



S.A.(MD)No.326 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.326 of 2023

Arjunan

... Appellant

/Vs./

1.Sasi

2.Retnam

3.Vijayan

4.Suseela

5.Thankam

6.Kumaradhas

7.Vilila

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 13.08.2019 made in A.S.No.75 of 2013 on the file of the learned Subordinate Judge, Kuzhithurai, Kanyakumari District, confirming the judgment and decree dated 05.10.2013 made in O.S.No.304 of 2009 on the file of the I Additional District Munsif Court, Kuzhithurai, Kanyakumari District, by allowing the present second appeal.



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For Appellant : Mr.G.Ramanathan
For Respondent : Mr.D.Srinivasaragavan (R1 & R7)
Mr.K.N.Thampi (R2, R4 to R6)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit in O.S.No.304 of 2009 on the file of the I Additional District Munsif, Kuzhithurai. The respondents 1 to 6 are the defendants in the said suit. The suit was filed for partition and the appellant / plaintiff claimed 1/6 share in the suit schedule property.

2. According to the appellant / plaintiff, as a brother, he is entitled to 1/6 share in the suit schedule property, as Mr.Retnamany, his brother died as bachelor. However, as seen from the written statement filed by the respective respondents / defendants, Mr.Retnamany died leaving behind his mother as Class-I legal heir as per the Hindu Succession Act,



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1956 and therefore, the appellant / plaintiff and his siblings are not entitled for any share in the suit schedule property. It is also their contention that his mother namely, Sundari, while she was alive after inheriting the property from her deceased son, namely, Mr.Retnamany had also sold the property to the respondents 3 and 6 / defendants 3 and 6 respectively under two separate sale deeds, which have been marked as exhibits before the trial Court. Based on the above contentions, the defendants have categorically pleaded that the appellant / plaintiff do not have any share in the suit schedule property.

3. The trial Court, namely, the I Additional District Munsif Court, Kuzhithurai, by its judgment and decree dated 05.10.2013 passed in O.S.No.304 of 2009 dismissed the suit filed by the appellant / plaintiff on the ground that his mother being a Class-I legal heir is alone entitled to inherit the property left behind by his late brother, Mr.Retnamany.

4. This Court does not find any infirmity in the findings of the trial Court, as being a mother, she is a Class-I legal heir, whereas the plaintiff being the brother of the deceased bachelor is only a Class-II legal heir.



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The other siblings of the deceased brother are also Class-II legal heirs and they are also not entitled for the suit schedule property as per the Hindu Succession Act, 1956. After inheriting the property, the mother of the deceased son, Mr.Retnamany has also sold the property to the third and sixth respondents, who are the defendants 3 and 6 respectively in the suit under two sale deeds both dated 25.03.1997 (Ex.B6 & Ex.B8). Subsequently, the third respondent / third defendant has also sold his property to the first and seventh respondents under sale deed dated 25.06.2009 (Ex.B7). As observed earlier, being the only Class-I legal heir, the mother is entitled to exclusively inherit the suit schedule property from her deceased son, Mr.Retnamany, who died as bachelor, as she was the only Class-I legal heir at the time of death of the deceased bachelor, Mr.Retnamany.

5. The lower appellate Court, in the appeal filed by the appellant/ plaintiff, namely, the Sub Court, Kuzhithurai, by its judgment and decree dated 13.08.2019 passed in A.S.No.75 of 2013 has also rightly confirmed the findings of the trial Court by dismissing the appeal filed by the appellant / plaintiff by holding that the appellant / plaintiff is not entitled



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to claim 1/6 share in the suit schedule property, as the appellant / plaintiff is not a Class-I legal heir as per Section 8 of the Hindu Succession Act, 1956. This Court does not find any infirmity in the same.

6. Both the Courts below have rightly held that the appellant / plaintiff is not a Class-I legal heir and when his mother being a Class-I legal heir was very much alive at the time of death of the deceased bachelor, Mr.Retnamany, the question of allotting shares to the appellant / plaintiff will not arise, as he is only a Class-II legal heir.

7. The substantial questions of law raised in the grounds of appeal by the appellant / plaintiff are all issues which have been rightly considered by the Courts below, which have rejected the contentions of the appellant / plaintiff, as he is only the Class-II legal heir and he is not entitled to any claim in the suit schedule property, when Class-I legal heir namely his mother was very much alive at the time of death of the deceased bachelor, Mr.Retnamany. There are no substantial questions of law involved in this second appeal for further consideration by this Court under Section 100 of CPC.



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8. In the result, there is no merit in this second appeal.

Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

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Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Subordinate Judge, Kuzhithurai, Kanyakumari District.
- 2.The I Additional District Munsif Court,
Kuzhithurai, Kanyakumari District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.326 of 2023

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