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A.S. No.302 of 2021
and C.M.P.No.14884 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

A.S.No.302 of 2021
and
C.M.P.No.14884 of 2021

Sindhuja

... Appellant

[Appellant declared as Major and Father / Guardian Mr.Narendran is discharged from Guardianship vide Court order dated 08.04.2021 Passed in CMP.No.6544 of 2021 in AS.SR.No.27326 of 2021 (KRJ)]

Versus

1.Chakrapani
2.Minor Tharun Krishna
3.Minor Ajai Krishna
4.Minor Arun Krishna
(Minor respondents 2 to 4 are
Represented by their next Friend and Father
Mr.Chakrapani)

5.Sankaran Kutty

... Respondents

PRAYER : Appeal Suit is filed under Section 96 and Order XLI Rule 1 & 2
of Code of Civil Procedure, praying to set aside the judgment and decree



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dated 29.06.2015 passed by the learned IV Additional District Judge,
Coimbatore in O.S.No.89 of 2013.

For Appellant : Mr.L.Mouli
For Respondents
For R1 to R4 : Mr.P.Ganesan
For R5 : No appearance

ORDER

The appellant has prayed to set aside the judgment and decree dated 29.06.2015 passed by the learned IV Additional District Judge, Coimbatore in O.S.No.89 of 2013.

2. The appellant herein is the 2nd defendant in O.S.No.89 of 2013 on the file of the No.IV Additional District Judge, Coimbatore, filed by the respondents/ plaintiffs for partition and other consequential relief, in respect of the suit property as described in the plaint Schedule.

3. The plaintiffs were claiming themselves as a legal heirs of the deceased Ranjani who is the daughter of Padmalatha. According to the plaintiffs the suit property was originally belonged to Padmalatha, they are



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having the share as legal heirs of the Padmalatha's daughter. On 25.09.2012, Padmalatha died intestate leaving behind the plaintiffs being the legal heirs of her predeceased daughter K.S.Ranjani along with the defendants 1 and 2, who are having 1/3rd share of the suit property. The 1st defendant said to be the husband of the deceased Padmalatha, set ex-parte before the Court below and the 2nd defendant was represented by the Court guardian who filed written statement on behalf of her and admitting all the averments mentioned in the plaint and based upon that the trial Court granted 1/3rd share in the suit property by passing a preliminary decree. By challenging the said decree the 2nd defendant has preferred this appeal.

4. The learned counsel for the appellant submitted that no notice was issued to the appellant or to her father in I.A.No.330 of 2013. Instead of her father Narendran, one J.Devarajan was appointed as Court Guardian and he submitted to Preliminary Decree. He also submitted that the respondents obtained preliminary decree in respect of the suit property without impleading appellant's father Narendran, who is one of the legal heirs of the deceased appellant's mother Padmalatha. The 5th defendant and the



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deceased Padmalatha dissolved their marriage mutually in HMOP.No.184 of 1991 on 07.02.1992 before the learned II Additional Subordinate Court, Coimbatore, to that effect, decree has been produced before this Court. Thereafter, deceased Padmalatha married appellant's father Narendran on 15.06.1997 and out of wedlock the appellant was born on 05.10.21998. He further submitted that the suit properties were purchased by the appellant's parents and only the appellant and her father Narendran are absolute owner of the suit properties and the respondents have no right in the suit property.

5. Prima facie it reveals that on 07.02.1992 itself, a decree for mutual consent was obtained, after that, she married Narendran on 15.06.1997. On bare perusal of the judgement of the learned trial Judge reveals that the trial Court made to believe that the appellant filed memo before as if she consented to the decree based on that 1/3rd share was granted. But facts reveals that, the property belonged to her mother deceased Padmalatha, she is absolute owner of the property in which the plaintiffs have no shares, all those facts are to be decided by adducing both oral and documentary evidence by giving sufficient opportunity to the appellant, who claim herself



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as the legal heirs of the said Padmalatha in whose name the property stands.

So she is having right over the property provided subject to proof.

6. Hence, request made by the appellant as such is justifiable and the matter is remanded back to the trial Court. Issue notice to the parties concerned, and giving opportunities to both sides by adducing both oral and documentary evidence and to decide the issue between the parties. Accordingly, earlier findings before the trial Court in O.S.No.89 of 2013, passed on 29.06.2015 is set aside. The learned IV Additional District Judge, Coimbatore, is directed to complete the trial within a period of four months from the date of receipt of a copy of this order.

7. Accordingly, this Appeal suit is Allowed. No costs.

24.04.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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T.V.THAMILSELVI, J.

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To

1. The No.IV, Additional District Judge, Coimbatore.
2. The Section Officer, VR-section, High Court of Madras.

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