



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD) No.364 of 2010

and

M.P.(MD) No.1 of 2010

1.Muthayyan (Died) .. 1st Appellant/Appellant/
2nd Defendant

2.Sundar .. 2nd Appellant
(2nd Appellant is brought on records as LR of the 1st
Appellant vide order dated 17/03/2022 made in CMP
(MD)Nos. 2165 to 2167 of 2022 in S.A.(md) No. 364
of 2010)

-VS-

1.Thankammal
2.Syamala .. Respondents/Respondents/
Plaintiffs 1 & 2

3.Lysammal
4.Rani .. Respondents/Respondents
3 & 4/Defendants 1 & 3

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in A.S.No.31 of 2007 dated 27.01.2009 by the Subordinate Judge, Padmanabhapuram confirming the judgment and decree passed in O.S.No.324 of 2004 dated 21.04.2006 by the Addl.District Munsif Court, Padmanabhapuram.

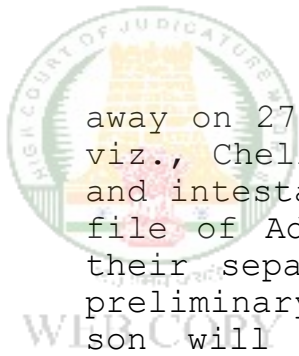
For Appellant : Mr.S.C.Herold Singh
For R2 : Mr.F.Deepak

For R1, 3 & 4 : No appearance

JUDGMENT

Heard the learned counsel on either side.

2. This second appeal arises out of a suit for partition. One Chellayyan got married to Kochammal and through the wedlock, six children (two sons and four daughters) were born. Chellayyan passed



away on 27.11.1980. His wife died on 25.12.1997. One of the sons, viz., Chellappan died in the year 1999. Chellappan died a bachelor and intestate. Two of the daughters filed O.S.No.324 of 2004 on the file of Additional District Munsif Court, Padmanabhapuram claiming their separate share in the suit items. The trial court passed preliminary decree holding that the four daughters and the remaining son will each be entitled to 1/5th share in the suit items. Aggrieved by the same, the son viz., Muthayyan filed A.S.No.31 of 2007 before the Sub court, Padmanabhapuram. By the impugned judgment and decree dated 27.01.2009, the decision of the trial court was confirmed and the appeal was dismissed. Challenging the same, Muthayyan filed this second appeal. During the pendency of this second appeal, he passed away and his son was brought on record.

3. The learned counsel appearing for the appellant submitted that one of the daughters viz., the 1st plaintiff, Thankammal had converted to Christianity even before the demise of her father and that therefore, she was disqualified to inherit any share in his property. He relied on Section 26 of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act" for brevity). Section 26 of the Act reads as follows:-

"Convert's descendants disqualified.- Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion any their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens."

4. Section 2 of the Act states that the Act applies only to Hindus. The succession of Chellayyan will obviously be governed by the Hindu Succession Act, 1956. Now the question is whether by virtue of Section 26 of the Act, the 1st plaintiff can be disinherited.

5. Any provision that disqualifies a person will have to be given a strict interpretation. The provision on hand only reads that the children born to the convert cannot inherit the property of their Hindu relatives. No disqualification attaches to the convert himself or herself. The Hon'ble Division Bench in **E.Ramesh vs. P.Rajni** reported in **(2002) 4 LW 192** had held that the bar against inheritance is only in respect of legal heirs of the convert. The individual who converted to some other religion from Hinduism will not forgo the right of an inheritance. Respectfully following the said decision, I hold that the 1st plaintiff is not disqualified from inheriting because she got converted to Christianity. The courts



below rightly held that each of the parties will be entitled to 1/5th share in the suit properties. The computation is perfectly right No substantial question of law is involved and the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Subordinate Judge,
Padmanabhapuram.

2.Additional District Munsif,
Padmanabhapuram.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.F. DEEPAK, Advocate (SR-19935[F] dated 21/04/2022)

+1 CC to M/s.S.C. HEROLD SINGH, Advocate (SR-20302[F] dated
21/04/2022)

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_RD(11.05.2022) 3P 7C