



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE **MR. JUSTICE V. LAKSHMINARAYANAN**

S.A.No. 959 of 2009

And

C.M.P.No. 1 of 2009

1. Saraswathy
2. K.Shanti (died)
3. K.Banumathi
4. K.Geetha ... Appellants/Appellants/Defendants

Vs.

Selvam (died) ... Respondent/Respondent/Plaintiff

2. K.Girija
3. S.Krithika
4. S.Shruthi

... 2 to 6 Respondents / legal representatives of sole respondent

5. V.Bhoopesh

6. V.Divya ... 5 & 6 Respondent/LRS of 2nd
Appellants



2nd Appellant died, RR 5 & 6 are LR's of 2nd appellant vide., Order of Court dated 30.03.2023 made in C.M.P.Nos. 6042, 6043, 6045, 6053, 6056, 6058/2023 in M.P.No. 1/15 in S.A.No. 959 of 2009)

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 19.11.2007 passed by the learned V Additional Judge, City Civil Court at Chennai in A.S.No. 377 of 2006 confirming the Judgment and Decree of the learned II Assistant Judge, City Civil Court, Chennai passed in O.S.No. 7577 of 1999 dated 12.08.2005.

For Appellants : Mr. Prakash Goklaney

For Respondents : Mr. P.Sivamani

JUDGMENT

This appeal arises out of a suit for partition filed by the son arraying his mother as the first defendant and sisters as defendants 2 to 4. The relationship between the parties is not in dispute. The sources of title to the property is also not in dispute.

2. The suit property originally belonged to one Natesa Mudaliar. He is the grandfather of the plaintiff and defendants 2 to 4 and the father-in-law of the first defendant. On the death of Natesa Mudaliar, his legal



heirs, namely, his son Kannivelu Mudaliar & daughter, Lakshmi had divided the property by way of a partition deed dated 12.10.1979. To that document, the plaintiff, Selvam, who was then minor was made a party. The plaintiff, on the death of his father Kannivelu Mudaliar, filed the suit.

3. According to him, by virtue of the document dated 12.10.1979, he is entitled to 1/2 share of the assets of Natesa Mudaliar and on the death of Kannivelu mudalidar, he is entitled to another 1/5th share and therefore in all he is entitled to 6/10th share. This argument had found acceptance before the Courts below. Against the concurrent finding, the present Appeal has been presented.

4. I have heard Mr. Prakash Goklaney for the appellants and Mr.P.Sivamani learned counsel for the respondents 2 to 4.

5. I frame the following substantial question of law:-

“Whether in the case of a partition of a father's property, a right would automatically vest in the grandson by a



WEB COPY



mere mention of his name in the partition deed, without any substantial right having vested in him?."

6. There is no dispute that the property belonged to the grandfather of the plaintiff. It was his self acquisition. As per section 8 of the Hindu Succession Act, on the death of Hindu Male, the property falls to the share of the son, wife and daughters, etc. A grandson is not a class-I heir. For reasons best known to the parties, perhaps to avoid further litigation or complication, a partition deed was executed on 12.10.1979 including the plaintiff as a party to the partition deed. The mere fact that a person has been included as a party to a document does not give him a right over the same.

7. In this particular case, Mr.Selvam was the grandson of Natesa Mudaliar and therefore, he does not have a right title or interest in his property. At best, it is a situation of *Spes successionis* ie., he can expect a share on the death of his father. Therefore, as long as Kannivelu Mudaliar was alive, the appellant would not have had a share. Kannivelu Mudaliar had passed away on 15.05.1981 and it is only after the death of



Kannivelu Mudaliar, the plaintiff and the defendants get a right in the property. The trial Court as well as the Lower Appellate Court proceeded that the partition document dated 12.10.1979 confers right on the plaintiff.

8. I am unable to agree since the plaintiff is not a class-I heir. The mere fact that a person joins a document does not mean he has a right in the same. I am fortified on this issue by a Judgment rendered by my learned brother Justice N.Anand Venkatesh, in S.A.No. 211 of 2015 dated 18.05.2022. This is not the case of coparcenary where the plaintiff would have got a right by birth. Admittedly, the properties belong to Natesa Mudaliar and on his death, the property vested only with his wife, son and daughter ie., the grandmother, father and paternal aunt of the plaintiff. Both the Courts below have proceeded on the basis that since he was a party to the document, he gets a share and have declared the plaintiff's share as $6/10^{\text{th}}$. In the light of the discussion, while decreeing the suit, I modify the share of the plaintiff from $6/10^{\text{th}}$ to $1/5^{\text{th}}$. The Second Appeal is partly allowed. The Judgment and Decree of the Courts below granting a preliminary decree is confirmed. The share alone is reduced from $6/10^{\text{th}}$ to $1/5^{\text{th}}$.



9. Mr.P.Sivamani, learned counsel appearing for the respondents submitted that the final decree has been passed and the execution proceedings are pending. Consequent to the modification of the preliminary decree, a fresh final decree will be passed and thereafter, the plaintiff is entitled to proceed in accordance with law.

10. In fine, the Second Appeal is partly allowed. The Judgment and Decree in O.S.No. 7577 of 1999 dated 12.08.2005 is confirmed and the Judgment and Decree in A.S.No. 377 of 2006 dated 19.11.2007 is modified. The plaintiff is declared to have 1/5th share in the properties left behind by Kannivelu Mudaliar. As the parties are closely related, I am not ordering costs in the Appeal. Consequently, connected Civil Miscellaneous Petition is closed.

17.04.2023
(1/2)

vsg

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. V Additional Judge, City Civil Court,
Chennai.
2. II Assistant Judge, City Civil Court, Chennai.



WEB COPY



7

V. LAKSHMINARAYANAN . J.

vsg

**S.A.No. 959 of 2009
And
C.M.P.No. 1 of 2009**

**17.04.2023
($\frac{1}{2}$)**