



S.A(MD)No.694 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.694 of 2016

and

C.M.P(MD)No.10666 of 2016

Sivakumar

... Appellant/Appellant/2nd Defendant

Vs.

1.Bhargavy

...1st Respondent/1st Respondent/
Plaintiff

2.Krishna Prasad

3.Panchayuthan (Died)

...Respondents 2 & 3/Respondents 2 &3
...Defendants 1 & 3

4.Pushpalatha

5.Pradeep

6.Pratheesh

7.Prabin

...Respondents 4 to 7

(Respondents 4 to 7 are brought on record as LRs of deceased R3, vide Court order dated 27.10.2017 made in C.M.P(MD)No.2650 of 2017 in S.A(MD)No.694 of 2016 by SBJ)



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PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.09.2013 made in A.S.No.39 of 2010 on the file of District Court, Nagercoil, confirming the judgment and decree, dated 06.01.2010 made in O.S.No.61 of 2006 on the file of Sub Court, Padmanabhapuram.

For Appellant : Mr.V.Georgeraia

For R1 – R2 : No Appearance

For R4 - R7 : Mr.J.John Jeyakumar

JUDGMENT

1.1. The second defendant in the suit is the appellant. The first respondent filed a suit claiming half share in the suit property. The suit was decreed in respect of half share in the suit property. The second defendant filed a written statement, supporting the case of the first respondent and he also claimed 1/4th share in the suit property. The suit was decreed by the trial Court granting half share in favour of the first respondent. Aggrieved by the judgment of the trial Court, the appellant herein filed a first appeal seeking 1/4th share as claimed by him in his written statement. The first appeal was



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dismissed by the First Appellate Court stating that the appellant was not entitled to any share in the suit property. Aggrieved by the same, the appellant/second defendant in the suit is before this Court.

1.2. The first respondent/plaintiff is the sister of the second respondent/first defendant. The appellant/second defendant is the son of the second respondent. The third respondent /3rd defendant is a purchaser of 50 cents in Item No.1 from the second respondent.

2.1. According to the first respondent/plaintiff, the suit property originally belonged to her maternal grand-father Ramakrishnan, who died in the year 1946. After his death, his only daughter namely mother of the first and second respondents Kamalakshi succeeded to the suit properties. The said Kamalakshi died in the year 1963 and her husband Sivanpillai died in the year 1987. Therefore, according to the first respondent, she and her brother, the second respondent, are entitled to half share in the suit properties. It is also pleaded the appellant herein as a son of the second respondent acquired birth right and hence, he is entitled to 1/4th share.



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2.2. The second respondent namely, the brother of the first respondent/plaintiff remained ex-parte and the suit was contested only by the appellant/second defendant and the 3rd respondent/3rd defendant.

2.3. The appellant/second defendant filed a written statement supporting the averments contended in the plaint. The appellant in his written statement claimed that he acquired birth right in the ancestral properties and hence, he was also entitled to 1/4th share in the suit property.

2.4. The third respondent herein filed a written statement raising a plea that the suit property originally belonged to Sivanpillai and the first respondent herein was given in marriage thirty years ago with sufficient *Stridhana* and hence, she has no right in the suit property. It was also further pleaded that after the death of Sivanpillai, the second respondent herein got the entire suit property and he sold portion of the same to the third respondent. Thus he claimed absolute right over the property purchased by him from the second respondent.



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3. The trial Court, on appreciation of evidence available on record, came to the conclusion that the first respondent/plaintiff proved her case and granted a decree for half share. Though the appellant herein prayed for preliminary decree in respect of his 1/4th share, in the preliminary decree passed by the trial Court, there was no mention about the share to be allotted to the appellant. Therefore, he filed an appeal in A.S.No.39 of 2010. The First Appellate Court had given a finding that the appellant is not entitled to 1/4th share in the suit property and dismissed the appeal. Aggrieved by the same, the second defendant in the suit has come by way of this second appeal.

4. The learned counsel appearing for the appellant submitted that the Courts below having come to the conclusion that the property originally belonged to the great grand-father of the appellant, namely Ramakrishnan, ought to have granted a decree for 1/4th share in favour of the appellant, as the appellant acquired birth right in the ancestral properties.

5. The said contention of the learned counsel for the appellant cannot be accepted in view of his own pleadings. In the written statement, the appellant herein supported the pleadings of the first respondent/plaintiff and submitted



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to the suit. In other words, he admitted the plea of the first respondent that the property originally belonged to the maternal grand-father of respondents 1 and 2, namely Ramakrishnan and on his death, his only daughter namely Kamalakshi succeeded to his estate. It is also admitted that after the death of Kamalakshi, the property was inherited by her daughter and son namely the first and second respondents. In that case, the suit property cannot be treated as coparcenary property of the family of the appellant, as he claim right over the property through maternal line.

6. In view of the admitted position in the pleadings, during the life time of appellant's father namely the second respondent, the appellant is not entitled to claim any share in the suit property. Consequently, the findings rendered by the First Appellate Court that the appellant is not entitled any share in the suit property need not be disturbed.

7. In fine,

(a) the Second Appeal stands dismissed and the judgment and decree, dated 27.09.2013 made in A.S.No.39 of 2010 on the file of District Court, Nagercoil stands confirmed;



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(b) in the facts and circumstances of the case, there would be no

order as to costs; and

(c) consequently, connected Miscellaneous Petition is closed.

23.02.2023

NCC : Yes/No
Index : Yes / No

vsd

To

- 1.The District Court,
Nagercoil.
- 2.The Sub Court,
Padmanabhapuram.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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