



WEB COPY



A.S.No.20 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.No.20 of 2009

1.Kannaiah Rao (deceased)

2.Devi Bai

3.Hari Prakesh Rao

4.Sudhan Prasad Rao

5.Manjula Bai

6.Dhanalakshmi Bai

7.Geetha Bai

.. Appellants

(A2 to A7 are brought on record as LR's of the deceased

1<sup>st</sup> appellant vide order dated 02.11.2009 made in

M.P.Nos.2 & 3 of 2009.

Versus

1.Jarina Begam @ Jayanthi

2.Chandra Bai (died)

3.Srinivasan

4.Chandra

5.Shajahan

6.Prakasam

7.Brammanayagam

8.Umpathy

9.Mohan

10.Doss

11.Xavier

12.Ashok Bhavan

13.Mohammed Iqbal

14.Fernandes

15.Kumar

16.Shamshed Begum



A.S.No.20 of 2007

17.C.Srinivasa Rao  
18.C.Umamaheshwar Rao  
19.C.Lokeshwar Rao  
20.C.Sathyanarayana Rao  
21.C.Durgalakshmi Bai

.. Respondents

(R17 to R21 are brought on record as LR's of the deceased/  
2<sup>nd</sup> respondent vide order dated 28.04.23  
made in CMP.Nos.21294, 21295 & 21296/22)

Prayer: Appeal Suit has been filed under Section 96 of CPC against the judgment and decree dated 31.03.2006 made in O.S.No.456 of 2004 (Tr.O.S.No.574 of 1995 - on the file of the Subordinate Judge, Poonamallee) on the file of Principal District & Sessions Judge, Fast Track Court-I, Chengalpattu.

For Appellants : Ms.Vasudha Thiagarajan

For R1 : Mr.K.Venkateswaran

For R17 to R21 : No appearance

R2 – died

R3 to R16 – given up

### **JUDGMENT**

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

The second defendant is on appeal. A suit in O.S.No.574 of 1995 for partition was laid by the first respondent herein claiming a third share in the suit properties. On transfer to the file of Principal District and Sessions Court at Chengalpattu, the said suit was renumbered as O.S.No.456 of 2004.



2. The appellant and the second defendant conceded the claim of the plaintiff.

The third defendant filed a written statement contending that she is entitled to the 'B' schedule property under a Will dated 24.02.1995. She had also claimed that the proceedings for grant of Letters of Administration for the said Will are pending before this Court in T.O.S.No.22 of 2000. The third defendant also took a stand that the plaintiff, being a convert, is not entitled to seek partition.

3. The Trial Court, after framing necessary issues, found that the plaintiff is entitled to a third share in the properties. It, however, did not grant a preliminary decree in respect of 'B' schedule properties, since the testamentary proceedings were pending in this Court in T.O.S.No.22 of 2000. Learned counsel for the parties would submit that the said T.O.S.No.22 of 2000 is pending even as on date.

4. Mrs.Vasudha Thiagarajan, learned counsel for the appellants, would submit that the Trial Court ought to have granted a preliminary decree in respect of 'B' schedule property also, subject to the result of the TOS. She would add that if the third defendant is unable to prove the Will, the sharers would be entitled a share in the said suit properties also.



A.S.No.20 of 2000

5. We find force in her submissions. Admittedly, Testamentary Original Suit is pending and neither Letters of Administration nor probate has been granted for the Will dated 24.02.1995. Therefore, the third defendant, who claims under the Will, cannot seek to establish her right under the Will in the suit, which would necessarily mean that other sharers would be entitled to a share. Therefore, the decree of the the Trial Court needs to be modified granting a preliminary decree in respect of 'B' schedule property also and making it subject to the result of Testamentary Original Suit in T.O.S.No.22 of 2000. The appeal is, therefore, partly allowed and the decree of the Trial Court is modified to the effect that there will be a preliminary decree in respect of all the properties, but, the preliminary decree granted in respect of 'B' schedule property will be subject to the result of T.O.S.No.22 of 2000. In all other respects, the judgment and decree of the Trial Court is confirmed. The parties shall bear their own costs in this appeal. Connected M.P.No.1 of 2010 is closed.

**(R.S.M., J.) (R.K.M., J.)**  
**11.07.2023**

rkm

Index:yes/no

Speaking/Non-speaking

Neutral citation: yes/no



WEB COPY



A.S.No.20 of 2007

To

Additional District & Sessions Judge,  
Fast Track Court-I,  
Chengalpattu.



WEB COPY



A.S.No.20 of 2009

R.SUBRAMANIAN, J.  
and  
R.KALAIMATHI, J.  
rkm

A.S.No.20 of 2009

11.07.2023