



S.A.Nos.373 and 374 of 1997

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.Nos.373 and 374 of 1997

S.A.No.373 of 1997

- 1.Y.Chinnathangam (died)
- 2.Mary Angel
- 3.Mariammal
- 4.Mary Stella Roseling
- 5.James Carmel Paulraj (died)
- 6.Daisy Metilda
- 7.S.Joseph Selvaraj
- 8.Delphin Quorettee

A4 to A8 are bring on record as LR's. of the deceased A1, as per order dated 26.02.2019 in C.M.P.No.10693 to 10695 of 2016 in S.A.No.373 of 1997.

9.G.Veronikam

10.Brindha Merin

AA9 and 10 are brought on record as LR's of the deceased 5th appellant vide Court order dated 23.09.2020 made in C.M.P.(MD).No.1354, 1358 and 1359 of 2020 in S.A.No.373 of 1997 by this Court.

... Appellants



S.A.Nos.373 and 374 of 1997

VS.

1.Y.Theresammal

2.Swamidhas

3.Sthanislaus

4.Mariathangam

5.S.Vincent Raj (died)

6.S.Aruldhasan (died)

7.Maria Pushpam

8.Y.Ponnammal

9.Wilson

10.G.Nelson

11.Alson Sobitha Raj

12.Celesti Bai

13.Mary Allby

14.V.Prakash Raj

15.Carol Joseph Raj

16.Benitta Mary Redleene

respondents 13 to 16 are brought on record
as LR's of the deceased R5 vide Court order
dated 21.04.2022 made in C.M.P.(MD).No.2682 of 2022
in S.A.No.373 of 1997.

17.Nirmala

18.A.Geetha

19.A.Prema

respondents 17 to 19 are brought on record as LR's of the
deceased 6th respondent vide Court order dated 19.07.2023
made in C.M.P.(MD).Nos.10649, 10651 and 10654 of 2022
in S.A.No.373 of 1997.

... Respondents



S.A.Nos.373 and 374 of 1997

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Principal District Judge, Kanyakumari District at Nagercoil in A.S.No.18 of 1993 and A.S.No.20 of 1993, dated 15.12.1995, on the file of Subordinate Judge, Padmanabhapuram, pursuant to the judgment and decree in O.S.No.43 of 1985, dated 27.11.1992.

For A4, A6 and A10 : Mr.N.Rhamadullah
For A3 : Mr.G.Madhavan
A1, A2 and A5 died
For Respondents : Mr.M.Vallinayagam, Senior counsel
for M/s.K.Elil Selvi
For R13 to R17 & R19 : Mr.C.Vakeeswaran
R5 and R6 died
R2 to R4, R7, R8 and R10 dismissed

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Y.Theresammal

... Appellant

vs.

- 1.A.Swamidhas(died)
- 2.Sthanislaus
- 3.Chainnathangam (died)
- 4.Mrs.E.Mary Angel(deceased)
- 5.A.Mariammal
- 6.Mariathangam
- 7.S.Vincent Raj (died)
- 8.Aruldhasan(died)
- 9.Mariapushpam
- 10.Ponnammal



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11. Wilson

12. Nelson

13. Alson Sobitha Raj

14. Celesti Bai

15. D. Dennis Rex (died)

16. Louis Mary Julius

17. Josephin Mary Pandian

18. Arul Xavier (died)

19. D. John Jaisingh

RR15 to 19 are brought on record
as LR's of deceased 4th respondent
vide Court order dated 16.12.2003 in
C.M.P.No.11022 of 1999.

20. A. Nirmala

21. A. Geetha

22. A. Prema

RR 20 to 22 brought on record as
LR's of the deceased R8 vide order
dated 02.03.2010 made in M.P.Nos.1 to 3 of 2007
in S.A.No.374 of 1997.

23. Stella Roelin

24. Daicy Mettilla

25. Selvaraj

26. Dolphin Koratti

27. Ranikkam

28. Brientha

Respondents 23 to 28 are brought on record
as LR's of the deceased R3 vide Court order
dated 29.03.2022 made in C.M.P.(MD).Nos.2824 to
2829 of 2019 in S.A.No.374 of 1997.

29. M. Jesu Stella Bai

30. D. Annie Sophia Rexline

31. David Rex



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Respondents 29 to 31 are brought on record as
LRs of the deceased R15 vide Court order dated
29.03.2022 made in C.M.P.(MD).Nos.2824 to
2829 of 2019 in S.A.No.374 of 1997.

