



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.376 of 2010

WEB COPY

1.R.Velayutham Asari (died)

2.R.Chinnakannu Asari (died)

3.Natarajan Asari

4.R.Rengaswamy ... Appellants 1 to 4 /
Appellants 1 to 4 /
Defendants 1, 2, 5 & 6

R.Muthuramalingam(Died)
5.Vasantha

6.Priyavarthini (minor)

7.Gowri (minor)

8.Ramanan (minor)
Appellants 6 to 8 are minors represented by their mother and
natural
guardian Vasantha ... Appellants 2 to 8 / Appellants 6 to 9

9.Kousalya

10.Ramasamy

11.Shanthi

12.Pitchaimuthu

13.Chanthanakumari
(Appellants 9 to 13 arebrought on record as Lrs of the deceased 1st
appellant vide order dated 23.03.2016 made in C.M.P. (MD)No.3066 of
2016)

14.Ramalingam

15.Esakkimuthu

16.Sundar

17.Sivakumar ... Appellants



(Appellants 14 to 17 devolution of interest holders of the deceased 2nd appellant are brought on record as Lrs of the deceased 2nd appellant vide order 01.02.2022 made in C.M.P.(MD)No.23 of 2022)

-Vs-

1.P.Krishnammal
Plaintiff

... 1st Respondent/1st Respondent /

2.Gomathi

3.Uma Maheswari

... Respondents 2 & 3/Respondents 2 & 3/
Defendants 3 & 4

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.27 of 2008 on the file of the Principal Subordinate Judge, Nagercoil, dated 23.12.2009 confirming the judgment and decree in O.S.No.232 of 2004 on the file of the Principal Munsif District Court, Nagercoil, dated 31.01.2008.

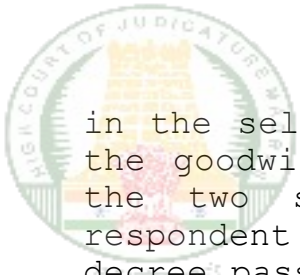
For Appellants	: Mr.C.Godwin
For R1 & R3	: Mr.T.Arul
For R2	: Mr.M.R.Sreenivasan

JUDGMENT

The first respondent herein namely Krishnammal filed O.S.No.232 of 2004 on the file of the Principal District Munsif Court, Nagercoil for partition of 1/8th share in the suit properties. The plaintiff was born with five brothers and two sisters. While the sisters sailed with the plaintiff, the brothers contested the suit. The brothers put forth the defence that some suit items are ancestral properties and some are self acquired properties of the father. Upholding the defence, the trial court passed preliminary decree on 31.01.2008 granting 1/8th share for the daughters in respect of the self acquired properties alone. Aggrieved by the same, the brothers filed A.S.No.27 of 2008 before the Principal Sub Court, Nagercoil. By the impugned judgment and decree dated 23.12.2009, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

2. On account of the recent pronouncement of the Hon'ble Supreme Court in **Vineetha Sharma Vs. Rakesh Sharma and others** reported in **2020 (5) CTC 302**, the daughters can claim share in all the suit items.

3. But the respondents 1 and 3 herein namely P.Krishnammal and Uma Maheswari appeared before this Court through video conference and submitted that they would not seek to enforce their claim even



in the self acquired properties. They want to leave everything to the goodwill of their brothers. The exceptional gesture shown by the two sisters is really appreciated. However, the second respondent herein namely Gomathi wants this Court to sustain the decree passed by the courts below. Subject to payment of the court fee, the decree passed by the courts below in favour of the second respondent is confirmed. The second appeal is disposed of by recording the aforesaid submission made by the respondents 1 & 3 before this Court. No cost.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge, Nagercoil.

2.The Principal District Munsif, Nagercoil.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C. GODWIN, Advocate (SR-19644[F] dated 20/04/2022)

+1 CC to M/s.M.R. SREENIVASAN, Advocate (SR-19912[F] dated 20/04/2022)

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MGJ(11.05.2022) 3P 7C