



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2022

CORAM: **JUSTICE N.SESHASAYEE**

S.A.No.1603 of 2001

and C.M.P(MD).No.7898 of 2022

Ammal (died) ... Appellant/Appellant/1st Defendant
2.S.Nelson
3.S.Vincent
4.S.Leela ...Appellants
(A2 to A4 brought as LR's of deceased sole appellant vide
Court order dated 26.02.2016 made in
M.P(MD).Nos.1 to 3 of 2013 in SA.No.1603 of 2001)

Vs

1.Palammal
2.Vasanthi ... Respondents 1,2 /Respondents/Plaintiffs
3.Thankaperumal ... Respondent-3/ Respondent/2nd Defendant

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.73 of 1995 on the file of the Subordinate Court, Padmanabhapuram dated 28.09.2000 confirming the judgment and decree made in O.S.No.350 of 1987 on the file of the Additional District Munsif Court, Padmanabhapuram, dated 28.02.1995.



For Appellants : Mr.M.Dennis Joe
For Respondents : Mr.S.Ramesh
for MR.V.Raghavachari (for R2)
No appearance (for R1)
R3-died

JUDGMENT

The first defendant in O.S.No.350 of 1987 on the file of the Additional District Munsif Court, Padmanabhapuram is the appellant. The suit was laid for partition, and the same came to be decreed by the trial Court and later by the First Appellate Court in an appeal preferred by the first defendant in A.S.No.73 of 1995. Aggrieved by it, the first defendant had preferred this appeal. For narrative convenience, the parties are referred to by their rank before the trial court.

2. There are two items of suit properties involved in this case, of which the 1st item is the block of land measuring 67 cents in Old.Sy.No.6316, and the second item is a house site measuring 13 cents in Survey No.6364. The plaintiffs pleads:

- Both the suit properties originally belonged to certain Muthaiyan. He had two sons namely Joseph and Devadasan, and two daughters namely



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Thangavadivu and Ammal. The first plaintiff is the widow of Joseph.

The second plaintiff is his daughter through the first plaintiff. Ammal is the first defendant. Thangavadivu is no more, and her husband is the second defendant. Devadasan, the another son of Muthaiyan, had died issueless in 1969.

- While so, on 14.04.1961, Joseph and Devadasan under Ext.A.2, dated 14.04.1961 had mortgaged the first item of property for a sum of Rs. 500/- with their sister, the first defendant herein, pursuant to which she is in possession. On the demise of Devadasan, his half share in the property devolved both on the plaintiffs and the defendants. Thus, the plaintiffs are entitled to 3/4 share in the property, and the remaining 1/4 belonged to the first defendant.
- The plaintiffs are agriculturist and hence, they are entitled to the benefit of Tamil Nadu Debt Relief Act, and are entitled to redeem the mortgage relating to item No.1 vide Ext.A2 mortgage deed without payment of mortgage money.

In fine, the plaintiffs have laid a suit for partition of their 3/4 share and also for redemption of the said mortgage.



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3. Of the two defendants, the second defendant, who is the husband of Thangavadivu, supported the case of the plaintiff.

4. Turning to the first defendant, she has pleaded as below:

- The first plaintiff was not married to Joseph, but she was living with certain Rajamani. Indeed, the second plaintiff was not born to Joseph, but to the first plaintiff through Rajamani. Joseph in fact was down with tuberculosis and died without recovery sometime in 1970, and the plaintiffs have now planted a case that they are the widow and child of Joseph and has fabricated the documents.
- Turning to Ext.A2, mortgage, the first item of property was given as *stridhana* to her and there is no mortgagor/mortgagee relationship as between Joseph and Devadasan on the one part, and Ammal on the other part. This apart, the first defendant had made substantial improvements in the property, expending around Rs.35,000/- in item No.1.

5. In the rejoinder, the plaintiffs have pleaded that the first plaintiff had married



Joseph on 16.01.1969 as per Hindu Rights, and that on 15.06.1970, the second plaintiff was born to her and, on 02.08.1970 Joseph died. He was never afflicted with any disease and was in good health till he died.

