



A.S.(MD)No.91 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.10.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

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1.Sri Prakash
2.Minor.Subashini
(Represented through her mother
next friend and natural guardian
Rathiammal)

... Appellants/Plaintiffs

Vs.

1.R.Machakalai
2.G.Malarvizhi

... Respondents/Defendants

PRAYER: Appeal - filed under Section 96 r/w Order 42 Rule 1 of the Code of Civil Procedure, to call for the records pertaining to the judgment and decree dated 11.09.2012 made in O.S.No.190 of 2010 on the file of the IV Additional District Court, Madurai and set aside the same and thereby allow this appeal.

For Appellants : Mr.T.C.S.Thillinayagam

For Respondents : No appearance for R1

Mr.P.Rajendran for R2



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JUDGMENT

J.NISHA BANU,J.
AND
N.ANAND VENKATESH,J.

This appeal has been filed by the plaintiffs against the judgment and decree passed by the learned IV Additional District Judge, Madurai, in O.S.No.190 of 2010, dated 11.09.2012, whereby the suit filed by the plaintiffs seeking for the relief of partition and for allotment of 2/3rd share in the suit properties was partly decreed by granting 2/6th share in the first item of the suit property and dismissing the suit insofar as the other items of the suit properties are concerned.

2. The case of the plaintiffs is that the suit properties are the ancestral properties of one Rosepinna Thevar. The further case of the plaintiffs is that the first defendant is the son of Rosepinna Thevar and he married Rathiammal, who is the mother of the plaintiffs. The said Rosepinna Thevar died in the year 1984 leaving behind his wife Magamayeammal and the first defendant.



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3. The grievance of the plaintiffs is that the first defendant went ahead and executed a sale deed in favour of the second defendant and alienated item Nos.2 to 4 in the suit properties. The plaintiffs claimed that they have 2/3rd share in the suit properties and without recognising their right, the alienation took place and hence, they were constrained to file the suit seeking for the relief of partition and for allotment of 2/3rd share in the suit properties.

4. The first defendant filed a written statement and took a plea that he was managing the suit properties as a Kartha and in order to meet the family expenses, item Nos.2 to 4 of the suit properties were sold in favour of the second defendant. The first defendant did not plead anything regarding the other items of the suit properties.

5. The second defendant also filed a written statement and took a stand that she is a *bona fide* purchaser of item Nos.2 to 4 in the suit properties and she was not aware about the nature of the property and the rights claimed by the plaintiffs.



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6. Based on the above pleadings, the following issues were framed by the Court below:

“1. Whether item 2, 4, 7 suit properties belong to Magamayee ammal and after her death 1st defendant is the absolute owner of the properties?

2. Whether the sale in favour of the 2nd defendant by the 1st defendant for the interest and benefit of family?

3. Whether the plaintiffs are entitled to sale price only from the 1st defendant?

4. Whether the plaintiffs are entitled for 2/3 shares in the suit properties?

5. To what further relief, the plaintiffs are entitled to?”

7. The following additional issue was also framed:

“Whether the plaintiffs are entitled for permanent injunction restraining the defendants from alienating and encumbering the schedule mentioned properties till the same is partitioned by metes and bounds?”



8. The plaintiffs examined one witness as P.W.1 and marked Exs.A.1 to A.11. The defendants neither examined any witness nor filed any document.

9. The Court below on appreciation of the evidence available on record, came to the conclusion that the plaintiffs are entitled for 2/6th share in the first item of the suit property and that they are not entitled for any share in the other items of the suit properties. Aggrieved by the same, the plaintiffs have filed this appeal.

10. Heard Mr.T.C.S.Thillinayagam, learned counsel appearing for the appellants and Mr.P.Rajendran, learned counsel appearing for the second respondent. The first respondent had initially engaged an Advocate-Mr.P.Raja Gopalan and took change of vakalat from him. Thereafter, Mr.T.Antony Arul Raj was engaged as a counsel and he filed a vakalat. However, it was informed to us that the first respondent has taken away the bundle from Mr.T.Antony Arul Raj also. The names of both the counsel were printed in the cause list and both of them informed this Court that they are no longer appearing in this case. The first respondent has not engaged



any other counsel to represent him in this appeal.

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11. This Court carefully considered the submissions made on either side and the evidence available on record and the following points for consideration arise:

“(a) Whether the plaintiffs have established that the suit properties are ancestral properties?”

