



**A.S(MD)No.179/2011 &
CROS.OBJ(MD)No.14/2013**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.179 of 2011 and
CROS.OBJ(MD)No.14 of 2013 and
M.P(MD)Nos.1 of 2011 and 1 of 2012

A.S(MD)No.179 of 2011:-

1)Dr.G.John Samuel

2)Indira Samuel

... Appellants

VS.

1)Mrs.Sujatha Thomson

2)Mrs.Shyla Mathew

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 31.03.2011 made in O.S.No.74 of 2004 on the file of the District Judge, Kanyakumari District at Nagercoil.

For Appellants : Mr.R.Asokan

For R1 : Mr.R.Manimaran

CROS.OBJ(MD)No.14 of 2013:-

Mrs.Sujatha Thomsaon

... Appellant

VS.



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- 1)Dr.G.John Samuel
2)Indira Samuel
3)Mrs.Shyla Mathew

... Respondents

CROS.OBJ(MD)No.14 of 2013 filed under Order 41 Rule 22 read with Section 96 of the Code of Civil Procedure, to allow the cross appeal against memorandum of grounds of A.S(MD)No.179 of 2011 against the judgment and decree dated 31.03.2011 made in O.S.No. 74 of 2004 on the file of the District Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.R.Manimaran
For R1 & R2 : Mr.R.Asokan

COMMON JUDGMENT

The defendants 1 and 3 in the suit are the appellants herein. The 2nd respondent herein is the 2nd defendant and the 1st respondent is the plaintiff in O.S.No.74 of 2004 on the file of the District Court, Kanyakumari District at Nagercoil. The said suit was filed for a decree for partition of plaintiff's 1/3rd share over the plaintiff schedule properties by metes and bounds and to give separate possession and also for accounts of the monies belonging to Late Mrs.G.P.Victoria Santha Bai received by the 1st defendant including the death cum retirement benefits, pension, LIC, chit funds and



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other sources. The trial Court partly decreed the suit by judgment and decree dated 31.03.2011. Challenging the same, the defendants 1 and 3 have filed A.S(MD)No.179 of 2011 and the plaintiff filed CROS.OBJ(MD)No.14 2013.

2. Brief facts in the plaint are as follows:-

The plaintiff and 2nd defendant are daughters of the 1st defendant and late Mrs.G.P.Victoria Santha Bai who is the first wife of the 1st defendant. The 3rd defendant is the second wife of the 1st defendant. The parties are governed by the Indian Succession Act. The plaintiff and defendants 1 and 2 are the legal heirs of the said deceased Victoria Santha Bai and they are entitled to 1/3rd share each in the property of the deceased. The deceased was employed as a Teacher and was aged 42 years at the time of her death. The A schedule properties belonged to her. The B schedule properties are the jewels left by her. The C schedule properties are the movable properties left by her. The 1st defendant purchased suit D schedule properties in the name of the 3rd defendant from the funds left by the deceased. The 3rd defendant is only a name lender. The plaintiff



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and the 2nd defendant are entitled to each 1/3rd share in the D schedule property. Prior to the death of Victoria Santha Bai, the 1st defendant prevailed upon the deceased to sell her ancestral property and the funds were with him and he also received the death cum retirement benefits and pension of the deceased and also received various amounts from the L.I.C and chit funds. He is bound to account for the same. The plaintiff and the 2nd defendant got married and are living separately and they are in joint possession of the plaint schedule properties. Hence the suit.

3. Brief averments in the written statement are as follows:-

The 1st defendant filed a written statement and the same was adopted by the 3rd defendant. In the written statement, the relationship between the parties was admitted. The age of the deceased G.P.Victoria Santha Bai as 42 years at the time of her death was denied as false and it was stated that she was aged 46 years at the time of her death. The properties mentioned in the A schedule property belongs to the deceased except Item No.1 which was purchased by the 1st defendant out of his earnings. They denied



