



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.77 of 2019

and

C.M.P. (MD)No.4281 of 2019

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A.Abdullah

... Appellant/1st Defendant

Vs.

1.A.Saliha Bibi

2.A.Kathiya Bibi

3.A.Ajara Bibi

4.Y.Kamarudin

5.Mohamed Sirajudeen

... Respondents 1-5/Plaintiffs

6.A.Sirajunisha

7.A.Mohammed Asik

8.Minor A.Mohammed Riyas

(Rep. by his mother Sirajunish the 6th respondent)

9.N.Rajendran

10.S.Soundararaj

... Respondents 6-10/Defendants 2-6

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 17.01.2018 passed in O.S.No.5 of 2016 on the file of the Sessions Judge, Mahila Court, Tiruchirappali.

For Appellant : M/s.J.Anandhavalli

For Respondents : Mr.D.Alagumalai,

For Mr.R.Udhayakumar for R1 to R5.

R6 to R10 : Given up

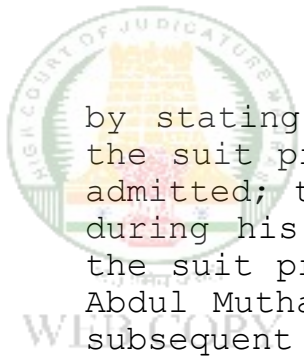


J U D G M E N T

This appeal has been preferred challenging the judgment and decree of the learned Sessions Judge, Mahila Court, Tiruchirappali, dated 17.01.2018 made in O.S.No.5 of 2016;

2.The appellant is the first defendant in the suit; the plaintiffs have filed the suit for partition of their 4/8th share in the suit property; the plaintiffs 1 to 3, deceased Mohamed Bibi, the first defendant and the deceased Abdul Muthaleef are the children of late.Abdul Rahman Sahib; the plaintiffs 4 and 5 are the legal heirs of the deceased daughter of late.Abdul Rahman Sahib, namely, Mohamed Bibi; the defendants 2 to 4 are the legal heirs of the deceased son of late.Abdul Rahman Sahib, namely, Abdul Muthaleef; the suit property belonged to late.Abdul Rahman Sahib by virtue of partition deed effected between himself and his brother, namely, Abdul Hameed on 13.08.1954; Abdul Rahman Sahib died intestate on 18.05.2009; the wife of Abdul Rahman Sahib predeceased him; hence Abdul Rahman Sahib left his four daughters and two sons as his legal heirs; one of the daughters namely, Mohamed Bibi died on 05.11.2012; one of his sons namely, Abdul Muthaleef died on 29.02.2012; hence, the suit property are inherited by the plaintiffs and the defendants 1 to 4; item No.5 in the suit property is a rice mill by name Rahamania Rice Mill and it has adjacent vacant site measuring 0.12.5 ares; the father/Abdul Rahman Sahib did not have any intention to disentitle the plaintiffs from inheriting the property; when he fell sick, the first defendant utilized the opportunity and made him to sell some of the valuable properties stood in his name and taken away the sale proceeds; even after the demise of Abdul Rahman Sahib, the first defendant attempted to sell the rest of the property; hence, the plaintiffs 1 to 3 along with her deceased sister filed a suit in O.S.No.112 of 2009 on the file of the I Additional District Court, Trichirappalli, seeking the relief of partition; during the pendency of the said suit, the fourth plaintiff herein who was also a party to the said suit died and one of the sons namely, Abdul Muthaleef also died; since steps were not taken to bring the legal heirs of the aforesaid persons, the suit was withdrawn; the defendants 5 and 6 are the lease holders of the Rice Mill, which is mentioned as item No.5 in the suit property; with the connivance of other defendants, they denied the rights of the plaintiffs in the Rice Mill; the defendants 5 and 6 by making some false allegations refused to handover the possession; they acted in collusion with the first defendant/late.Abdul Muthaleef for creating a false hiba document; the suit property are undivided common property and they have to be divided as eight shares between plaintiffs 1 to 5 and defendants 1 to 4; the plaintiffs are jointly entitled to 4/8th shares.

