



A.S.(MD)No.120 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.120 of 2014

and

M.P(MD)No.1 of 2014

Nithya

..Appellant/Plaintiff

Vs.

1.Annamalai

2.Pushpam

3.Gunasekaran

4.Nambirajan

...Respondents/Defendants

(the respondents are exparte
before the trial Court. Hence,
notice may given up against them)

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, as against the judgment and decree dated 01.04.2014 passed in O.S.No.36 of 2012 on the file of the learned Principal District Judge, Pudukkottai.

For Appellant	: Mr.D.Rameshkumar
For R3&R4	: No appearance
For R2	: No appearance



WEB COPY



A.S.(MD)No.120 of 2014

JUDGMENT

Aggrieved over the dismissal of the suit filed by the next friend and guardian of the appellant, the present appeal is filed. The suit has been filed for claiming partition.

2.It is the case of the plaintiff that the suit property originally belonged to one Arunachalam, who died leaving behind the defendants 1 to 4 and one Nagarethinam, who is the father of the plaintiff, died 16 years back, as his legal heirs. After the demise of the said Nagarethinam, his wife remarried to another person and she left her daughter under the care and custody of the maternal grandfather. She has not only left the minor child, but also left her 1/5th share in the above property. The plaintiff demanded partition. But, the defendants failed to do the same. Hence, the suit has been laid by the grandfather on behalf of the minor plaintiff.

3.The defendants 1 and 2 remained ex-parte before the trial Court. Though the defendants 3 and 4 appeared before the Court, they did not file any written statement.

2/6



A.S.(MD)No.120 of 2014

WEB COPY

4.Before the trial Court, on behalf of the minor, his maternal grandfather was examined as P.W.1 and Ex.A.1 to Ex.A.6 were marked . On the side of the respondent, no witness was examined and no documents were marked.

5.The trial Court, after considering the oral and documentary evidence, has simply dismissed the suit on the ground that no documents have been produced, except patta and further Ex.A.4 is the Legal Heirship Certificate of the plaintiff, which shows that the plaintiff is 18 years, when P.W.1 was examined and therefore, P.W.1 is not entitled to represent as a guardian of the minor. Challenging the same, the present appeal is filed.

6.Despite the name was printed in the cause list, none appeared for the respondents today.

7.On a perusal of the judgment of the trial Court, it is seen that the trial Court simply dismissed the suit mainly on the ground that at the time of evidence of P.W.1, the minor has attained 18 years and further, except patta,



A.S.(MD)No.120 of 2014

no other document has been filed. Therefore, this Court is of the view that the following point is raised for consideration:

(1)Whether the trial Court is right in dismissing the suit in short point without giving an opportunity to the plaintiff, who attained majority at the relevant point of time?.

8.Admittedly, on the date of evidence of P.W.1, the minor has already attained majority. As per P.W.1, the trial Court ought to have taken steps and would have directed the parties to file an application to declare the plaintiff as major in the manner known to law and discharged the guardian.

9.This being the matter, the trial Court is wrong in dismissing the suit, without giving an opportunity to the plaintiff to prove his case. Such view of the matter, the judgment of the trial Court is set aside and the matter is remanded back to the trial Court and the trial Court shall give an opportunity to the plaintiff and also give opportunity to implead any parties, if necessary and proceed with the trial, thereafter, the trial Court also to consider the same and pass appropriate judgment on merits and in



A.S.(MD)No.120 of 2014

WEB COPY

accordance with law, within a period of eight months from the date of receipt of a copy of this judgment.

10. With the above direction, the Appeal Suit is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

Index : Yes/No

Internet : Yes/No

Ns

To

1. The Principal District Judge,
Pudukkottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.120 of 2014

N.SATHISH KUMAR, J.

Ns

Judgment made in
A.S.(MD)No.120 of 2014
and
M.P(MD)No.1 of 2014

15.03.2023