32.Mary Allby

33.V.Prakash Raj

34.Carol Joseph Raj

35.Benitta Mary Redleene

Respondents 32 to 35 are brought on record
as LRs of the deceased R7 vide Court order
dated 04.04.2022 made in C.M.P.(MD).No.3011 of 2022
in S.A.No.374 of 1997.

36.A.Rose Antony Joys

37.A.Rabinson

38.A.Subin

respondents 36 to 38 are brought on record as LRs
of the deceased 18th respondent vide Court order
dated 19.07.2023 made in C.M.P.(MD).Nos.8423, 8426
and 8427 of 2023 in S.A.No.374 of 1997.

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Principal District Judge, Kanyakumari District at Nagercoil in A.S.No.18 of 1993 and A.S.No.20 of 1993, dated 15.12.1995, pursuant to the judgment and decree in O.S.No.43 of 1985, dated 27.11.1992, on the file of the Subordinate Judge, Padmanabhapuram.

For Appellant	:Mr.M.Vallinayagam, Senior counsel for M/s.K.Elil Selvi
For R7	: Mr.C.Vakeeswaran
For R5, R16 to R19	: Mr.R.P.Ramachandran
For R9	: Mr.V.Angasamy
R1, R2, R3, R4, R8, R15 and R16 died	



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COMMON JUDGMENT

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These Second Appeals have been filed against the judgment and decree passed by the Principal District Judge, Kanyakumari District at Nagercoil in A.S.Nos.18 and 20 of 1993, dated 15.12.1995, pursuant to the judgment and decree passed by the Subordinate Judge, Padmanabhapuram. in O.S.No.43 of 1985, dated 27.11.1992.

2. While admitting these second appeals, this Court, on 31.03.1997, framed the following substantial questions of law:

(i) Whether the finding of the lower Court that the share of Arulappan the father of Yestak Nadar who died in the year 1941 devolved not only to his son Yestak Nadar but also to his wife and daughters under the provisions of Travancore Christian Succession Act is correct?

(ii) Whether the determination of share to the plaintiff and defendants 4 to 6 is against Travancore Christian Succession Act in respect of succession which opened prior to 01.04.1951?

3. When the matters came up for hearing today, after making the submissions, by referring to the Indian Succession Act, 1925 as well as the Travancore Christian Succession Act, both the learned counsel



appearing for the appellants as well as the respondents narrow down the issues and the learned counsel for the appellants submitted as follows:

(1) Admittedly, suit item-2 (except 7 cents in survey No.593A belongs to Arulappan), Item-6, 7, 8 and 10, one half (1/2) of item 12, 13 and 14 of “A” Schedule belong to plaintiff's father Yestak Nadar. Therefore, the plaintiff is entitled to 1/6 share in the said properties as correctly held by the courts below. There is no dispute in this regard in the present second appeal.

(2) The “B” schedule properties admittedly belong to plaintiff's mother Sebestiyaye. Therefore, the plaintiff is entitled to 1/6 share in “B” schedule properties as correctly held by the court's below. The appellant is satisfied with the decree of the courts below in respect of “B” schedule property.

(3) The item-1, 7 cents (Survey No.593A) in Item-2 1/2 share in item-3, item-4, 5 and 9 “A” schedule belong to their grandfather “Arulappan Nadar”. Arulappan Nadar admittedly died in 1941. On the date of his death, Travancore Christian Succession Act (regulation No.II (1092.M.E.) was in force. According to Travancore Christian Succession Act, Widow or mother shall have only life interest and daughter shall not be entitled to succeed to the properties of deceased. Therefore, Arulappan's daughter Prakasi, Varuvel and Cruzantony did not have any right over his properties. Arulappan's wife Mariantony also died on 10.08.1961. Therefore, the entire properties of plaintiff's grandfather “Arulappan” devolved



upon his only son the plaintiff's father Yestak Nadar and the plaintiff and the defendants 2 to 5 are equally entitled to 1/6 share in all the suit "A" schedule properties. The first appellate Court has failed to decide the case applying the provisions of Travancore Christian Succession Act relating to properties of plaintiff's grandfather Arulappan.

(4) The plaintiff's grandfather Arulappan's daughter Pragasi, Varuvel and Cruzantony had not claimed any right over his properties. During the pendency of the suit, the 2nd defendant with a view to reduce the plaintiff's share, has obtained release deeds under Ex.B8 and B9 as if they are also having share in the plaintiff's grandfather Arulappan's properties. When, they can't have no share as per the provisions of Travancore Christian Succession Act which was in force on the date of death of Arulappan Nadar. Therefore, the release deed obtained by the 2nd defendant from the daughter of Arulappan is void document and hence 2nd defendant can't claim more than 1/6 share on account of this release deed.