3. The first defendant filed the written statement resisting the suit



by stating that the plaintiffs are not entitled to 4/8th share in the suit property; however, the relationship between the parties is admitted; the property belonged to late.Abdul Rahman Sahib and even during his life time, he settled his property except item No.5 in the suit property in favour of the first defendant and the deceased Abdul Muthaleef under two gift deeds dated 23.02.2006 respectively; subsequent to that, the donees took exclusive possession of the property and they were in possession and enjoyment of the same; the plaintiffs were aware of the said fact; hence, item No.5 in the suit property alone is available for partition; the allegations as against the defendants 5 and 6 are false; the allegation that the brother of the defendant namely, Abdul Muthaleef borrowed a sum of Rs.50,000/- is also false; when an earlier suit in O.S.No.112 of 2009 for the same cause of action was dismissed as withdrawn on 16.02.2014, the present suit filed for the same cause of action is not maintainable; hence, the suit may be dismissed;

4.On the basis of above pleadings, the learned trial Judge framed the following issues:-

- 1.Whether the suit property shall be divided into 8 equal parts and whether 4/8 shares shall be allotted to plaintiffs?*
- 2.Whether the plaintiffs shall be granted with separate possession of suit property?*
- 3.Whether the preliminary and final decree shall be passed accordingly in favour of plaintiff as prayed for? and*
- 4.Whether any other relief shall be granted to plaintiffs?*

5.During the course of the trial, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and Exs.A1 to A7 were marked; on the side of the defendants, the first defendant examined himself as D.W.1 and no documentary evidence was marked;

6.At the conclusion of the trial on the basis of evidence, the trial Court partly allowed the suit and granted preliminary decree in favour of the plaintiffs in respect of their 4/8th share in Item No.5 of the suit property alone and the suit was dismissed in respect of the rest of the items of the suit property; first defendant challenged the said judgment and decree by way of filing the present Appeal Suit;

7.Mrs.J.Anandhavalli, learned counsel for the appellant submitted that the suit is barred by *res judicata* in view of the withdrawal of earlier suit in O.S.No.112 of 2009; the learned trial Court had committed error in arriving at the share of the plaintiffs at 4/8 instead of 4/6.



8.Mr.D.Alagumalai, learned counsel for the respondents 1 to 5 submitted that the learned trial Judge has correctly appreciated the evidence on record and allotted the shares; hence, the impugned judgment and decree does not call for any interference;

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9.The point for consideration arises in this Appeal Suit is as follows:

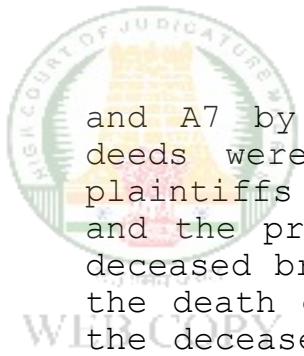
Whether the preliminary decree for partition passed in respect of 4/8th share in favour of the plaintiffs is fair and proper?

10.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5.

11.The relationship between the plaintiffs and the defendants 1 to 4 is not in dispute. The fact that the property belonged to the father of the plaintiffs 1 to 3, namely, Abdul Rahman Sahib is also not denied. The wife of Abdul Rahman Sahib predeceased him. Abdul Rahman Sahib had four daughters and two sons. He died on 18.05.2009. Subsequent to his death, the plaintiffs 1 to 3 along their deceased sister filed a suit in O.S.No.112 of 2009 before the I Additional District Court, Tiruchirappalli for partition of the suit property against the first defendant and another deceased brother, namely, Abdul Muthaleef, since one of the plaintiffs namely, Mohamed Bibi and one of the sons namely, Abdul Muthaleef died, the said suit was withdrawn in order to file a fresh one.

