



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.745 of 2010 and

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

WEB COPY

Dhanapal

... 1st Defendant / Appellant /
Appellant

Vs.

Dhanalakshmi (Died) ... Plaintiff / 1st Respondent / ...

1. Jayalakshmi

2. S.Arumugam (Died) ... Defendants 2 & 3 /
Respondents 2 & 3 /
Respondents 1 & 2

Malayalam (Died) ... Defendant No.4 / / /

3. Krishnaveni

4. Subramanian

5. Ravi

6. Elangovan

7. Kala

8. Jaya

9. Thoniammal

10.Nagammal ... Defendants 5 to 12 /
Respondents 4 to 11/
Respondents 3 to 10 /

11. S.Sekar @ Rajasekaran

12.R.Saravanan

13. R.Shankar ... Respondents 12 to 14 /
Respondents 11 to 13

14. Sarasu



15. Sivakumar

16. Sivaraj

17. Sivashankar

18. Sivasamy

(R-14 to R-18 were *suo motu* impleaded as LR's. of the deceased 2nd respondent vide Order dated 23.03.2022)

... Respondents

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.03.2010 in A.S.No.22 of 2009 on the file of the District Judge, Karur, confirming the Judgment and Decree dated 28.11.2003 made in O.S.No.104 of 1997 on the file of the Subordinate Court, Kulithalai.

For Appellant : Mr.K.Govindarajan

For R-10 : Mr.M.Suresh

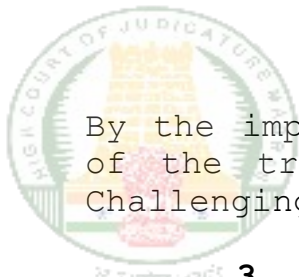
For R-11 to 13 : Mr.Raguvaran Gopalan,
for Mrs.J.Maria Roseline.

For R-4 to R-9 &
R-14 to R-18 : No appearance.

J U D G M E N T

This second appeal arises out of a suit for partition.

2. The suit items are six in number. The suit ' A ' schedule property was allotted to the share of Shanmuga Nadar, father of the plaintiff. Shanmuga Nadar died intestate. He was blessed with one son and two daughters. Claiming 1/3rd share in the suit items 1 to 4 and 6 and 1/6th share in the suit item No.5, he filed O.S.No.104 of 1997 on the file of the Sub Court, Kulithalai. The appellant herein was the contesting defendant. He filed written statement controverting the plaint averments. Based on the divergent pleadings, issues were framed. The plaintiff examined herself as P.W.1 and Ex.A.1 and Ex.A.2 were marked. The appellant examined himself as D.W.1 and two other witnesses were examined. Ex.B.1 and Ex.B.2 were marked. After considering the evidence on record, the trial Court by judgment and decree dated 28.03.2003 partly decreed the suit passing preliminary decree in favour of the appellant in respect of the suit items 3, 4, 5 and 6. 1/3rd share was given in the suit items 3, 4, 5 and 6 while the suit was dismissed in respect of the suit items 1 and 2. Aggrieved by the same, the first defendant filed A.S.No.22 of 2009 before the District Judge, Karur.



By the impugned judgment and decree dated 22.03.2010, the decision of the trial Court was confirmed and the appeal was dismissed. Challenging the same, this second appeal came to be filed.

3. This second appeal was admitted on 03.03.2011 on the following substantial questions of law:-

(i) Whether the Courts below have committed an error in holding that the deceased plaintiff was entitled to 1/3rd share in the suit properties when the claim of the plaintiff itself was that she was entitled to 1/6th share?

(ii) Whether the grant of past mesne profits in the light of the claim made by the plaintiff to be in joint possession and the fact that the suit has been valued under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is against law?

4. It is not in dispute that the plaintiff had not claimed 1/6th share in the suit item No.5. While passing the preliminary decree, the trial Court had granted 1/6th share in the suit item No.5. This is obviously an arithmetical and clerical error which warrants correction. The first appellate Court without notice of the same, mechanically confirmed the decision of the trial Court. When the suit items belonged to Shanmuga Nadar, following his demise, it devolved on all the children. Therefore, the possession of the appellant will have to be considered as possession on behalf of the siblings also. The plaintiff cannot be considered as having been ousted from the suit properties. Therefore, valuation of the suit under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act was right. The second substantial question of law is answered against the appellant. The first substantial question of law is answered in favour of the appellant. The judgment and decree passed by the Court below is modified and it is declared that the plaintiff / legal heir of the deceased plaintiff, namely, respondents 11 to 13 will be entitled to 1/3rd share in suit item Nos.3, 4 and 6 and 1/6th share in the suit item No.5.

5. This second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

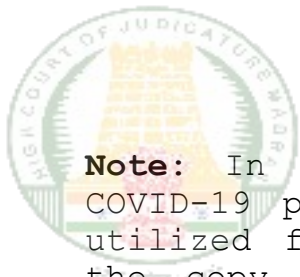
Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

PMU



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 District Judge,
Karur.
2. The Subordinate Judge,
Kulithalai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-21819[F] dated 27/04/2022)

+1 CC to M/s.J. MARIA ROSELINE, Advocate (SR-22204[F] dated 28/04/2022)

S.A.(MD)No.745 of 2010
27.04.2022

ss (CO)
TR(09.06.2022) 4P 7C