the plaintiff to institute a fresh suit on the same cause of action would be quite unreasonable. But let me come back to that aspect a little later.

8. Thereafter a First Appeal came to be filed in A.S.No.65 of 2007. This came up before the Principal District Court, Cuddalore. The learned Principal District Judge, Cuddalore, had framed points for consideration to examine whether the judgment and decree of the Trial Court could be sustained. Thereafter, the First Appellate Judge also examined the endorsement made by the plaintiff that she is not claiming any right or for partition or any share in item Nos.2 and 3 and had therefore, straight away noted that the plaintiff herein would not be entitled to any share in item Nos.2 and 3. Thereafter, it was held that the appeal would survive only with



respect to item No.1 which was the property in the name of the husband / 4th respondent herein and item Nos.4 and 5 / amounts receivable under the LIC policy and the death benefit of the deceased.

9. With respect to item No.5 namely the death benefits, it had been stated that the plaintiff had issued a no objection certificate letter stating that the 1st appellant herein can receive the said amount, viz., the death benefits and on that basis, the First Appellate Court had dismissed the appeal with respect to the 5th item also.

10. This leaves out item Nos.1 and 4. With respect to the 1st item, the First Appellate Court went into a detailed discussion and found fault with the reasoning of the learned Trial Judge and stated that the plaintiff would be entitled to an undivided 1/4 share in the 1st item of suit property.

11. I do not think that reasoning can interfere with in the Second Appeal since, the reasoning is correct. The mother is a class I heir of her deceased son. The property standing in the name of the deceased son would also in accordance with the ratio devolve upon her as a class I heir.



Therefore, I would hold that this appeal would not stand with respect to item

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12. These leaves out item No.4 which is the LIC amount received by the 1st appellant herein under the LIC policy. That was an amount of Rs.1,50,000/-. Mr.Gururaj, learned counsel, stated that amount had been paid to the 1st appellant. The 1st respondent as plaintiff, has not paid any Court fees seeking recovery of her 1/4 share. Even otherwise I do not think that such a minute division should be entered into upon members of the family, who have already suffered the loss of the husband / son. Let that aspect remain as it is. The 1st appellant had received the amount and I am confident that towards looking after her mother-in-law in her advanced age, she would repay more than what she had received from the LIC policy by way of affection showered.

13. Therefore, in the Second Appeal, I do not think that it would be worthwhile to issue notice to the respondents as no substantial question of law arises for consideration.



14.The Second Appeal is dismissed with respect to item No.1 which would indicate that the 1st respondent / mother is entitled to a preliminary decree of 1/4 share in item No.1 alone. With respect to item No.4, the Second Appeal is allowed and the 1st appellant who had received the amount from LIC can retain the fruits of such amount. Let there not be a minute partition of the each and every item of the deceased.

15.In the result, the Second Appeal is partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.06.2022

Index:Yes/No
Internet:Yes/No
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To

- 1.The Principal District Court, Cuddalore.
- 2.The Sub Court, Panruti.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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