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S.A. No.421 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2024

PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.421 of 2009

1.Veerappan
2.Rajakumari
3.Gandhimathi
4.Nithiya
5.Minor Paraveen ... Appellants
Rep by mother and guardian
Rajalakshmi.

Vs.

1.Selladurai
2.Dhanabackiyam
3.Alagammal
4.Vinodathammal
5.Natarajan ... Respondents
(The Respondents 2 to 5 remained
exparte before the Lower Court)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against

the judgment and decree dated 24.04.2008 made in AS.No.53 of



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2003 on the file of the Additional District Judge, (Fast Track Court), Ariyalur, confirming the judgment and decree dated 23.07.1996 made in OS.No.372 of 1990 on the file of District Munsif, Ariyalur.

For Appellant : Mrs.V.Srimathi

For R1 : Mr.C.Parthiban

For R2 to R5 : Exparte

JUDGMENT

The 6th & 7th defendants, who are the purchasers of the suit property from the second defendant, are the appellants in this appeal. Since the 7th defendant died, his legal heirs are brought on record as appellants 2 to 5 herein. The first respondent herein is the plaintiff in the suit.

2. This Second appeal is filed challenging the judgment and decree dated 24.04.2008 in AS.No.53 of 2003 on the file of Additional District Judge, (Fast Track Court), Ariyalur confirming the judgment and decree dated 23.07.1996 in OS.No.372 of 1990 on the



file of District Munsif, Ariyalur.

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3. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

The brief facts, which gave rise to the present Second Appeal, are as follows:

4. According to the plaintiff, he is the son of Singaram born through his 3rd wife Dhanabackiyam, who is the first defendant. Singaram had two brothers, Karuppaiah and Kaliyaperumal, and the brothers partitioned the family properties and they have been in enjoyment of their respective shares. Singaram, the plaintiff's father, got the suit properties through partition and also by purchase. Plaintiff's father Singaram married Alagammal and they did not have any child in their matrimonial life. As the second defendant Alagammal brought a bad reputation to the plaintiff's father, his father divorced the second defendant before the Panchayat on



01.08.1962, as per the customary practise of the caste and also paid money, gold and properties in view of the divorce.

5. Further according to the plaintiff, his mother Dhanabackiyam married Karuppaiah, and they had two children, Mariyayee a daughter and Ramasamy a son. After the death of Karuppaiah, the plaintiff's mother Dhanabackiyam, being the widow married Singaram on 01.08.1966 which was a Self Respect Marriage. One Angamuthu participated and performed the self-respect marriage by giving thali. Out of the marriage, Sampath, the brother of the plaintiff, was born, but later he died. Thereafter, the plaintiff was born as the second son. Singaram died on 19.10.1973, and pursuant to his death, the plaintiff, as his son, inherited the property and he is in possession and enjoyment of the suit properties by paying the taxes and carrying on cultivation.

6. Further according to the plaintiff, Singaram died on 19.10.1973 and all the last rights were performed by the plaintiff and



his mother, the first defendant. The second defendant joining hands

with the defendants 3 to 5, by creating fabricated document, started to

interfere in the suit properties. As such, the plaintiff had come with

the suit for declaration and permanent injunction and in the

alternative to grant a preliminary decree for 1/3rd share in the suit

properties in favour of the plaintiff.

7. The defendants resisted the suit property by filing the written statement denying the claim of the plaintiff. According to

the defendants, there was a litigation between the first defendant and

the second defendant in OS.No.1696/1974, wherein the first

defendant set up the claim based on adoption, stating that late

Singaram had adopted minor Ramasamy, who is the son of

Karuppiah and claimed certain share in the properties of Singaram.

In that suit, neither the divorce of the second defendant, nor the self

respect marriage with the first defendant was alleged or whispered,

which will show that the present claim made by the plaintiff is false.



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8. In the earlier suit, the title and possession of the second defendant over the suit properties were declared and the same was confirmed in AS.No.275/1978 on the file of Sub-Court, Tiruchirapalli. After the death of Singaram, the second defendant became the absolute owner and she had been mortgaging the properties and also later sold the suit properties to the 6th defendant through sale deed dated 17.07.1992. Further, the second defendant had already sold some items to the father of the 6th defendant through registered sale deed dated 02.08.1979, therefore the defendants have prayed for dismissal of the suit.

Evidence and Documents:

9. During Trial, on the side of the plaintiff, PW.1 to PW.5 were examined and Exs.A1 to Ex.A129 were marked. On the side of the defendants, the second defendant Alagammal was examined as DW.1 and the purchaser, the 6th defendant was examined as DW.2



and Exs.B.1 to B.156 were marked.