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the averment that B schedule property left by the deceased. All the jewels of the deceased were given to the plaintiff at the time of her marriage. The defendants 1 and 3 are not in possession of any jewels and they deny that C schedule properties left by the deceased. The movable properties of the deceased consist of only few Eversilver vessels and two or three bronze vessels. All the items in the C schedule was purchased out of the funds of the 3rd defendant. The D schedule property absolutely belongs to the 3rd defendant and the property was not purchased out of the funds of the deceased. The sale of 15 cents of land belonging to the deceased was done out of her own will and the funds were utilized only for her benefit. No such land of 40 cents in Pitchi Thottam is available and it was not sold to anybody. The death cum retirement benefit amounts were not received by the 1st defendant. Only the part payment of the P.F. amount of Rs.9,000/- was received from the P.F. Authorities and the 1st defendant has account for the same. The L.I.C. policy in the name of the deceased got lapsed and a case was fled by the L.I.C. with regard to the mortgage property and it is pending before the Sub Court, Chengalpet, in O.S.No.116/2002.



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Neither the plaintiff nor the 2nd defendant are in joint possession of the schedule property. The 1st defendant is in absolute possession of Item No.1 of the A schedule property. The deceased started her career as a Teacher with a salary of Rs.250/- per month. Due to her ill-health, she resigned the job in 1976 and subsequently joined in S.I.E.T. College, Chennai, as an instructee on a monthly salary of Rs. 400/- and worked for three years and subsequently joined in a Punjab Association School for a salary of Rs.450/- per month and it was raised to Rs.800/- subsequently in due course of time. Hence, she was not an earning member of the family. The 1st defendant did not receive the terminal benefits, pension etc., as alleged. There is no cause of action for the suit.

The 1st defendant also filed additional written statement stating that the suit in O.S.No.116/2002 was filed by the Life Insurance Corporation in respect of mortgage created for Item No.1 of A Schedule property and the said suit was decreed in favour of the L.I.C. As per the said decree, the 1st defendant is liable only to the extent of 1/3rd share. The remaining 2/3rd share has to be discharged by the plaintiff and the 2nd defendant. Subject to the said decree and



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realization of the said amount, Item No.1 of the A schedule property cannot be divided by metes and bounds. Without prejudice it was stated by the 1st defendant that the property can be allotted to him and he will clear the mortgage, otherwise, the property will be brought for sale to realize the decree amount by the L.I.C. The plaintiff is not entitled to claim her share in B, C and D schedule properties. Hence, he prayed for dismissal of the suit.

4. Based on the above pleadings, the trial Court framed the following issues:-

1) Whether the plaint schedule properties are that of Mrs.G.P.Victoria Santha Bai?

2) Whether the plaint has cause of action?

3) To what relief?

Under Order 14 Rule 5 CPC, the above issues were re-casted as follows:-

1) Whether the A, B, C suit schedule property belong to the late G.P.Victoria Santha Bai?

2) Whether D schedule property are purchased in the name of



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the 3rd defendant out of the fund left by late G.P.Victoria Bai?

3) Whether the plaintiff is entitled for the relief of partition of the suit properties as prayed for?

4) Whether the plaintiff is entitled for the accounts of the money belonging to late G.P.Vicotira Santha Bai as prayed for?

5) To what relief the plaintiff is entitled to?

5. In order to substantiate the case, on the side of the plaintiff, the plaintiff examined herself as PW1 and 7 documents were marked as Exs.A1 to A7. On the side of the defendants, the 1st defendant examined himself as DW1 and 14 documents were marked as Exs.B1 to B14.

6. The trial Court, considering the pleadings, oral and documentary evidence, partly decreed the suit by judgment and decree dated 31.03.2011. Challenging the same, the defendants 1 and 3 have filed A.S(MD)No.179 of 2011 and the plaintiff filed CROS.OBJ(MD)No.14 2013.



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7. The learned counsel for the appellants would submit that though in A schedule property, except the first item, other items of properties stand in the name of the deceased, first item of the A schedule was purchased by the 1st appellant in the name of his deceased first wife and he also constructed a building by spending his own money and therefore, the first item in A schedule is belonged to the 1st appellant. The respondents are daughters of the deceased. They were given all the jewels of the deceased and also the marriage expenses. Therefore, the other movable properties in B and C schedule are not available for partition. As far as D schedule property is concerned, it was the property of the 2nd appellant and the respondents are not entitled to any share over D schedule. The learned trial Judge failed to appreciate the entire oral and documentary evidence and erroneously decreed the suit with reference to A schedule property and rightly dismissed the suit in respect of other items.

