



WEB COPY



A.S.No.329 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.No.329 of 2016

1.Mr.Deivasigamani (Died)

2.Mr.Duravelpandian

3.Mrs.Lakshmi Ammal

.. Appellants

(A3 is brought on record as LR of the deceased

1st appellant vide order dated 13.02.2023 made in

C.M.P.No.3148 of 2023 in A.S.No.329/16)

Versus

1.Mrs.Vijayalakshmi

2.Mr.Sundaravadivelu

3.Mrs.Devi

4.Mr.Karthick

5.Mr.Damodaran

.. Respondents

(transposed as R5 vide order dated 19.04.2023

passed in CMP.No.3150/23 in A.S.No.329/16)

Prayer: Appeal Suit has been filed under Section XLI Rule 1 read with 96 of CPC against the judgment and decree dated 23.02.2016 passed in O.S.No.21 of 2011 by the IV Additional District Judge, Ponneri, Thiruvallur District.

For Appellants

: Mr.K.Mohanamurali

For R1

: Ms.S.Vasavi Sridevi

R2 to R4 – exparte

R5 is not ready



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A.S.No.329 of 2010

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The legal representatives of the deceased first defendant are the appellants. Challenge in this appeal is to the preliminary decree granted by the Trial Court in O.S.No.21 of 2011, a suit for partition filed by the first respondent herein, a daughter of the deceased Deivasigamani/first defendant.

2. According to the plaintiff, the suit properties belonged ancestrally to one Ganesa Thambiran, who had married two wives, one after the other. While the first defendant was born to first wife, second wife had a son by name Balasubramaniam. At a partition that took place between the first defendant/Deivasigamani and his step brother Balasubramaniam on 15.04.1961, the suit properties were allotted to the first defendant. According to the plaintiff, on the enactment of Act 39 of 2005, she would become a co-parcener and she would be entitled to a fifth share in the suit properties.

3. The suit was resisted by the defendants contending that on and from the date of partition i.e. 15.04.1961, the suit properties would partake the character of absolute properties of the deceased Deivasigamani/first defendant and therefore, the plaintiff has no right over the same. The first defendant is also said to have executed certain documents alienating the properties during the pendency of the suit. The



A.S.No.329 of 2018

Trial Court rejected the defence and granted a decree as prayed for. Hence, this appeal.

4. We have heard Mr.K.Mohanamurali, learned counsel for the appellants and Ms.S.Vasavi Sridevi, learned counsel for the first respondent and other respondents are not appearing despite service.

5. Upon hearing the counsel for parties, the following points arise for determination in this appeal.

(i) Whether the contention of the defendants that the property allotted to the first defendant at a partition on 15.04.1961 would partake the character of absolute property or they would remain as ancestral property in the hands of the first defendant?

(ii) To what other relief the plaintiff is entitled?

6. Point No.(i)

The character of the property as ancestral in the hands of Ganesa Thambiram is not disputed. On his death, his sons had entered into a partition. The property allotted to a son, a coparcener, at a partition, though would be his absolute property, will partake the character of ancestral property once the son or daughter is born to



A.S.No.329 of 2016

him. This position in Hindu Law is indisputable. That being so, we are unable to find fault with the Trial Court for having rejected the claim of the defendants that the property in the hands of the first defendant belonged absolutely to him. Hence, the first point is answered against the appellants and in favour of the respondents.

7. Point No.ii

Once it is concluded that the property in the hands of the first defendant is ancestral in nature in view of the Act 39 of 2005, the plaintiff would automatically become a coparcener and will be entitled to 1/5th share in the suit properties. In view of the legal position, we do not think we can interfere with the judgment and decree passed by the Trial Court. The appeal fails and it is accordingly dismissed. It is made clear that any alienation made pending suit will be subject to the result of the appeal. No Costs. Connected C.M.P.No.7035 of 2016 is closed.

(R.S.M., J.) (R.K.M., J.)
05.07.2023

rkm
Index:yes/no
Speaking/Non-speaking
Neutral citation: yes/no

To

IV Additional District Judge,
Ponner, Thiruvallur District.



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A.S.No.329 of 2016

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.
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A.S.No.329 of 2016

05.07.223