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Findings of the Trial Court:

10. The Trial Court, after analysing the evidence and documents dismissed the suit. The Trial court found that after the divorce of Valliyammai, Singaram married the first defendant, Dhanabackiyam and the plaintiff was born to Singaram and the first defendant. The Trial court based on the documentary evidence came to the conclusion that plaintiff was born to Singaram and therefore as a son, he is entitled to inherit the suit properties and therefore granted 1/4th share in favour of the plaintiff in the suit schedule property. The purchasers alone, who are the defendants 6 & 7, filed the appeal in AS.No.53 of 2003.

11. The Lower Appellate Court after reappraising the evidence dismissed the appeal. The Lower Appellate Court found that, after the demise of Karuppiah, the first defendant Dhanabackiyam had



lived along with Singaram for several years and thereby gave birth to one Sampath, who had died, and also the plaintiff, Chelladurai. The

Lower Appellate Court also found that since the earlier suit in OS.No.1696/1974 was between the first and second defendants, where no claim in respect of the plaintiff or any issue in respect of his being the son or legal heir of Singaram was in issue and decided in that suit, the same cannot operate as res judicata for the present suit. Aggrieved by the concurrent finding of fact, the purchasers, 6th and 7th defendants, are before this Court on appeal.

Substantial questions of law:

12. This Court by order dated 09.06.2009, framed the following substantial questions of law.

“a. Whether the Courts below are right in holding that PW.1 is the son of Singaram when admittedly he was born during the continuance of marriage between Dhanabackiyam and Karuppiah?



b. Whether there could be legal presumption that a child was born to Singaram, relying upon PW.5 when she was unable to prove the disruption in status between Singaram and Alagammal or between herself and Karuppiah?

c. Whether the Courts below ought not to have seen the fraudulent nature of the proceedings in the light of the defence raised and evidence tendered by PW.5 (1st defendant herein) in OS.No.1696/1974 on the file of the District Munsif Court, Ariyalur?"

Submissions on both sides:

13. The learned counsel for the appellant argued that admittedly Singaram had married Alagammal and they were the husband and wife and no documents have been produced to show that the marriage between them was dissolved and that Singaram had divorced the second defendant and further there is no material to show that Singaram had married the first defendant Dhanabackiyam.



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The courts below have presumed the existence of marriage only by placing reliance on birth extract and other documents, which cannot be the basis for the proof of marriage.

14. The learned counsel further contended that even when Karuppiyah died, the plaintiff was 2 ½ years old and it was not possible for the plaintiff to claim that he is the son of Singaram. The learned counsel further contended that as the first defendant / Dhanabackiyam has lost her claim in the suit filed by the second defendant in OS.No.1696/1974 on the file of District Munsif, Ariyalur, she had set up the plaintiff and the present suit is a collusive proceeding instituted by the plaintiff and the first defendant.

15. The learned counsel further contended that when the first defendant has lost the suit in OS.No.1696/74 and the rights of the second defendant have been declared against the first defendant in respect of the suit properties, the judgment in the earlier suit will



operate as constructive res judicata as against the present plaintiff and

therefore the suit is not maintainable. It is also further argued that

the first defendant had not raised the issue about the divorce of the

second defendant by Singaram or self respect marriage in the earlier

suit and the first defendant is the dishonest woman, black mailer and

instigated the plaintiff and file the present suit.

16. The learned counsel further contended that when the

second defendant Alagammal, had sold several properties, the

plaintiff has chosen to only selectively challenge the sale executed in

favour of the appellant herein / 6th and 7th defendants in the suit. The

learned counsel further contended that the factum of marriage has not

been proved and the relationship, if any, between the first defendant /

Dhanabackiyam and Singaram cannot be equated as a valid marriage.

The courts below have erroneously relied merely on the birth

certificate filed by the plaintiff to prove the factum of marriage and

therefore the judgment and decree passed by the courts below are



perverse and sought for allowing this second appeal.

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17. The learned counsel also relied on the decisions of this Hon'ble High Court in **V. Leela and others vs D. Rajammal (Died), Gopal** reported in **1993 II MLJ 17** for the proposition in respect of the proof of marriage.

18. Per contra, the learned counsel for the respondent argued that from the admission of DW.1 who is the second defendant Alagammal, it has been established that Singaram had married Alagammal as his first wife and later married Valliyammai, as his second wife, as he did not have any issue through the second defendant. Further, the son born through Valliyammai died, and the marriage was divorced as evidenced by the document in Ex.A.129. The late Singaram had then married the first defendant / Dhanabackiyam as his third wife through a self respect marriage, she being a widow, due to the death of Karuppiyah in the year 1963.



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19. The learned counsel further argued that the documents filed by the plaintiff, the birth certificate, record sheet and school certificate and voters list marked as Ex.A.28 to Ex.A.30 and Ex.A.32 would also show that Singaram is the father of the plaintiff and the first defendant / Dhanabackiyam is the mother.

