



S.A.No.1606 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 17.08.2023

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THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.1606 of 2000

and

C.M.P.No.16276 of 2002

Vasantha

... Appellant

-VS-

1.Palaniyammal

2.Palanimuthu

3.Duraipandi

4.Palaniswami

(R4 is declared as major and guardianship is
discharged vide Court order dated 10.07.2018
made in CMP(MD)No.5816 of 2017)

... Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 04.08.1998 made in A.S.No.23 of 1998 on the file of the II Additional District Judge, Tiruchirappalli reversing the Judgment and Decree dated 25.11.1994 made in O.S.No.121 of 1986 on the file of the District Munsif, Turaiyur.

For Appellant

... Mr.T.M.Hariharan



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JUDGMENT

The appellant is the fifth defendant, who is the purchaser. The appellant/fifth defendant has purchased the property from the second respondent/first defendant, who is the husband of the first respondent/plaintiff.

2.The first respondent/plaintiff has filed the suit in O.S.No.121 of 1986 on the file of the District Munsif, Thuraiyur, seeking the relief for division of suit property as two shares and handover the possession in respect of one share and for interim maintenance. In the said suit, the first respondent/plaintiff alleged that she is the first wife of the second respondent/first defendant. Out of the wedlock, one Palanisamy was born. After 20 years, the said Palanisamy, died. Thereafter, she filed the suit. After full-fledged trial, the trial Court dismissed the suit. Challenging the said Judgment and Decree, the first respondent/plaintiff has filed the appeal in A.S.No.23 of 1998 on the file of the Second Additional District Judge, Trichy. After hearing, the first appellate Court allowed the appeal and set aside the Judgment and Decree passed by the trial Court. The first appellate Court came to the conclusion that the first



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respondent/plaintiff is entitled to 1/2 share in the suit schedule property.

Aggrieved over the same, the appellant/fifth defendant/purchaser, has filed the present second appeal before this Court raising the following substantial questions of law:-

“1) Whether the burden is not on the first respondent to show that Palaniswami was born through her wedlock with the 2nd respondent and whether the reversal of the finding of the trial Court in this regard is legal and proper?

2) Whether the burden is not on the 1st respondent to show that the alienations will not bind her and whether the reasoning and findings of the appellate Court to the contra is legally sustainable?

3) Whether the suit is not bad for non-joinder of the brother of the 2nd respondent, admittedly, having a share in the family house?

4) Whether when the appeal is dismissed against the 2nd defendant, whether the appeal as a whole does not abate in the instant case?”

3.However, this Court, after considering the facts and circumstances, while admitting the second appeal, has formulated the following substantial questions of law:



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“1) Whether the burden is not on the first respondent to show that Palaniswami was born through her wedlock with the 2nd respondent and whether the reversal of the finding of the trial Court in this regard is legal and proper?

2) Whether the suit is not bad for non-joinder of the brother of the 2nd respondent, admittedly, having a share in the family house?

4. In this case, notice sent, has been served on the third respondent and his name is also printed in the cause list, however, no one appeared on his behalf. Notice sent to the respondents 1 and 2 were returned with an endorsement 'died' and no steps have been taken to bring the legal heirs of the deceased respondents 1 and 2. Hence, on 25.04.2023, this Court dismissed this second appeal as against the respondents 1 and 2. Service is awaited for the fourth respondent. However, it is stated by the learned counsel for the appellant/fifth defendant that the fourth respondent is mentally affected.

5. The learned counsel for the appellant/fifth defendant would submit that the first appellate Court passed the Judgment and Decree stating that the first respondent/plaintiff is entitled 50% of the share. The



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appellant/fifth defendant purchased only 86 cents situated in S.No.91/2 at Kollampatti village, Thuraiyur Taluk, which is mentioned in the third schedule, from the second respondent/first defendant/husband, prior to the filing of the suit, by way of sale deed dated 02.02.1976, which was marked as Ex.A6. Besides, the lands to an extent of 69 cents in S.No. 153/1 and to an extent of 63 cents in S.No.153/2 and to an extent of 95 cents in S.No.66/15 and a house bearing Door No.1/63 in S.No.151/1 are in Schedule Nos.1, 2 and 4. Hence, the learned counsel requested this Court in the final decree proceedings, the above said 86 cents mentioned in III Schedule, may be allotted to the second respondent/first defendant/husband, so that the interest of the appellant/fifth defendant would be protected.

6.In view of the above fact, this Court feels that there is no necessity to answer the substantial questions of law framed by this Court. Accordingly, considering the request of the learned counsel for the appellant/fifth defendant, this Court directs the Court below, who deals with the final decree proceeding in this matter, to take into consideration the request of the appellant/fifth defendant/purchaser and allot the said 86 cents to the second respondent/first defendant/husband to safeguard



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the interest of the appellant/fifth defendant, when the final decree application is filed.

7. With the above direction, this Second Appeal is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

1.The II Additional District Judge, Tiruchirappalli.

2.The District Munsif, Turaiyur.

3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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