



S.A.(MD).No.525 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.525 of 2017

and

C.M.P.(MD)No.11330 of 2017

M.Ganesan

... Appellant

/Vs./

1.Susila

2.Nirmala

A.Mahamani (died)

3.Jeyalakshmi

4.Mallika Rani

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 16.12.2014, in A.S.No.1 of 2012 on the file of Additional District Sessions Court, Dindigul, confirming the Judgment and Decree, dated 14.11.2011, in O.S.No.429 of 2002 on the file of Sub Court, Palani.

For Appellant : Mr.H.Lakshmi Shankar



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JUDGMENT

The plaintiff and the defendants are sisters and brother. Originally the suit property was purchased by one Kamatchi Pillai who is the grandfather of the plaintiff and defendants. The said Kamatchi Pillai had two sons namely Iyyanperumal Pillai and Marimuthu Pillai. The said Kamatchi Pillai had executed Will and the suit property was allotted to Iyyanperumal Pillai and Marimuthu Pillai was allotted another property. The said Iyyanperumal Pillai is having three daughters namely Nirmala (D1), Suseela (plaintiff), Jeyalakshmi (D2) and Mahamani (D3). The said Suseela filed suit for partition claiming 1/4th share. The 3rd defendant took a plea that the property is an ancestral property. Therefore, the plaintiff and other daughters are entitled to 1/8th share only. However, disbelieving the case of the defendants, the Trial Court as well as the First Appellate Court has decreed the suit granting 1/4th share.

2. The further contention of the appellant is that the son Mahamani is living with his family in that property. Pending suit, the said Mahamani died and his legal heirs namely Ganesan (son) who is living with his



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family and daughter M.Mallikarani (daughter) who is living in different place, were impleading as parties. Further the appellant submitted that the extent of the property is 1035 square feet and the same is not divisible in metes and bounds. If it is divided in metes and bounds, nobody can enjoy the property and the property would be useful, if it is kept as such by one person. Therefore, the plaintiff offered to pay the value of the shares in the suit property to the daughters, but the plaintiff and other daughters rejected the offer. The appellant further submitted that in a partition it is not necessary that each and every property must be partitioned and that the parties are put in separate possession of respective portions of properties falling to their share. But both the courts have failed to consider the same.

3. The Learned Counsel relied on the judgment dated 23.04.2002 of the Hon'ble Supreme Court in M.L. Subbaraya Setty (Dead) and others Vs. M.L. Nagappa Setty (Dead) by Legal Heirs reported in (2002) 4 SCC 743 wherein it was held,



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“29. The Trial court for allotting the Coffee estate and other immovable properties only to the defendants relied upon the underlined sentence in direction No. 4 of the earlier decision. The direction has been misconstrued and misinterpreted by the trial court. It is true, as contended by Mr. Shanti Bhushan, that the direction that the plaintiff is entitled to 2/19th share in the joint family property and that he shall be put in separate possession of the properties giving him share by metes and bounds does not mean that every item of the property is to be divided between co-shares. It is correct that the only requirement is that property allotted to each co-sharer should bear approximately the same value as corresponds to his share. It may also not be necessary that if the properties consist of movable and immovable properties then each party must necessarily be given a share in all movable and immovable properties. While effecting partition of joint family properties, it may not be possible to divide every property by metes and bounds. The allocation of properties of unequal value may come to the share of a member of a joint family at the time of effecting partition but for that necessary adjustments have to be made. It can also happen that some of the co-sharer on partition may not get any share in immovable property. No hard and fast rule can be laid. It depends upon the facts of each case. It depends upon the nature of the immovable property and number of such properties as also the number of members to whom it is required to be divided. Properties of a



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larger value may go to one member. Property of lesser value may go to another. What is necessary, however, is the adjustment of the value by providing for payment by one who gets property of higher value. In short, there has to be equalization of shares. But that is not what has been done by the Trial Court in the present case. The Trial court going by the valuation of July, 1940 has allotted shares and bonds to the plaintiff and immovable property to the defendants and for this partition support was also sought to be drawn from the aforequoted sentence from direction No. 4. That was certainly not the intention. It was a case of a total misinterpretation and misconstruction of the decree passed by this Court which has been set right by the High Court in judgment under appeal. It was not the direction of this Court that in each and every number of the Coffee estate, the plaintiff should be given 2/19th share by metes and bounds. We do not think that the impugned judgment of the High Court also directs that.”

4. After hearing the arguments, this Court had given its anxious consideration. It is seen that the appellant had challenged the preliminary decree. The present plea is available to the appellant before the Court which would consider the final decree application. The Trial Court which would consider the final decree application shall consider the present



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plea and pass appropriate orders. If it is not divisible in metes and bounds the appellant may submit a proposal to calculate the value of the share and the appellant shall deposit the amount equivalent to the value of the share. The same may be considered by the Trial Court and pass appropriate orders.

5. With the above observations, the judgment and decree passed by the Lower Court is confirmed with the above modification. Hence, the second appeal is disposed of in above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

NCC : Yes / No

Tmg



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TO:

1. Additional District Sessions Court, Dindigul.
2. Sub Court, Palani.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.525 of 2017

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