(5) The plaintiff's grandfather Arulappan had 1/2 share in item-3 of "A" schedule. He died in 1941. His entire properties devolved upon his only son Yesthak Nadar under Travancore Christian Succession Act. The courts below ought to have granted 1/6 share in one half (1/2) of 3rd item of "A" schedule in favour of appellant herein.

(6) The plaintiff's grandmother Mariantony was the



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exclusive owner of item-11 of “A” schedule. She died on 10.08.1961. All her three daughters namely Prakasi, Varuvel and Cruzantony and her son Yestak Nadar have equal share. The plaintiff is entitled to 1/6 is one fourth ($\frac{1}{4}$) of her property in item-11 of “A” schedule being a daughter of Yestak Nadar.

(7) The 2nd defendant and plaintiff's father Yestak Nadar have purchased the item-12 of “A” schedule properties. Yestak Nadar has one half ($\frac{1}{2}$) of item-12 of “A” schedule. Being a daughter, the plaintiff is entitled to 1/6 in one half of his item-12 of “A” schedule.

(8) The House property in Survey No.593A (7cents) in item-2 of “A” schedule bearing Door No.25/105 and 25/101 exclusively belongs to grandfather of the plaintiff and the plaintiff's father become absolute owner of the property on the demise of Arulappan Nadar in the year 1941 under Travancore Christian Succession Act and therefore, plaintiff has got 1/6 share in the house properties in item-2 of “A” schedule.

(9) Hence, the plaintiff is entitled to 1/6 share in item-1, 2 (including 7 cents in survey No.593A), Item-4, 5, 6, 7, 8, 9, 10, 13, 14 in “A” schedule and item-1 and 2 of “B” Schedule and 1/12 in Item-3, Item-12, (total) in “A” schedule” and 1/24 in item-11 in “A” schedule.

(10) It is also pertinent to say the 3rd defendant



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Stantislav (nun) executed the release deed Ex.B10 in favour of the 2nd defendant in respect of her proposed shares excluding the item 7, 13, 14. Therefore, being a sister of deceased 3rd defendant (nun), the plaintiffs entitled to 1/5 share in item 7, 13, 14 in "A" schedule".

4. The learned counsel appearing for the respondents also filed the points for consideration, which read as under:

1) The plaintiff is the appellant in the present second appeal.
(2) The appellant originally filed the suit in O.S.No.43 of 1985 seeking partition. The case of the appellant is that "A" schedule property consists of 14 items. "A" schedule property absolutely belongs to her Father Yesthak Nadar. The 2nd defendant is her brother and defendants 3 to 5 are her sisters. All are having equal 1/6 share in the property of Yesthak Nadar. Likewise, "B" schedule property belonged to their mother Sebastiyaye and the plaintiff and defendants 2 to 5 are entitled to equal 1/6 share in the "B" schedule properties also.

(3) The case of the 2nd and 4th defendant is that, item -1, a portion of 7 cents (survey No.593A) in item-2, 1/2 share in item-3, item-4 and 5 in "A" schedule belong to their grandfather Arulappan. Arulappan died in 1941. He had a son Yesthak Nadar and three daughters namely Pragasi, Varuvel



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and Cruzantony. All the properties of Arulappan devolved upon her son and daughters equally. Therefore, 1/6 share can't granted in favour of plaintiff and defendants 2 to 5. Only $\frac{1}{4}$ of the properties of Arulappan devolved upon his son Yestak Nadar, on his demise in the year 1975, the plaintiff and defendants 2 to 5 can have equal share only in $1 / (4^{th})$ of grandfather Arulappan's properties.

Points for consideration in the present second appeal :-

(1) Admittedly, suit item-2 (except 7 cents in survey No.593A belongs to Arulappan), Item-6, 7, 8 and 10, one half ($\frac{1}{2}$) of Item 12, 13 and 14 of "A" Schedule belong to plaintiff's father Yestak Nadar. Therefore, the plaintiff is entitled to $\frac{1}{6}$ share in the said properties as correctly held by the courts below. There is no dispute in this regard in the present second appeal.

(2) The "B" schedule properties admittedly belong to plaintiff's mother Sebestiyaye. Therefore, the plaintiff is entitled to $\frac{1}{6}$ share in "B" schedule properties as correctly held by the court's below. The appellant is satisfied with the decree of the courts below in respect "B" Schedule property.

