



S.A.No.1009 of 2007
and M.P.No.1 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1009 of 2007 &

M.P. No.1 of 2007

N.Rajeswari Ammal

...Appellant

Vs.

1.C.Chinnaswami Naicker

2.B.Sudha

3.B.Prakash

... Respondents

(R1 name changed as Chinnaswami Naicker vide order of Court dated 26.02.2021 made in CMP.No.2009/2016 in S.A.No.1009/2007)

(Respondents 2 & 3 remained *ex parte* in both the Court below. Notice to this may be dispensed with)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.04.2007 passed in A.S. No.107 of 2006, on the file of the II Additional Sub Court, Cuddalore, reversing the decree and judgment dated 28.09.2006 passed in O.S. No.333 of 2004, on the file of the Principal District Munsif Court, Cuddalore.

For Appellant : Mr.K.A.Ravindran

For R1 : Mr.R.Karunakaran

For R2 & R3 : No appearance.



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JUDGMENT

The appellant is the plaintiff in O.S. No.333 of 2004, on the file of the Principal District Munsif, Cuddalore. She filed the said suit against the respondents/defendants for partition of the suit properties into three equal shares and to allot one such share to her and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The brief facts of the case of the plaintiff are as follows:

- i. The 1st defendant is the brother of the plaintiff. The suit properties morefully described in the plaint belonged to their father Sambasivam by virtue of a partition deed (Ex.A1) dated 17.07.1965. Ever since the date of partition, the said Sambasivam was in possession and enjoyment of the same.



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- ii. One Nageswari Ammal, the mother of the defendants 2 and 3, is also the sister of the plaintiff and the 1st defendant and she died leaving behind the defendants 2 and 3 as her legal heirs. Her husband also expired.
- iii. Since the 1st defendant did not give the plaintiff her share in the income from the suit properties, the plaintiff issued a notice to him dated 27.03.2002, a copy of which was marked as Ex.A2.
- iv. The 1st defendant sent a reply dated 22.04.2002 (Ex.A3), which according to the plaintiff contained false allegations. She, therefore, filed the suit.

4. The suit was resisted by the 1st defendant on the following grounds:

- i. The suit properties are joint family properties of the 1st defendant and his father Sambasivam.
- ii. The plaintiff and Nageshwari Ammal were given in marriage in the year 1987 and were given valuable articles and jewels as sreedhana.



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- iii. Sambasivam (father of the plaintiff and the 1st defendant) purchased an extent of 540 sq. ft. in T.S. No.1576 of Manjakuppam, Cuddalore District, through a registered sale deed dated 16.10.1997 (Ex.B1) and treated the said property as joint family property.
- iv. The plaintiff and the deceased Nageshwari Ammal have relinquished their right in the joint family properties as they have been substantially given sreedhana properties during their marriage.
- v. Late Sambasivam, during his life time, borrowed a sum of Rs.10,00,000/- from Mayavaram Finance and various other persons for the purpose of constructing a house in the suit property and also to meet out his medical expenses as he was admitted as an inpatient in Apollo Hospital, Chennai. The 1st defendant alone discharged the entire loan amount and therefore, the plaintiff cannot claim any right over the suit properties.



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5. The defendants 2 and 3, who are the son and daughter of late Nageshwari Ammal, remained absent before the trial court and were set *ex parte*.

6. On the basis of the above pleadings, the trial court framed the following issues:

- 1) Whether the plaintiff is entitled for 1/3 share in the suit properties?
- 2) Whether the suit is maintainable?
- 3) To what relief the plaintiff is entitled?

7. In the trial court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A4. The 1st defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B4.

8. The learned trial court judge, after full contest, decreed the suit in favour of the plaintiff and passed a preliminary decree for partition of the suit properties into three equal share and to allot one such share to the plaintiff vide his decree and judgment dated 28.09.2006 on the



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following grounds:

- i. Sambasivam died intestate and it is seen from Ex.A1 that the suit properties were allotted to the share of the deceased Sambasivam.
- ii. The 1st defendant though in his written statement had contended that the plaintiff and late Nageswari Ammal relinquished their right in the suit properties even at the time of their marriage, he did not adduce any acceptable evidence to substantiate the same especially when the plaintiff had denied this contention of the 1st defendant.
- iii. The 1st defendant did not also adduce any documentary evidence to show that he alone discharged the loan amount obtained by his father Late Sambasivam during his lifetime.
- iv. It is seen from Ex.B1 to Ex.B4 that all the loan amounts were discharged even in the year 1997 and Sambasivam died only in the year 2001.
- v. The trial court, therefore, held that the plaintiff is entitled for 1/3 share in the suit properties.

