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REV.APLC.(MD)NO.132 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

REV.APLC.(MD)No.132 of 2022 in
S.A.No.1332 of 2003

Subramaniam(Died)

... 1st Respondent

1. S. Nagarajan
2. G. Sankari
3. S. Sudha
4. G. Nagaretinam
5. G. Vanaja

... Review Petitioners

Vs.

1. K.S. Annapoorani Bai (Died)

2. N. Arulchandar

... Respondents 1 & 2 /
Appellants 1 & 2

3. Vairavan (Died)
4. Kulalamani (Died)
5. Nagarajan (Died)
6. Rajamani (Died)

7. Gandhi Bai
8. Ramachandran

9. Vaidyalingam (Died)

10. B. Kalavathy
11. K. Vasanthi
12. R. Satheesh Kumar

13. V. Nagendran (Died)
14. R. Gomathi



15. R. Valliammal
16. R. Kamalam
17. R. Krishnammal
18. K. Sankari
19. Kamala
20. N. Sankar

... Respondents 3 to 20 /
Respondents 1 to 19

21. N.A. Nagalatha (Died)

22. Rajaram
23. Karthik

... Respondents 21 to 23 /
Respondents 20,22 & 23

Prayer: Review petition is filed under Order 47 Rule 1 of CPC, against the Judgement and Decree passed in S.A. No.1332 of 2003 dated 05.10.2021 passed by the Court.

(Cause title is accepted vide Order dated 12.09.2022 made in CMP(MD)No.8029 of 2022 in Rev. Aplc. (MD)No.SR12751 of 2022)

For Petitioners : Mr.T.S.R. Venkat Ramana

For R-2 : Mr.J.Parthasarathi,
for Mr.B.Ponnu Pandi.

For R-7 & R-15 : Mr.G.Ramanathan

For R-10 to R-12 : Mr.M.P.Senthil

For R-22 & R-23 : Mr.P.S.Ganesan

For R-8, R-14,
R-16 to R-18 : No appearance.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The plaintiff in O.S.No.1055 of 1985 on the file of the II Additional District Munsif, Nagercoil, filed S.A.No.1332 of 2003. It was a suit for partition. The second appeal was disposed of as follows:-

“1) That the judgment and decree, dated 28.03.2003 passed in AS No.91 of 2000 on the file of the I Additional Sub Court, Nagercoil, be and hereby are set aside.

2) That the present appellant Arulchandar shall be entitled to 1/8th undivided share in both the suit items. Rajaram and Karthick, husband and son of Nagalatha, shall be entitled to 1/8th share in both the suit items by virtue of being the legal heirs of the original plaintiff Annapoorani Bai.

3) That the Ex.A8 executed by the legal heirs of Shankaran in favour of Subramanian (R1 herein) be and hereby is valid to the extent of Vendor's 1/4th undivided share. Subramanian and



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the legal heir of his sibling Vaidyalingam shall be entitled to 1/4th undivided share in both the suit items in their capacity as legal heirs of Nagarammal.

4) That the legal heirs of Vairavan shall be entitled to 1/4th undivided share in both the suit items. The legal heirs of Shankaran shall have 1/4th undivided share in item No.2.

5) That this second appeal is disposed as above.

6) That there be no costs in the second appeal. ”

Aggrieved by the same, the legal heirs of the deceased first respondent in the second appeal have filed this review application.

3. The learned counsel appearing for the review applicants reiterated all the contentions set out in the grounds for review. The learned counsel appearing for the review applicants fairly stated that he would not fault the judgment of this Court to a substantial extent. He has only one grievance



regarding allotment of shares. The case involved four branches, namely, Vairavan branch, Shankaran branch, Nagarammal branch and Saraswathy branch. This Court held that each branch was entitled to $1/4^{\text{th}}$ share. Ex.A.8 was executed by the legal heirs of Shankaran in favour of the first respondent Subramanian. However, I had held that it would be valid to the extent of vendor's $1/4^{\text{th}}$ divided share. I had also noted that the deceased first respondent will be entitled to $1/4^{\text{th}}$ undivided share in both the suit items in their capacity as legal heirs of Nagarammal. The learned counsel wants this Court to work out the equities in such a manner so that the review applicants can take the entire first item. There are two items of property. Since the total share of Shankaran will be 1.87 cents, he wants the first item in its entirety to be allotted to Shankaran branch.

4. This issue cannot be gone into in this review application. This is for more reasons than one. The petitioners' counsel would rely on the principle of feeding the estoppel. That doctrine cannot be invoked. Shankaran branch had only $1/4^{\text{th}}$ share in the first item. $1/4^{\text{th}}$ share of Shankaran branch in



the second item cannot be taken away so as to cause accretion to their share in the first item. In any event, these are matters that will have to be worked out in the final decree proceedings, when the Court will physically divide and allot items. Granting liberty to the review applicants to work out their rights in the final decree proceedings, this review application stands dismissed. No costs. I make it clear that the dismissal of this review application will not affect their case in the final decree proceedings.

03.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No

PMU

To:

The II Additional District Munsif,
Nagercoil.



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G.R.SWAMINATHAN,J.

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