



S.A.No.839 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.839 of 2022

&

C.M.P.No.17101 of 2022

Kuppusamy (deceased)

1.Kaveriyammal

2.Jayamani

3.Thangammal

4.Eswaramoorthi

5.Krishnamoorthi

6.Baby

...Appellants

Vs

1.Rajammal

2.Pappayee

... Respondents

1/9



S.A.No.839 of 2022

WEB COPY

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 01.10.2020 made in A.S.No.48 of 2020 on the file of the Principal District Judge, Namakkal confirming the Judgement and Decree dated 16.03.2020 made in O.S.No.382 of 2018 on the file of Subordinate Court, Paramathy.

For Appellants : Mr.M.Murali

JUDGEMENT

The legal heirs of the deceased defendant have filed the Second Appeal challenging the concurrent Judgement and Decree passed in a suit for partition. The facts in brief are as follows. The parties are referred to in the same array as in the suit.



S.A.No.839 of 2022

WEB COPY

2. The plaintiffs and the defendant are the children of one Allalan, to whom the suit properties belonged, ancestrally. The said Allalan died intestate 40 years ago and on his death the plaintiffs and the defendant inherited the suit property. The plaintiffs would submit that they are entitled to two shares and the defendant to one share in the suit property.

3. On 15.02.2017, the plaintiffs had approached the defendant with a request to partition the suit property, however the defendant refused to partition the property. The plaintiffs had sent a legal notice dated 21.02.2017, to the defendant demanding the partition of the suit property. However, the defendant had issued a reply notice dated 06.03.2017 contending false allegations. Therefore, plaintiffs have come forward with the suit in question.



S.A.No.839 of 2022

WEB COPY

4. The defendant had filed a written statement inter alia contending that it is true that the suit property was ancestral and that his father had died 40 years ago, but he denied the claim of plaintiffs that they are entitled to 2/3rd share. The defendant would contend that their father was entitled to an extent of 1.78 ½ acres in S.No.402/2, out of a total extent of 7.14 acres.

5. The defendant would submit that their father Allalan had died about 40 years ago and even 15 years prior to his death, plaintiffs had been given on marriage. The said Allalan had given them all the necessary Sridhana articles. The said Allalan had also died 40 years ago. Therefore, plaintiffs are not entitled to the share in the property, which admittedly is the ancestral property.

6. The defendant further contended that the Court fee paid is not appropriate, since plaintiffs are out of possession of the suit property



S.A.No.839 of 2022

WEB COPY

and therefore the Court fee ought to have been paid under Section 37 (1) of the Tamil Nadu Court Fees and Suit Valuation Act.

7. The learned Subordinate Judge, Paramathy, had framed the following the issues.

(i) Whether the plaintiffs are entitled for partition of the suit property?

(ii) Whether the plaintiffs are entitled to 1/3rd share each?

8. The 1st plaintiff had examined herself as P.W.1 and one Swaminathan as P.W.2 and marked Ex.A.1 to Ex.A.4 on their side. The defendant had examined as D.W.1 and one Subramani as D.W.2. The defendant had marked Ex.B.1, kist receipts (Nos.15).



S.A.No.839 of 2022

WEB COPY

9. The learned Subordinate Judge, Paramathy, on considering the evidence partly decreed the suit stating that the plaintiffs were entitled to a share only in the father's $\frac{1}{2}$ share and had therefore, allotted a $\frac{1}{6}^{\text{th}}$ share each to the plaintiffs.

10. Aggrieved by the said Judgement, the defendant had filed an appeal in A.S.No.48 of 2020 on the file of the Principal District Judge, Namakkal. The learned Principal District Judge, Namakkal had also confirmed the Judgement and Decree of the Trial Court by dismissing the appeal. Challenging the same, the legal heirs of the deceased defendant are the appellants before this Court.

11. Heard the learned counsel for the appellants.

12. Admittedly, the property is the ancestral property of the father of the plaintiffs and the defendant. The plaintiffs have been



S.A.No.839 of 2022

WEB COPY

given in marriage, 55 years prior to the filing of the suit. The father had died 40 years prior to the institution of the suit. However, the father of the plaintiffs and defendant had $\frac{1}{2}$ share each in the suit property. Admittedly, their father had died intestate. Therefore, his share of the property would devolve on his three children, namely, the plaintiffs and the defendant. The plaintiffs would each be entitled to a $\frac{1}{6}$ th share in the $\frac{1}{2}$ share of their father. The Courts below have granted only this extent though the plaintiffs have sought for partition of a $\frac{2}{3}$ rd share.

13. Both the Courts below have rightly decreed the suit for a $\frac{2}{6}$ th share. I see no reason to interfere with the well considered Judgement and Decree of the Courts below. Further, the appellants have not made out any Substantial Question of law.



S.A.No.839 of 2022

WEB COPY

14. In the result, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

14.10.2022

kan

Index : Yes/No

Speaking order/non-speaking order

To,

1.The Principal District Judge, Namakkal

2.The Subordinate Court, Paramathy.



WEB COPY



S.A.No.839 of 2022

P.T.ASHA, J.,

kan

S.A.No.839 of 2022

14.10.2022