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S.A.Nos.1026 & 1027 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.1026 & 1027 of 2014

1.R.Sarojammal

2.Bharathi

3.Renuka

...Appellants
in both the Second Appeals

Vs.

1.Hemavathy (died)

2.Lakshmi

... Respondents
in both the Second Appeals

[R1 Died, vide Court Order dated 20.04.2022 made in S.A.Nos.1026 & 1027 of 2014]

COMMON PRAYER : Second Appeals filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.07.2013 made in A.S.No.17 of 2011 and Cross Appeal No.17 of 20211 on the file of the Subordinate Judge, Tiruvallur, setting aside the judgment and decree passed in O.S.No.495 of 2005 dated 29.11.2010 on the file of the District Munsif of Tiruvallur.

For Appellants : Mr.P.B.Balaji
in both Second Appeals

For Respondents : Mr.M.S.Subramanian for R1



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in both Second Appeals

JUDGMENT

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The defendants 1, 3 and 4 are the appellants in these Second Appeals.

2.The deceased 1st respondent/plaintiff filed the suit seeking for the relief of partition and for allotment of 1/5th share in the suit property. The plaintiff also sought for the relief of permanent injunction. During the pendency of the suit, Item No.2 was added to the schedule property.

3.The trial Court passed a preliminary Decree on 29.11.2010 in favour of the plaintiff and insofar as the 1st Item of the suit property is concerned, 1/5th share was allotted in favour of the plaintiff. The defendants filed an appeal and the plaintiff also filed the cross-objection insofar as the rejection of the claim made by her with respect to the 2nd Item of the suit property. The lower appellate Court through Judgment and Decree dated 22.07.2013 confirmed the Judgment and Decree of the trial Court with respect to allotment of the 1/5th share in the first item of the suit property. Insofar as the second item of the suit property is concerned, it was held that the same is the absolute property of the plaintiff and it is not liable for



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any partition. This finding was given, since the defendants did not dispute the right of the plaintiff insofar as the 2nd Item of the suit property is concerned. The same is clear from the finding at Paragraph No.12 of the Judgment of the lower Appellate Court.

4. Aggrieved by the Judgment and Decree passed by the lower Appellate Court, defendants 1,3 and 4 have filed these Second Appeals.

5. The 2nd defendant has been added as the 2nd respondent in these Second Appeals. This defendant sails along with the other defendants and hence, her right will also be safeguarded by the appellants.

6. When the matter came up for hearing on 06.04.2022, this Court passed the following order:

Pursuant to the orders passed by this Court on 17.03.2022, the private notice that was sent to the 2nd respondent has been served and affidavit of service has been filed in USSR No.11904 of 2022. In view of the same, the service of notice is complete.

2. It is brought to the notice of this Court that the first respondent also died on 09.11.2020 and the death certificate has



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been filed. The learned counsel for the appellant sought for some time to take steps to bring the legal representatives of the deceased 1st respondent on record. The learned counsel for the 1st respondent shall also take steps in this regard and provide the details of the legal representatives of the deceased 1st respondent.

3. The learned counsel for the appellant submitted that the Report of the Commissioner plays a major role in this case. When copy application was filed seeking for the certified copy of the Report, it was not furnished on the ground that it is not available in the original records.

4. The Registry is directed to verify the same and ensure that all the papers are put up in the original records before the next date of hearing. Post this case under the caption 'for passing further orders' on 20.04.2022.

7. When the matter was taken up for hearing today, the learned counsel for the appellants filed a memo along with the Death Certificate of the plaintiff. The contents of the memo are extracted hereunder:

The counsel for the Appellants state that the 1st respondent passed away issueless on 09.11.2020 and the Death Certificate of the 1st respondent is enclosed along with this



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memo.

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This Hon'ble Court may be please to record the same in the interest of justice.

8.The learned counsel who was appearing for the 1st respondent submitted that they had sent a letter to the husband of the 1st respondent on 06.04.2022 and the cover has been returned with an endorsement that the husband of the 1st respondent has also died. The learned counsel who was appearing for the 1st respondent submitted that they do not have any instructions as to whether the 1st respondent had any issues left behind at the time of her death.

9.The learned counsel for the appellants submitted that the 1st respondent died issueless and they have received instructions in this regard from their clients. It is only based on the instructions received from the appellants, the memo has been filed before this Court.

10.The present Second Appeals confined itself only to the 1st Item of the suit property. Insofar as the 2nd Item is concerned, the defendants have not questioned the right and title of the plaintiff and it has already been held that Item 2 of the suit property is the self-acquired property of the



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11.Since a specific stand has been taken to the effect that the 1st respondent/plaintiff died issueless and her husband has also died, the 1st Item of the suit property will have to be shared by the defendants in the following ratio:

1st Defendant – 1/16th Share

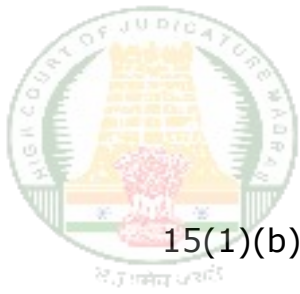
2nd Defendant – 5/16th Share

3rd Defendant - 5/16th Share

4th Defendant - 5/16th Share

12.Since the plaintiff had died issueless, the 2nd Item of the suit property will be inherited in accordance with Section 15 of the Hindu Succession Act, 1956.

13.In view of the above, there shall be a preliminary Decree to the effect that the 1st defendant will get 1/16th share in the 1st Item of the suit property and defendants 2 to 4 will get 5/16th share in the 1st Item of the suit property. Insofar as the 2nd Item of the suit property is concerned, the trial Court shall ascertain if there are any heirs of the husband who are available in order to inherit the 2nd Item of the suit property as per Section



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15(1)(b) of the Hindu Succession Act, 1956. If in case no one is available,
the property will vest absolutely on the 1st defendant.



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14.The Second Appeals are disposed of in the above terms.
Considering the facts and circumstances of the case, there will be no order
as to costs.

20.04.2022

Index :Yes/No

(2/2)

Internet :Yes/No

ssr

To

1.The Subordinate Judge, Tiruvallur.

2.The District Munsif of Tiruvallur.



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N.ANAND VENKATESH.,J
ssr

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(2/2)