“(b) Whether the Court below was right in denying a share in the other items of the suit properties in favour of the plaintiffs? and

“(c) Whether the judgment and decree passed by the Court below requires the interference of this Court?”

12. The plaintiffs claim that the suit properties are ancestral properties. There are totally eight items of the suit properties. On carefully going through Ex.A.6, it is seen that a sale deed has been executed in favour of Rosepinna Thevar which pertains to item No.3 of the suit properties. On carefully going through Exs.A.7 to A.11, it is seen that these are the sale deeds executed in favour of Magamayammal, who is the wife of the said Rosepinna Thevar and it pertains to item Nos.2, 4 and 7 in the suit



properties. There is no indication that the properties that were dealt with in these exhibits are ancestral properties. The said Rosepinna Thevar died intestate in the year 1984 leaving behind his wife and the first defendant.

13. The Court below has come to the conclusion that item Nos.2, 4 and 7 and item Nos.5, 6 and 8 of the suit properties are self-acquired properties of the said Magamayeammal and Rosepinna Thevar. That apart, item No.3 is the self-acquired property of Rosepinna Thevar. This finding has been arrived at by the Court below without any basis. Even the first defendant who filed the written statement does not deny the stand taken by the plaintiffs that the suit properties are ancestral properties, except item Nos.2 to 4 in the suit properties which were sold by him in favour of the second defendant.

14. As per the documents that were marked on the side of the plaintiffs, it can be seen that item Nos.2, 3, 4 and 7 of the suit properties are individual properties of Rosepinna Thevar and Magamayeammal. The first defendant has claimed that he is the Kartha of the family. The Court below has come to the conclusion that the first item of the suit property is ancestral



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property. If the said logic is further expanded, even item Nos.5, 6 and 8 of the suit properties must be held to be ancestral properties. In view of the same, this Court holds that except item Nos.1, 5, 6 and 8 of the suit properties, the other items of the suit properties are individual properties of Rosepinna Thevar and Magamayeammal. The first point for consideration is answered accordingly.

15. The finding of the Court below with respect to item Nos.2, 3, 4 and 7 of the suit properties, is substantiated by the documents marked on the side of the plaintiffs as Exs.A.6 to A.11. The plaintiffs cannot claim any right over these properties. Consequently, the sale of item Nos.2 to 4 in favour of the second defendant does not require the interference of this Court. On the demise of Magamayeammal, the first defendant, who is her son, becomes the absolute owner of the properties in item Nos.2, 4 and 7 of the suit properties. Likewise, on the demise of Rosepinna Thevar, the first defendant becomes entitled to item No.3 of the suit properties exclusively. Hence, the first defendant dealing with item Nos.2 to 4 of the suit properties is valid and the title of the second defendant cannot be questioned.



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16. The claim made by the plaintiffs with regard to item Nos.1, 5, 6 and 8 of the suit properties, as ancestral properties, has not been denied by the first defendant. The Court below without any material has come to an erroneous conclusion that item Nos.5, 6 and 8 of the suit properties are also individual properties of Rosepinna Thevar and Mahamayee Ammal. This finding of the Court below requires the interference of this Court. Even insofar as the share that was allotted in favour of the plaintiffs is concerned, the Court below ought to have allotted $\frac{2}{3}$ rd share in the first item of the suit property, instead, only $\frac{2}{6}$ th share was allotted and there was absolutely no reason as to why a reduced share was given in favour of the plaintiffs.

17. In the considered view of this Court, the appellants/plaintiffs will be entitled for $\frac{2}{3}$ rd share in item Nos.1, 5, 6 and 8 of the suit properties and the judgment and decree passed by the Court below requires to be interfered with to that extent. The second and third points for consideration are answered accordingly.

18. In view of the above discussion, the judgment and decree passed by the Court below in O.S.No.190 of 2010 dated 11.09.2012 is partly set



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aside. There shall be a preliminary decree for partition in favour of the appellants/plaintiffs with respect to item Nos.1, 5, 6 and 8 of the suit properties and the same shall be divided into three shares and two shares shall be allotted to the plaintiffs by metes and bounds. With respect to the other items of the suit properties, the judgment and decree passed by the Court below stands confirmed.

19. In the result, this Appeal Suit is partly allowed to the extent indicated hereinabove. No costs.

(J.N.B.,J.) (N.A.V.,J.)
27.10.2022

Index : Yes/No
Internet : Yes
ssb

To:

IV Additional District Court, Madurai



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ssb

Judgment made in
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Dated
27.10.2022