9. The 1st defendant, aggrieved over the decree and judgment



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10. Now, challenging the decree and judgment of the first appellate court, the present Second Appeal is filed by the plaintiff, which was admitted on the following substantial questions of law:

- I. Whether the lower appellate court has committed error of law in dismissing the suit in its entirety when the first respondent even in the written statement has admitted the 1/6th share of the plaintiff/appellant?
- II. Whether the lower appellate court is right in holding that the



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11. Heard Mr. Mr.K.A.Ravindran, learned counsel for the appellant and Mr.R.Karunagaran, learned counsel for the first respondent.

12. Mr.K.A.Ravindran, learned counsel for the appellant contended that the trial court had analysed the oral and documentary evidence adduced on both sides in the right perspective and on the other hand, the first appellate court had misdirected itself by observing that since the daughters of late Sambasivam were given in marriage with sufficient sreedhana, they cannot claim any share in the suit properties. He would therefore contend that the appeal is liable to be allowed.

13. Per contra, learned counsel for the 1st respondent contended that since the plaintiff and late Nageshwari Ammal relinquished their right in the suit properties at the time of their marriage, they cannot claim



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any share in the suit properties. He would also contend that they were given in marriage even in the year 1987 and as per Tamil Nadu Amendment Act 1989, they cannot claim any right over the suit properties. In order to substantiate the same, he relied on the decision in ***Leelavathi vs. Chellaswami*** reported in ***2023-1-L.W. 804***.

14. It is an admitted fact that the plaintiff and the 1st defendant are brother and sister born to one Sambasivam and the defendants 2 and 3 are the son and daughter of their another sister late Nageshwari Ammal. It is also admitted that the suit properties were allotted to the share of their father late Sambasivam through a registered partition deed dated 17.07.1965 (Ex.A1). Their mother also predeceased their father. Late Sambasivam died intestate and therefore the properties had to be divided equally among his children as per Section 8 of the Hindu Succession Act.

14.1. The contention of the 1st defendant is that the properties were joint family properties and that the plaintiff and late Nageshwari Ammal were given valuable articles as sreedhana during their marriage.



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His another contention is that both the plaintiff and Nageshwari Ammal relinquished their right in the suit properties. The second contention had not been substantiated by the 1st defendant by adducing acceptable evidence. As regards the first contention, it is pertinent to note that giving valuable articles as sreedhana is immaterial as women have equal rights in ancestral properties. It is not the case of the 1st defendant that some properties were settled in favour of the plaintiff and late Nageshwari Ammal.

14.2. Yet another contention of the 1st defendant is that he discharged the loan amount obtained by his father late Sambasivam and in order to substantiate the same, he had adduced Ex.B2 to Ex.B4, the discharge receipts. A perusal of Ex.B2 to Ex.B4 shows that the loans were discharged between 1997 and 1999 by late Sambasivam. The 1st defendant admitted that his father died during the year 2001 and though it is contended by him that his father was admitted as an inpatient in Apollo Hospital, Chennai, he did not adduce any documentary evidence to prove the same. In any event, the 1st defendant did not adduce any



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acceptable evidence to show that he alone discharged the loan obtained by his father. Ex.B2 to Ex.B4 are least useful to the case of the 1st defendant. The decision in *Leelavathi vs. Chellaswami* (cited supra) would not apply to the facts of the present case since in that case, a Release Deed was executed. The first appellate court had erroneously held that since the daughters were given in marriage by giving sreedhana, they cannot claim any right over the suit properties. In fact, the said observation of the first appellate court is unknown to law. On the contrary, the trial court had analysed the oral and documentary evidence adduced on both sides threadbare and had come to a definite conclusion that the plaintiff is entitled for 1/3 share in the suit properties. The finding of the trial court has to be upheld and in view of the same, the Second Appeal is allowed. The substantial questions of law are answered accordingly.



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15. In the result,

- i. the Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 23.04.2007 passed in A.S. No.107 of 2006, on the file of the II Additional Sub Court, Cuddalore, is set aside.
- iii. The decree and judgment dated 28.09.2006 passed in O.S. No.333 of 2004, on the file of the Principal District Munsif Court, Cuddalore, is upheld.

17.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The II Additional Sub Court, Cuddalore.
2. The Principal District Munsif Court, Cuddalore.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
bga

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