8. The learned counsel would further submit that though the first item of A schedule property was purchased as a vacant site in



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the name of the deceased, the entire consideration was paid only by the 1st appellant out of his own money. Further, during the life time of the deceased, the ground floor alone was constructed. Subsequently, out of his own funds, the 1st appellant constructed rest of the portions. The plan approval for the said construction was obtained in the name of the 1st appellant and house tax was also paid in the name of the 1st appellant. He has spent his own money, as such, first item of A schedule only belonged to the 1st appellant. Therefore, the respondents are not entitled to get any share in any of the items in A schedule. He would further submit that the loan availed by the deceased was repaid by the 1st appellant. Thus, the learned counsel would pray for setting aside the judgment and decree passed by the trial Court.

9. The learned counsel for the Cross Objector/ plaintiff would submit that the mother of the plaintiff/deceased Victoria Santha Bai was working as a Teacher and she was an earning member and she purchased the first item in A schedule and rest of the items in A schedule also belonged to the deceased Victoria Santha Bai and she



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only constructed the building out of her own earnings and further, the 1st appellant received all the retirement benefits of the deceased and he is also having all other items of properties. The D schedule property was purchased by the 1st appellant in the name of the 2nd appellant out of the funds of the deceased. The 2nd appellant is only a name lender of the D schedule property and the 1st appellant only paid the entire sale consideration out of the funds of the retirement benefits of the deceased Victoria Santha Bai. Therefore, D schedule properties are also liable for partition. The trial Court though granted partition of 1/3rd share in respect of A schedule properties, but however, wrongly gave a direction that 1/3rd amount borrowed by the deceased from the LIC to be paid to the 1st appellant in order to get 1/3rd share from the first item of A schedule. Though the deceased borrowed the money, the 1st appellant received the entire retirement benefits and other benefits of the deceased Victoria Santha Bai and he paid the loan due for the LIC loan borrowed by the deceased Victoria Santha Bai and therefore, the Cross Objector is not liable to pay the debt amount of 1/3rd share. Further, he would submit that C schedule properties are very much available for



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partition. The trial Court wrongly rejected the claim of the Cross Objector in respect of other items which is erroneous. Therefore, the appeal has to be dismissed and the Cross Objection has to be allowed and the Cross Objector is entitled to 1/3rd share in all the items of the suit properties.

10. Heard both sides and perused the records.

11. The relationship is not disputed. Admittedly, A schedule property stands in the name of the deceased Victoria Santha Bai. The 1st appellant has stated that he only purchased a vacant site in the first item of A schedule in the name of the deceased Victoria Santha Bai and constructed a house by spending his own money out of his pocket. It is a well settled proposition of law, any property stands in the name of the female members of the family is the absolute property of the female on whose name the property stands, unless it is proved that the purchaser has no means or income to purchase the said property, whereas, in this case, admittedly, the deceased Victoria Santha Bai was working as a Teacher and even



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during her life time, she borrowed a loan from the LIC for constructing the building. Therefore, she has constructed the building in the vacant site purchased in her name.

12. Though the 1st appellant claimed that he spent his money for construction, it is seen from the records that the deceased Victoria Santha Bai constructed the building and borrowed a loan in her name. Though she died subsequently, the loan was repaid by the 1st appellant. If at all the 1st appellant spent his entire money and constructed the first item in A schedule, then what is the necessity of borrowing construction loan in the LIC by the deceased Victoria Santha Bai. After the death of Victoria Santha Bai, the 1st appellant repaid the same. Therefore, the trial Court rightly directed the respondents to bear 1/3rd debt amount each, repaid by the 1st appellant to the LIC. Therefore, the stand of the appellants cannot be sustained, because, the first item in A schedule property stands in the name of the deceased Victoria Santha Bai and she obtained loan from the LIC and constructed the building, of course, before clearing the EMI, she died and therefore, the balance dues were cleared by



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the 1st appellant. Though the Cross Objector/plaintiff would submit that the 1st appellant received the retirement benefits of the deceased Victoria Santha Bai and out of that funds, he repaid that loan amount and therefore, the plaintiff is not liable to pay 1/3rd of the debt amount, however, there is no evidence to show that what was the amount received by the 1st appellant towards the retirement benefits of the deceased Victoria Santha Bai.

