



SA.No.1641 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

**S.A.No.1641 of 2008
and M.P.Nos.1 to 3 of 2009**

S.Sampoornam

... Appellant

Vs.

1.S.Sekar

2.Kalyani (deceased)

3.Sankaranarayanan

4.Rajasundaram (died)

5.S.Periyaswami

6.P.Hemalatha

7.Premalatha

8.P.Mohanarangan

9.P.Madanagopal

(R5 to R9 brought on record as LRs of the deceased 2nd respondent.

Vide order of Court dated 08.07.2010 made in MP.No.3 of 2010)

10.R.Manonmani

11.R.Somasundaram

12.R.Kavitha

(R10 to R12 brought on record as LRS of the deceased R4 viz.,

Rajasundaram vide order of Court dated 19.12.2019 in S.A.No.19941
to 19943 in S.A.No.1641 of 2008 (VPNJ)

... Respondents



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PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the III Additional Judge, City Civil Court Chennai, made in A.S.No.397 of 2006, dated 27.11.2007 partly reversing the judgment and decree dated 09.04.2003 made in O.S.No.5017 of 1996 on the file of the VII Assistant City Civil Court, Chennai.

For Appellant	: Mr.T.Dhanasekaran
For Respondents	: Mr.V.Sairam for R1 M/s.P.Devados Associates for R5, R6 and R9 Mr.V.S.Mannar samy for R10 to R12 R2 and R4 – died R3-served

JUDGMENT

The first plaintiff in the suit for partition which is decreed by the VII Assistant City Civil Court, Chennai in O.S.No.5017 of 1996 and reversed by the III Additional Judge, City Civil Court Chennai, in A.S.No.397 of 2006 is the appellant before this Court.



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2. The second appeal was admitted on the following substantial questions of law.

- 1. Whether the lower Appellate Court is correct in denying right of appellant under Hindu Succession Act, Schedule 5?;*
- 2. Whether the Lower Appellate Court is correct in denying share in the absence of any registered release deed executed by the father of the appellant and respondents herein?;*
- 3. Whether the Lower Appellate is correct in denying the share of the appellant herein in the registered Will executed by the father of the appellant dated 21.03.1994?.*

3. The learned counsels agreed that the issue revolves only around substantial question of law No.2 and in order to appreciate the above, it is necessary to briefly set out the facts which have ultimately culminated in the filing of the above second appeal and the parties for ease of understanding are referred to in the same rank as before the trial Court.



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4. The appellant as the first plaintiff, and the deceased Kalyani had filed the suit in O.S.No.5017 of 1996, seeking a partition of their 1/5th share each in the suit schedule property. The suit schedule property is the house and ground bearing old Door No.42, Present Door No.89, Ashtabujam Road, Choolai, Madras- 112. It is their case that the property belonged to their father Subramania Pillai which he had purchased from out of his self acquired funds under a sale deed dated 25.01.1958. Besides, the plaintiffs, the said Subramania Pillai had three sons who are arrayed as the defendants in the suit.

5. It is the case of the plaintiff that by a Will dated 21.03.1994, the father had bequeathed the suit property in favour of his wife viz., Sulochana Ammal, which was to be enjoyed by her during the life time and after her death the property was to be taken equally by his sons and daughters. The plaintiff's father died on 12.05.1994, leaving behind his wife and the plaintiffs and defendants. The plaintiff's mother Sulochana Ammal died on 27.07.1995 and therefore by virtue of the recitals in the Will the plaintiffs and defendants are having equal share in the suit mentioned properties. The plaintiff would contend that they are entitled to 1/5th share each in the property and they are enjoying the same along



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with others. The suit schedule also included gold jewellery in the possession of first defendant. The plaintiff would contend that despite the return of articles, the defendants have not come forward to effect partition constraining them to issue legal notice dated 25.08.1995, calling upon the defendants to partition 'A' schedule property to put them in possession of their 1/5th share. Though the notice was served on the defendants they did not come forward to effect the partition constraining the plaintiff to file the suit.

6. The defendants had filed a written statement denying the claim of the plaintiff to 1/5th share each in the suit schedule property on the ground that immediately, after the marriage of the 1st plaintiff, the father had purchased the property at Chrompet in lieu of her 1/5th share in the suit schedule property. It was the case of the defendants that by purchasing the above property, the first plaintiff's 1/5th share has been granted to her. As regards the second plaintiff, they would contend during the life time of her father, she had been given 12 ½ sovereigns of jewels in lieu of her 1/5th share in the suit schedule property. Therefore, plaintiffs were not entitled to any share in the suit schedule property. The defendants would also question the Will of Subramania Pillai as the same



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has not been probated. The defendants would further submit that the first defendant had spent money in maintaining the house and also the medical expenses of his mother. The plaintiff and other defendants had not pitched into help him take care of their mother and it was he who had spent the entire amount. Therefore, they sought for dismissal of the suit.

7. The VII Assistant City Civil Court, Chennai, by judgment and decree dated 09.04.2003 was pleased to decree the suit in respect of 'A' schedule property.

8. Aggrieved by the said judgment and decree, the first defendant alone had filed A.S.No.397 of 2006 on the file of the III Additional Judge, City Civil Court, Chennai. The learned Appellate Judge allowed the appeal in respect of the first plaintiff's 1/5th share by stating that since she had been allotted the property, she was not entitled to any share in the suit property. However, the decree was confirmed with reference to the second plaintiff. It is against this judgment and decree, the first plaintiff is before this Court. The Appellate Court has proceeded to non-suit the first plaintiff only on the ground that under Ex.B1, the father had purchased a property for the 1st plaintiff in lieu of



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her 1/5th share. When she was examined as PW.1, she has clearly stated that the same was purchased from out of the income granted by her father at the time of her marriage.

9. The recitals clearly states that the amounts for the purchase of the property had been provided from out of the Sreedhana amount given by the father at the time of marriage. The defendants had not produced any documents showing that the first plaintiff has relinquished her right in her father's property, when she has purchased the property under Ex.B1. Therefore, without such a release it is rather strange that the lower Appellate Court has dismissed the suit against the 1st plaintiff.

10. Admittedly, Subramania Pillai had died intestate, being a Hindu male under Section 8 of Hindu Succession Act the property would devolve equally on all legal heirs. The defendants have questioned the Will on the ground that no probate of the said Will has been obtained. Even if the Will is ignored the plaintiffs are entitled to a share under Section 8 Supra. Therefore, in the absence of any proof of the first plaintiff having relinquished her right in the suit property, the first plaintiff has also entitled to 1/5th share in the suit schedule property. The



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substantial question of law is answered in favour of the first plaintiff and the second appeal is allowed. The judgment and decree of the lower Appellate Court in A.S.No.397 of 2006 is set aside and the judgment and decree in O.S.No.5017 of 1996 is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

22.02.2023

Index : Yes/No
Internet : Yes/No
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To

1. The III Additional Judge, City Civil Court Chennai.
2. The VII Assistant City Civil Court, Chennai.



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P.T.ASHA, J.
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