



S.A.No.1569 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.No.1569 of 2004
and
C.M.P.(MD) No.12281 of 2004
and
M.P.(MD) No.1 of 2008

1.Lakshmi
2.Selvaraj
3.Baby

... Appellants/Appellants/
Defendants

Vs

1.Sellammal (Died)
2.Arukkani (Died)

... Respondents/Respondents/
Plaintiffs

3.Pongiammal @ Kannammal
4.Gunasekaran

... Respondents 3 & 4

*[Respondents 3 and 4 were brought on record as
LRs of the deceased 1st respondent vide order
dated 20.09.2022 made in C.M.P.(MD) Nos.7237
and 7238 of 2022 in S.A.No.1569 of 2004]*

5.Kaliappan
6.Selvarani

... Respondents 5 & 6

*[Respondents 5 & 6 were brought on record as
LRs of the deceased 2nd respondent vide order
dated 18.09.2022 made in C.M.P.(MD) Nos.6439,
6442 & 6443 of 2022 in S.A.No.1569 of 2004]*



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 13.10.2003 made in A.S.No.12 of 2003 on the file of the District Court, Karur, confirming the judgment and decree dated 17.12.2002 made in O.S.No.267 of 1996 on the file of the Sub Court, Karur.

For Appellants : Mr.PT.S.Narendravasan

For Respondents : Mr.S.Gokul Raj for R3 to R6

J U D G M E N T

The defendants in O.S.No.267 of 1996 on the file of the Sub Court, Karur, are the appellants herein. The suit was laid for partition of plaintiffs' 2/3rd share in two items of suit properties. The suit was decreed and it came to be confirmed in A.S.No.12 of 2003 filed by the defendants. Hence the second appeal. For narrative convenience, parties would be referred to by their rank before the trial Court.

2. There are two items of suit property both of which are agricultural lands. According to the plaintiffs, this property belonged to a certain Sellammal



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and her 4 brothers. One of the Sellammal's brother was Sellappa Goundar.

The said Sellammal was married to another Sellappa Goundar and begot two daughters and a son. Her daughters are the plaintiffs herein and her only son was Palanisamy. Palanisamy has since passed away and his heirs are the defendants. While so, Sellammal during her lifetime had executed Ext.A.1, a registered Will, dated 27.12.1995 bequeathing both the items of property equally to all of her three children. P.W.2 and P.W.3 were the attestors to the Will and they proved the Will. The genuineness of the Will however is not in dispute. Based on the Will, the plaintiffs had laid the suit claiming jointly 2/3rd share in both the items of suit properties.

3. As indicated earlier, Palanisamy had passed away and his heirs have filed their written statement, in which they contend that the suit properties belong not to Sellammal, but Sellamma's husband Sellappa Goundar. That this Sellappa Goundar had died in 1950 and the properties being ancestral properties in his hand, the daughters are excluded from inheritance.



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4. The dispute went to trial and before the trial Court, the first plaintiff examined herself as P.W.1. As indicated earlier, P.W.2 and P.W.3 are the attestors to Ext.A.1-Will. For the defendants, the first defendant was examined as D.W.1. She is the widow of Palanisamy. She also examined a revenue official as D.W.2 through whom Ext.X1 to Ext.X4 came to be marked. She also examined two other independent witnesses as D.W.3 and D.W.4. On the side of the plaintiffs, they produced Ext.A.1 to Ext.A.8 and the defendants had produced Ext.B.1 to Ext.B.10. Of the documents produced, Ext.A.1 has already been referred to. Ext.A.3 is a lease deed executed by the plaintiff's mother Sellammal in favour of one Ponnusamy on 20.04.1953 regarding the 2nd Item of property. So far as the 1st Item of property is concerned, patta itself stands in the name of Sellammal and this is also supported by the testimony of D.W.2 and Ext.X1 to Ext.X.4. In these circumstances, the trial Court decreed the suit, since it also accepted the genuineness of the Will as established by the plaintiffs, and the first appellate Court concurred with the said findings. Hence the appeal.



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5. This appeal was admitted for considering the following substantial questions of law:

*“(i) Are the Courts below right in holding that the property belongs to the mother of the plaintiffs when they themselves admitted in a written statement filed in O.S.No.921 of 1994 that the property belongs to their father? and
(ii) Whether the Courts below were right in granting the relief that the plaintiffs are entitled to a share as per Hindu Succession Act, when the father died even before the Act came into force?”*

6. The learned counsel for the appellants made a valiant effort to convince this Court that the property belonged to Sellappa Goundar, the father of the plaintiffs and Palanisamy.

7. However, the testimony of D.W.1 goes contrary to the said statement. Nor the defendants have produced any evidence worthy of establishing their case that the property belonged to the plaintiff's father Sellappa Goundar. Given the facts made available before the Courts, both the Courts below



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have entered a finding on facts, and this Court does not find that these findings on fact are perverse enough to warrant an interference by this Court. Under these circumstances, this Court does not intend to interfere with the judgment and decree dated 13.10.2003 made in A.S.No.12 of 2003 on the file of the District Court, Karur, confirming the judgment and decree dated 17.12.2002 made in O.S.No.267 of 1996 on the file of the Sub Court, Karur. Hence, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Internet:Yes
Index:Yes/No

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To

- 1.The District Judge, Karur.
- 2.The Sub Judge, Karur.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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