



S.A.No.1648 of 2001

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1648 of 2001

1.A.Gopalakrishnan (Died)

2.G.Gomathi

3.G.Srinivasan

4.G.Kannan

5.Arunachalam

6.Muthulakshmi

(Appellants 2 to 6 are brought on record as Lrs of the deceased sole appellant vide order dated 11.06.2013 made in M.P(MD). Nos.1 to 4 of 2013 in S.A.No. 1648 of 01.)

... Appellants

-Vs-

1.Muthulakshi Ammal

2.Adilakshmi

3.Pappathi

4.Nainar Chettiar

.. Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgement and decree dated 07.04.2000 made in A.S.No.97 of 1998, on the file of the Additional Subordinate Judge, Tirunelveli in confirming the judgment and decree dated 23.09.1998 made in O.S.No.371 of 1996 on the file of the Principal District Munsif Court, Tirunelveli.



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For Appellants : Mr.Athimoolapandian
For Respondents : No appearance

JUDGMENT

Though the second appeal was filed in the year 2001, so far the appeal has not been admitted and the substantial question of law is not formulated. It is strange to say that the second appeal is pending without admitting for the the past 22 years.

2. Today, when the matter is taken up for hearing, there is no representation on behalf of the respondents.

3. The first respondent filed the suit against the first appellant and the respondent 2 to 4 are the defendants 2 to 4 in O.S.No.371 of 1996, before the Principal District Munsif, Tirunelveli. The said suit was filed by the first respondent for partition and the trial Court granted preliminary decree for 1/3rd share declaring that the first respondent/plaintiff is entitled 1/3rd share of the suit property. Challenging the above said judgment and preliminary decree, the first appellant/first defendant filed an appeal before the Additional Subordinate Judge,



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Tirunelveli in A.S.No.97 of 1998. The first appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Therefore, the first defendant in the above said suit as well as the appellant in the first appeal has filed the present second appeal before this Court.

4. This second appeal is pending from the year 2001 without admitting and without formulating the substantial questions of law.

5. The specific case of the first respondent/plaintiff is that the suit property belongs to one Arunachalla Chettiar, who got three sons, namely, Arunagiri Chettiar, Kumaravel Chettiar and Nainar Chettiar. Arunagiri Chettiar got one son, namely, Gopalakrishna Chettiar/first defendant and two daughters, namely, Athilakshmi/second defendant and Papathi/third defendant. Kumaravel Chettiar has got one son, namely, Ramakrishna Chettair and two daughters, namely, Uchimakaliyammal and Muthulakshmi. Kumaravel Chettaiyar has executed a release deed in respect of their property. Therefore, Muthulakshiyammal is entitled to get the share of the Kumaravel Chettiyar. After the death of Arunagiri Chettiyar, Kumaravel Chettaiyar and Nainar Chettiyar



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equally entitled to 1/3rd share in the property. Now, Ramakrishnan and Uchimakali executed release deed in favour of the first respondent/plaintiff and he is entitled to 1/3rd share in the suit property. Therefore, she has filed the suit for partition. The trial Court also granted preliminary decree for 1/3rd share and the first appellant/first defendant filed the appeal and the same was also dismissed. Challenging the same, the second appeal has been filed before this Court.

6. The case of the first defendant/first appellant is that the suit property is not an ancestral property of the Arunachalla Chettiayar and Arunachalla Chettiayar has purchased the property as a self acquired property. After his death, his sons enjoyed the property. Since it is a self acquired property of Arunachalla chettiayar, the plaintiff/Muthulaksumiammal is not entitled to any share from the suit property. The trial Court has failed to consider that the plaintiff has not proved the case that the suit property is an ancestral property of Arunachallam Chettiayar and the plaintiff's father, namely, Kumaravel Chettiayar is entitled to 1/3rd share and therefore, the plaintiff is also entitled to 1/3rd share.



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7. The trial Court failed to consider that the plaintiff has to prove her case on her own strength she cannot take advantage of weakness of the the defendants and simply stated that the first defendant/first appellant has not proved his case that the property is not an ancestral property. It is well settled proposition of law that a person claims any share from the ancestral property, it is the duty to him to prove that it is an ancestral property. Herein, the plaintiff has not proved the same. Therefore, first appellant has filed an appeal and the same was also dismissed and thereafter, approached this Court by way of this second appeal.

8. Heard the learned counsel for the appellants and perused the materials available on records.

9. The learned counsel for the appellants fairly conceded that before the trial Court, the defendant has not proved that it is a self acquired property of Arunachalla Chettiar and therefore, the trial Court finds that it is ancestral property and all the three sons, namely, Arunagiri Chettiar, Kumaravel Chettiar and Nainar Chettiar are entitled to 1/3rd share. Since the plaintiff is the one of the legal heirs of one Kumaravel Chettiar and her brother and sister have executed



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release deed in her favour, she is entitled to 1/3rd share and they have no objection for granting 1/3rd share to the plaintiff.

10. Considering the fact that, so far this Court has not formulated the substantial questions of law and this case is pending for more than 22 years under the caption 'For Admission', this Court heard the learned counsel for the appellants and carefully considered the pleadings, oral and documentary evidence and also the judgments of the both courts below.

11. Since it is admitted that the property is the ancestral property of Arunachallam Chettiar and the plaintiff's father, namely, Kumaravel Chettiar, who is the one of the sons of Arunachallam Chettiar and therefore, the plaintiff's father is entitled to 1/3rd share in the suit property. Since the plaintiff's brother and sister have executed released deed in her favour, the plaintiff is entitled to get the 1/3rd share of Kumaravel Chettiar. Therefore, the trial Court rightly granted preliminary decree for 1/3rd share to the plaintiff. There is no perversity in the appreciation of evidence by the trial Court as well as the appellate Court and there is no



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substantial question of law involved in this second appeal hence, there is no merit in the second appeal and the same is liable to be dismissed.

12. As per the dictum of Hon'ble Supreme Court in the case of ***Kattukandi Edathil Krishnan and Another Vs. Kattukandi Edathil Valsan and others***, reported in ***2022 SCC Online SC 737***, once a preliminary decree is passed by the trial Court, the Court should proceed with the case for drawing up the final decree *suo motu*. After passing of the preliminary decree, the trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The Courts should not adjourn the matter *sine die*, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end by only when a final decree is drawn. Therefore, i direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings.



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13. Accordingly, this Second Appeal is dismissed. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. Additional Subordinate Judge, Tirunelveli.
2. Principal District Munsif Court, Tirunelveli.
3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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