(3) The item-1, 7 cents (Survey No.593A) in Item-2 $\frac{1}{2}$ share in item-3, item-4, 5 and 9 "A" schedule belong to their grandfather "Arulappan Nadar". Arulappan Nadar admittedly died in 1941. On the date of his death, Travancore Christian



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Succession Act (regulation No.II (1092.M.E) was in force. According to Travancore Christian Succession Act, Widow or mother shall have only life interest and daughter shall not be entitled to succeed to the properties of deceased. Therefore, Arulappan's daughter Prakasi, Varuvel and Cruzantony did not have any right over his properties. Arulappan's wife Marian Antony also died on 10.08.1961. Therefore, the entire properties of plaintiff's grandfather "Arulappan" devolved upon his only son the plaintiff's father Yestak Nadar and the plaintiff and defendants 2 to 5 are equally entitled to 1/6 share in all the suit "A" schedule properties. The first appellate court has failed to decide the case applying the provisions of Travancore Christian Succession Act relating to properties of plaintiff's grandfather Arulappan.

(4) The plaintiff's grandfather Arulappan's daughter prakasi, Varuvel and Cruzantony had not claimed any right over his properties. During the pendency of the suit, the 2nd defendant with a view to reduce the plaintiff's share, has obtained release deeds under Ex.B8 and B9 as if they are also having share in the plaintiff's grandfather Arulappan's properties. When, they can't have no share as per the provisions of Travancore Christian Succession Act which was in force on the date of death of Arulappan Nadar. Therefore, the release deed obtained by the 2nd defendant from the daughter of Arulappan



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is void document and hence 2nd defendant can't claim more than 1/6 share on account of this release deed.

(5) The plaintiff's grandfather Arulappan had $\frac{1}{2}$ share in item-3 of "A" schedule. He died in 1941. His entire properties devolved upon his only son Yesthak Nadar under Travancore Christian Succession Act. The courts below ought to have granted 1/6 share in one half ($\frac{1}{2}$) of 3rd item of "A" schedule in favour of appellant herein.

(6) The plaintiff's grandmother Marianthony was the exclusive owner of item-11 of "A" schedule. She died on 10.08.1961. All her three daughters namely Prakasi, Varuvel and Cruzanthony and her son Yesthak Nadar have equal share. The plaintiff is entitled to 1/6 is one fourth ($\frac{1}{4}$) of her property in item-11 of "A" schedule being a daughter of Yesthak Nadar.

(7) The 2nd defendant and plaintiff's father Yesthak Nadar have purchased the item-12 of "A" schedule properties. Yesthak Nadar has one half ($\frac{1}{2}$) of item-12 of "A" schedule. Being a daughter, the plaintiff is entitled to 1/6 in one half of his item-12 of "A" schedule.

(8) The House property in survey No.593A (7 cents) in Item-2 of "A" schedule bearing Door No.25/105 and 25/101



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exclusively belongs to grandfather of the plaintiff and the plaintiff's father become absolute owner of the property on the demise of Arulappan Nadar in the year 1941 under Travancore Christian Succession Act and therefore, plaintiff has got 1/6 share in the house properties in item-2 of "A" schedule.

9) Hence, the plaintiff is entitled to 1/6 share in item-1, 2 (including 7 cents in survey No.593A), Item-4, 5, 6, 7, 8, 9, 10, 13, 14 in "A" scheduled and item-1 and 2 of "B" Schedule and 1/12 in Item-3, Item-12 (total) in "A" schedule and 1/24 in item-11 in "A" schedule.

(10) It is also pertinent to say the 3rd defendant Stanislas (nun) executed the release deed Ex.B10 in favour of the 1st defendant in respect her proposed shares excluding the item-, 7, 13, 14, Therefore being a sister of deceased 2nd defendant (nun), the plaintiffs entitle 1/5 share in item-4, 7, 13, 14 in "A" Schedule.

5. A conjoint reading of the points for consideration filed by both the learned counsel appearing for the appellants and respondents, would reveal that both parties have made similar points in line with each other. Therefore, the shares of the respective plaintiffs and the other parties are



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modified to the extent referred to above.

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6. In such a view of the matter, the substantial questions of law are not required to be answered in these matters. Accordingly, both the Second Appeals are disposed of. No costs.

21.09.2023

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order
akv

To

- 1.The Principal District Judge,
Kanyakumari District at Nagercoil.
- 2.The Subordinate Judge,
Padmanabhapuram.
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

KRISHNAN RAMASAMY, J.

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