6. The dispute went to trial. During trial, the first plaintiff examined herself as P.W.1. Besides her, she also examined P.W.2 to P.W.6, and they have produced as many as 25 documents, which came to be marked as Ext.P1 to Ext.P25. Of which, Ext.P2 is the mortgage deed executed by Joseph and Devadasan in favour of the first defendant; Ext.P19 is the death certificate of Joseph; and Ext.P20 is the birth certificate of Joseph. On the side of defendants, the first defendant alone was examined as D.W.1 and she has produced Ext.D1 to Ext.D5.

7.1 The trial Court passed a preliminary decree declaring that the plaintiffs 1 and 2 are entitled to 3/4 share in Item No.1 of the suit property which is under mortgage in the hands of the first defendant, and that they can redeem their 3/4 share in Item No.1 without paying the mortgage amount, and insofar as Item No.2 of the suit property is concerned, the plaintiffs 1 and 2 are entitled to 3/4 share. It has also held that since Item No.1 is under mortgage with the first



defendant since 1961, and that certain improvements were done by planting some trees by the first defendant by expending a sum of Rs.35,000/-, the same can be decided by the Court in the final decree proceedings.

7.2 Aggrieved by the decree of the trial court, the first defendant had preferred A.S.No.73/1995 before the Sub Court, Padmanabapuram, which Vide its decree dated 28.09.2000 confirmed the decree of the trial Court. Aggrieved by the decrees of the trial Court, the present second appeal is filed.

8. This second appeal is admitted for considering the following substantial question of law :

'Whether the judgment of the Courts below granting a preliminary decree for partition is opposed to the established evidence on record?'

9. Pending second appeal, the appellant has filed a petition in CMP.(MD) No. 7898 of 2002, seeking leave of the Court to accept the registered joint release deed dated 02.08.2010, executed by the first respondent/first plaintiff in favour of her son, as additional evidence.



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10. Heard both sides, and the nature of arguments advanced on either side is in line with what was argued earlier before the courts below. Emphasizing yet again that the first plaintiff was not married to Joseph but to Rajamani, the learned counsel of the first defendant referred to the release deed dated 02-08.2010 and stated that in this document the first plaintiff had described herself as the wife of Rajamani. Ext.A-19 is the death certificate of Joseph according to which he had died on 02.08.1970, about two months after the birth of the second plaintiff on 15.06.1970 as seen in Ext.A-20 birth certificate of the latter.

11. The issue here is not about the marital status of the first plaintiff after the demise of Joseph, but whether she had married Joseph. She had produced Ext.A.20, the birth certificate of the second plaintiff, which shows that Joseph is the father of the second plaintiff, and it is not disputed that the second plaintiff is not the daughter of the first plaintiff. Ext.B.2 is the voter list of the year 1993, and even this document does not advance the case of the defendants.



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12. Turning to Ext.A.2, this Court is in agreement with the findings of the Courts below that it is only a mortgage document and not a *strithana* document and the evidence on record does not suggest that the approach of the Courts below are perverse. The substantial question of law raised is answered accordingly.

13. Having said that Devadasan admittedly had died issueless, and since parties are Hindus, his right would devolve on his brothers and sisters under Section 8 read with Clause II of the First Schedule of the Hindu Succession Act. This would imply Joseph, the first defendant and Thangavadivu would be entitled to 1/3 share each in the share of Devadasan. This would imply that the plaintiffs cannot claim 1/2 share in Devadasan's half share, but only 1/3 of it. In other words Joseph's branch will be entitled to 1/6 in the share of Devadasan. In *toto* the plaintiffs would be entitled to 2/3 share, with Ammal and Thangavadivu taking 1/6 share each. Thangavadivu's share would necessarily devolve on her husband, the second defendant. The second defendant, who is the husband of the Thangavadivu, had only pleaded that he was unnecessarily made as a party to the suit.



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14. In the result, this second appeal is partially allowed and the decree of the Court in A.S.No.73 of 1995 is modified and the plaintiffs' 2/3 share in both the items of suit properties are hereby declared. No costs. Consequently, connected Miscellaneous Petition is closed.

09.11.2022

Index: Yes/No
Internet: Yes/No
Rmk

To

- 1.The Subordinate Judge, Subordinate Court, Padmanabhapuram.
- 2.The Additional District Munsif, Padmanabhapuram.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE.J.,

Rmk

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