12.The learned counsel for the appellant submitted that the suit was withdrawn without any liberty to file a fresh suit on the same cause of action. Hence, the plaintiffs cannot file the present suit for partition. The legal heirs of the deceased son and daughter have right to file a suit for partition in respect of their shares. The cause of action for filing the suit for partition would revive each time at the death of one of the sharers. Even though it would have been possible to implead the legal heirs of the deceased daughter and son in the earlier suit itself, that will not deprive the rights of the legal heirs of the deceased sharers to file a fresh suit jointly with other sharers.

13.The first defendant himself admitted that item No.5 was not subjected to partition. Regarding other items, first defendant claimed that his father during his life time executed two settlement deeds dated 23.02.2006 respectively and settled the item Nos.1 to 4 and 6 to 8 in favour the first defendant and his deceased brother, Abdul Muthaleef. Those settlement deeds have been marked as Exs.A2



and A7 by the plaintiffs themselves. Even though the settlement deeds were of the year 2006, they were not challenged by the plaintiffs till date. The above settlements have come into effect and the property settled in favour of the first defendant and his deceased brother and they are in their respective enjoyment. After the death of Abdul Rahman Sahib, the property settled in favour of the deceased son were inherited by the deceased wife and children. Hence, item No.5 alone is available for partition.

14.The learned trial Judge has rightly observed that subsequent to the settlement deeds, patta was mutated in the name of the sons of late.Abdul Rahman Sahib, so, it cannot be claimed by the appellant that the suit is not maintainable in view of the withdrawal of the earlier suit. The cause of action for suit for partition continues until the property are partitioned. The appellant himself admitted that item No.5 is available for partition. The learned trial Judge had also taken only item No.5 for dealing the issue on partition.

15.The plaintiffs and the defendants 1 to 4 are covered under Muslim Law. As per Mohammedan Law, the property of the father, who died intestate would be inherited by his sons and daughters. The wife of Abdul Rahman Sahib had predeceased him. Hence, the legal heirs of Abdul Rahman Sahib are entitled to partition in respect of Item No.5. As per Mohammedan Law, the daughters would become residuary along with the son but the son would take double share. Since Abdul Rahman Sahib had four daughters and two sons, the property has to be divided into equal 8 shares, out of which, the daughters are entitled to $1/8^{\text{th}}$ share each and the each son is entitled to $2/8^{\text{th}}$ share each. Since the plaintiffs 4 and 5 are the legal heirs of the deceased daughter of Abdul Rahman Sahib, namely, Mohamed Bibi, they would inherit their mother's share. Similarly, the legal heirs of the deceased son of Abdul Rahuman Sahif, namely, Abdul Muthaleef will inherit their father's share of $2/8$. Hence, the plaintiffs 4 and 5 would get $1/8^{\text{th}}$ share each and the plaintiffs 1 to 3 would get $1/8^{\text{th}}$ share jointly.

16.As per Mohammedan Law, the daughter will get one share while the son will get double share. Thus, the first defendant and the defendants 2 to 4 would get $2/8^{\text{th}}$ share for each branch, which is double the share of the daughters. Though the learned trial Judge has not discussed about the method of apportionment of shares among the parties, she had rightly held that the the plaintiffs are entitled to $4/8^{\text{th}}$ share. But the appellant has misconstrued himself and given a calculation by reducing his share from $2/8$ to $1/6$. There is no ground to set aside the judgment and decree of the trial Court, who had granted the rightful shares to the parties. Hence, I feel that the impugned judgment and decree are fair and proper and they do not call for any interference.



17.In the result, the Appeal Suit is dismissed and the judgment and decree passed in O.S.No.5 of 2016, dated 17.01.2018, by the learned Sessions Court, Mahila Court, Tiruchirappalli, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ias

To:

The Sessions Judge,
Mahila Court, Trichirappalli.

Copy to:-

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

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-15257[F] dated 30/03/2022)

+1 CC to M/s.R.UDHAYAKUMAR, Advocate (SR-15424[F] dated 30/03/2022)

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RD(12.04.2022) 6P 6C