



AS(MD)No.119 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **22.09.2022**

CORAM

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

A.S.(MD)No.119 of 2014
and
M.P.(MD)No.3 of 2014

1.Jeyachandran

2.Chandra

... Appellants / Defendants 1&4

/Vs./

1.Sundayee A Mathalaimuthual

2.Vijayalakshmi

... Respondents 1&2 /Plaintiffs

PRAYER: Appeal - filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.11.2012 passed by the learned VI Additional District Judge, Madurai in O.S.No.72 of 2008 and dismiss the suit.

For Appellants : Mr.K.Sekar

For Respondents : No appearance



AS(MD)No.119 of 2014

WEB COPY

JUDGMENT

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This appeal has been filed by the defendants 1 and 4 challenging the preliminary decree passed by the Court below granting 1/6 share each for the plaintiffs.

2. The case of the plaintiffs is that the first plaintiff is the mother of the second plaintiff and the first plaintiff is the legally wedded wife of one Mathalaimuthu. The first plaintiff has admitted that she is the 5th wife of the said Mathalaimuthu. The further case of the plaintiffs is that the said Mathalaimuthu left behind the plaintiffs and defendants 1 to 4 as his legal representatives and according to the plaintiffs, they are entitled for share in the suit property. Accordingly, they sought for preliminary decree for allotment of 7/12 property in favour of the first plaintiff, 1/12 share in favour of the second plaintiff.



WEB COPY 3. The first defendant and the third defendant filed written statements.

They categorically took a stand that the marriage between the abovesaid Mathalaimuthu and the first plaintiff is not legal and hence she will not be entitled for any share in the property. They also took a stand that the plaintiffs do not have any right over the suit property and the suit has been filed only to grab the property, which belongs to the actual legal heirs of the deceased Mathalaimuthu.

4. The Court below, on considering the oral and documentary evidence and the facts and circumstances of the case, came to a conclusion that both the plaintiffs are entitled for 1/6 share each in the suit property and accordingly, a preliminary decree was passed. Aggrieved by the same, the present appeal has been filed before this Court.

5. The points for consideration in the present appeal are:-

(a) Whether there was a valid marriage between the first plaintiff and the deceased Mathalaimuthu and consequently whether the first plaintiff is entitled for any share in the suit property?



(b) Whether the Judgment passed by the Court below requires interference of this court?

6. Heard Mr.K.Sekar, learned counsel appearing for the appellant.

7. It is clear from the pleadings and the evidence that was let in that the first plaintiff was the fifth wife of deceased Mathalaimuthu. There was absolutely no evidence to show that the marriage was actually contracted between the first plaintiff and the said Mathalaimuthu. Even if such a marriage had taken place, the relationship of the first plaintiff with the deceased Mathalaimuthu will not have the backing of law, since such a marriage had taken place during the subsistence of the earlier marriage. In view of the same, the trial Court was absolutely wrong in allotting a share in favour of the first plaintiff. The first point for determination is answered accordingly.

8. Insofar as the second plaintiff is concerned, she is the daughter of the first plaintiff and even if the marriage between the first plaintiff and the deceased Mathalaimuthu is not valid, the second plaintiff will be entitled for



AS(MD)No.119 of 2014

a share in the property belonging to her father by virtue of Section 16 of the Hindu Succession Act, 1956. In view of the same, share given to the second plaintiff is perfectly right and it does not require the interference of this Court. In view of the same, the second plaintiff will be entitled for 1/5 share in the suit property and the defendants 1 to 4 will be entitled for 1/5 share each. To that extent, the preliminary decree passed by the Court below requires modification. The second point for consideration is answered accordingly.

9. In view of the above discussion, this Appeal suit is partly allowed and the judgment and decree passed by the Court below in O.S.No.72 of 2008 dated 20.11.2012 is modified and there shall be a preliminary decree for allotment of 1/5 share in the suit property in favour of the second plaintiff. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.,J.) (N.A.V.,J.)
22.09.2022



AS(MD)No.119 of 2014

Index : Yes/No
Internet : Yes

WEB COPY

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

sm

To:

1.The VI Additional District Judge, Madurai.

Judgment made in
A.S.(MD)No.119 of 2014

Dated
22.09.2022