13. The facts are clear that a vacant site was purchased by the deceased Victoria Santha Bai and she obtained the LIC loan and constructed the building and before clearing the dues, she died and the 1st appellant repaid the loan dues. Even though the appellant has not filed plan approval in his name, he filed only the receipt for approval fee and also the tax receipt, but it is not the sufficient proof to prove that the 1st appellant constructed the building in the first item in A schedule out of his own fund. Moreover, the 1st appellant himself admitted that the deceased Victoria Santha Bai obtained the construction loan from the LIC which was cleared by him. Therefore, the trial Court rightly held that A schedule property belongs to



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Victoria Santha Bai, however, since because the 1st appellant repaid the LIC loan, the Court directed the 1st respondent in this appeal to bear 1/3rd of the debt amount.

14. As far as other items are concerned, though D schedule property stands in the name of the 2nd appellant, the Cross Objector would submit that it was purchased by the 1st appellant out of the retirement benefits of the deceased Victoria Santha Bai. Therefore, the respondents are entitled to get shares in the said property as it is treated as the property of the deceased Victoria Santha Bai, but however, there is no material to show that D schedule property was purchased in the name of the 2nd appellant out of the retirement benefits of the deceased Victoria Santha Bai or any other properties of Victoria Santha Bai. Therefore, the trial Court rightly held that the respondents are not entitled to any share in D schedule.

15. As far as B and C schedule properties which are movable properties, the appellants stated that all the jewels of the deceased were given to her daughters/respondents and therefore, the



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respondents are not entitled to any share in B and C schedule which are not available for partition. Even during the pendency of the suit, the Cross Objector/plaintiff had not filed any application to take the inventory of the movable goods and ascertain that B and C schedule properties are available for partition. However, the plaintiff proved that A schedule properties belonged to the deceased Victoria Santha Bai and after her death, the 1st appellant and respondents who are the legal heirs each entitled to 1/3rd share. Since the 2nd respondent is in the custody of the 1st appellant and she is not insisting any share, she did not join with the Cross Objector/plaintiff to sue the case and therefore, the Cross Objector shown her as the 2nd defendant in the suit.

16. The plaintiff has to prove her case on her own merits and she cannot take advantage of the loopholes left by the defendants. Though in a partition suit, the defendants are plaintiffs and vice versa, but however, in this case, when the defendants denied about the availability of the movable properties for partition, it is for the plaintiff to establish that the other movable items, especially, B and



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C schedule properties are available for partition. Therefore, considering the facts and circumstances of the case, the trial Court rightly decreed the suit partly and passed a preliminary decree in respect of item Nos.1 to 7 of the A schedule property. Since the deceased Victoria Santha Bai obtained the loan from the LIC, at the time of her death there was a loan due and subsequently, the 1st appellant cleared the said dues. Therefore, in order to get the share in the first item of A schedule property, the trial Court directed the plaintiff to pay the 1st appellant 1/3rd of debt amount which was due to the LIC at the time of death of the deceased Victoria Santha Bai that which was cleared by the 1st appellant. In respect of other properties, the trial Court rightly dismissed the suit.

17. The appellate Court being a fact finding Court, it has to re-appreciate the entire pleadings, oral and documentary evidence. On a careful perusal of the entire pleadings, oral and documentary evidence and also the judgment and decree of the trial Court, this Court does not find any perversity or good reason to interfere with the said judgment.



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18. In view of the above, the Appeal Suit and the Cross Objection are dismissed and the judgment and decree dated 31.03.2011 made in O.S.No.74 of 2004 on the file of the District Judge, Kanyakumari District at Nagercoil, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

bala

08.07.2022

Index : Yes / No

Internet : Yes

To

The District Judge,
Kanyakumari District
at Nagercoil.



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P.VELMURUGAN, J.

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COMMON JUDGMENT MADE IN
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DATED : 08.07.2022