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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SA.NO.553 OF 2012
AND MP NO.1 OF 2012

1.Rajappa (died) ...Appellant / 1st Respondent /
1st Defendant

2.Parvathi

3.Srinivasan

4.Neelavathi

Appellants 2 to 4 residing at
No.10, Vallalar Koil Mela Street,
Mayiladuthurai, Nagapattinam District

(Appellants 2 to 4 brought into record as legal heirs of
the deceased sole appellant viz., Rajappa Vide Court
Order dated 18.02.2022 made in CMP No.16759 of 2021
in SA No.553 of 2012 (NAVJ)) ...Appellants

Vs.

1.Vijaya Lakshmi

2.Indirani

3.Panjali ...Respondents 1 to 3 / Appellants 1 to 3 /
Plaintiffs 1 to 3

4.Bakyalakshmi ...4th Respondent / 2nd Respondent /
2nd Defendant

5.Rajam

6.Minor Balaji ...Respondents 5 & 6 / Respondents 3 & 4 /
Appellants 4 & 5

Prayer : Second Appeal filed under section 100 of the Code of
Civil Procedure to set aside the decree and judgment of
Principal Sub Court, Mayiladuturai, dated 15.11.11 made in
A.S.No.63 of 2008 reversing judgement and decree of Principal
District Munsif Court, Mayiladuturai dated 28.08.2006 made in
O.S.No.219 of 2005.



For Appellants : Mr.S.Sounthar

For Respondents : Mr.A.Muthukumar
for R1 to R6.

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JUDGMENT

The 1st defendant is the appellant in this second appeal. The appellant died during the pendency of the Second appeal and in his place, the legal heirs have been impleaded and they are appellants 2 to 4.

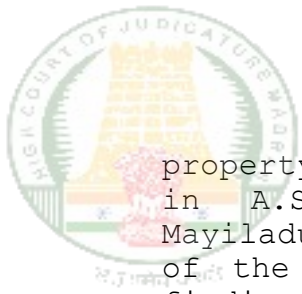
2. The respondents 1 to 3, who are the plaintiffs filed a suit seeking for the relief of partition and claiming for 4/6th share in the suit property.

3. The case of the plaintiffs is that the suit property originally belonged to Vadharanyeswaraswamy Devasthanam. It was taken on paguthi by one Srinivasan and he had also put up a house in the property and he and his family members were in possession and enjoyment of the property. The said Srinivasan died on 18.06.1988 leaving behind plaintiffs, defendants 1 and 2. There is yet another predeceased son Rajasekaran, whose legal heirs are the plaintiffs 4 and 5.

4. After the demise of the said Srinivasan, there was some dispute within the family. The plaintiffs were requesting the 1st defendant to effect a partition and to give a share in the property. Since the 1st defendant was not coming forward to partition the properties, the suit came to be filed seeking for the relief of partition.

5. The 1st defendant filed a written statement. He took a stand that he is the owner of the property and he had initiated eviction proceedings against the husband of the 2nd plaintiff and eviction was ordered and confirmed by this Court. Thereafter, the 1st defendant was taking steps to take delivery of the suit property. It is at this stage, the suit came to be filed. The 1st defendant has taken a clear stand that the suit property is the absolute property of the father and the daughters have already been sufficiently provided and they have also married and left to their matrimonial home and they did not have any right to claim for any share in the property.

6. The Trial Court on considering the oral and documentary evidence and after taking into consideration the facts and circumstances of the case, passed a preliminary decree through judgement and decree dated 28.08.2006 and declared that plaintiffs 1 to 3 are entitled for 1/18th share each and plaintiffs 4 and 5 are entitled for 7/18th share in the suit



property. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.63 of 2008 before the Principal Sub Corut, Mayiladuthurai. The Lower Appellate Court after re-appreciation of the oral and documentary evidence and on considering the findings of the Trial Court, modified the Judgement and Decree of the trial Court and held that plaintiffs 1 to 3 are entitled for 1/6th share each in the suit property and the plaintiffs 4 and 5 are entitled for 1/6th share together. Accordingly, the preliminary decree was modified. Aggrieved by the same, the 1st defendant has filed the present second appeal.

7. The learned counsel for the Appellants submitted that the property in question is an ancestral property at the hands of the grand father of the plaintiffs and defendants and the plaintiffs, who are married daughters are not entitled to any share in the suit property and at the best, they are entitled for a share in the share of their father Srinivasan. It was further submitted that the plaintiffs had abandoned their right over the suit property after their marriage and they are ousted from the property and therefore, they are not entitled for the share as granted by the Lower Appellate Court.

8. This Court has carefully considered the submissions made on either side and the materials available on record and the findings of both the Courts below.

9. In the considered view of this Court, even if the property in question is taken to be the ancestral property in the hands of Srinivasan, by virtue of the 2005 amendment to the Hindu Succession Act and by virtue of the judgement of the Hon'ble Supreme Court in [Vidya Drolia and Others v. Durga Trading Corporation] reported in 2020 5 CTC 302, the plaintiffs will be entitled for the share as granted by the Lower Appellant Court. The findings of the Courts below is based on the evidence available on record and this Court does not find any perversity in those findings. In any case, no substantial question of law is involved in this second appeal.

10. In the result, this Second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Sub Court,
Mayiladuthurai

2.The Principal District Munsif Court,
Mayiladuthurai

Copy To:-

The Section Officer
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate Sr.No.15323

+1cc to Mr.A.Muthukumar, Advocate Sr.No.14925

S.A.No.553 of 2012

RSV(CO)
RVM(31/03/2022)