20. The learned counsel further contended that Ex.A.29 is the birth extract which evidences the parentage of the plaintiff, Singaram and the first defendant. Further the document executed by Singaram himself in Ex.A.31 which is the mortgage deed executed in favour of the Land Development Society, wherein it is mentioned by Singaram as his three sons, (1) Ramasamy, (2) Sampath and (3) newly born un-named son, which establishes the fact about the marriage between Dhanabackiyam and Singaram and further establishing the fact that Singaram is the father of the plaintiff.

21. The learned counsel further submitted that they have



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annexed the geneology tree along with the plaint which is admitted

by defendants, by showing that Singaram had three wives,

Alagammal, the first wife, Valliyammai, the second wife and

Dhanabackiyam, the third wife. Since there were no issues for

Singaram through Alagammal and Valliyammai, he had married

Dhanabackiyam by self respect marriage. Even in the geneology

tree, Ramasamy and Mariyayee had been shown to be born through

Dhanabackiyam and Karuppiah. After Karuppiah died in 1964, as a

widow, Singaram had married the first defendant /Dhanabackiyam on

01.08.1966. Through this marriage, two sons namely Sampath, who

is predeceased, and the plaintiff Chelladurai were born. The plaintiff,

was born in the year 1970. The fact that Singaram executed the

mortgage deed in Land Development Society in Ex.A.31 in the year

05.02.1971 where he mentioned the un-named new born as the 3rd

son along with Sampath and Ramasamy, clearly establishes the fact

that the plaintiff was born to Singaram through the first defendant /

Dhanabackiyam. As such, in view of the evidence and the



testimonies made by the witness, both the courts below have correctly arrived at the finding of fact, which needs no interference and sought for dismissal of the second appeal.

22. All three substantial questions of law framed by this Court pertains to whether the plaintiff PW.1 is the son of Singaram, whether the disruption of marriage between Singaram and Alagammal or between Dhanabackiyam and Karuppiah is established, and whether there can be a legal presumption that the plaintiff was born to Singaram.

Analysis:

23. Originally the suit properties belonged to one Balagurunathan who had three sons, Singaram, Karuppiah and Kaliyaperumal. According to the plaintiff, Singaram married Alagammal as his first wife, since there were no issues, he married Valliyammai as second wife and since there were no issues,



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Singaram married the first defendant / Dhanabackiyam as his third wife on 01.08.1966. It is also admitted by the plaintiff that earlier

Dhanabackiyam was married to Singaram's brother Karuppiyah and through the marriage, they had two children, one Ramasamy and second Mariyayee. Pursuant to the death of Karuppiyah in the year 1964, Singaram married the first defendant / Dhanabackiyam as his third wife by self respect marriage. Through this marriage two sons were born, one Sampath and another the plaintiff / Chelladurai.

24. It is the case of the plaintiff that Singaram died on 19.10.1973 and after his death, the plaintiff inherited the suit properties and he is in possession and enjoyment of the same and he also carried on cultivation in the lands. He further claims that Singaram married Valliyammai after divorcing his first wife Alagammal and since they did not have any issue, Singaram married the widow of Karuppiyah, the first defendant / Dhanabackiyam.



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25. PW.1 gave details about his birth and marked his birth certificate, School certificate, voters card which all reveals that Singaram is the father and the first defendant / Dhanabackiyam is the mother. The plaintiff apart from filing the documents in Ex.A.28, Ex.A.29 and Ex.A.32, also examined four other witnesses including his mother, the first defendant as PW.5. All the witnesses spoke about the fact that after Karuppiah died, the first defendant / Dhanabackiyam married and lived with Singaram. They also mentioned that the plaintiff was born to Singaram and the first defendant. Further, the other son Sampath, who was born, had died.

26. The perusal of the evidence of DW.1/second defendant / Alagammal would show that in fact Singaram had three wives. During cross examination, DW.1 deposed that there are records available for the marriages conducted by her husband for the first wife, second wife and third wife. It is also admitted by DW.1 that she had no issues through the marriage, in spite of her husband



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Singaram taking her for treatments. DW.1, further admitted that since

she had no issues, she herself conducted the marriage of Valliyammai

with her husband. Since Valliyammai ran away from the house with

some other person, she had instructed her husband to divorce her. It

is also further admitted that one son was born to Valliyammai and

Singaram, but he died, prior to the divorce of the marriage between

Singaram and Valliyammai in the year 1963. DW.1 also further

admitted that two children were born to Dhanabackiyam and

Karuppaiah and out of which, son Ramasamy is residing at Chennai.

It is her further evidence that Dhanabackiyam/first defendant became

a widow after the death of Karuppaiah and that after the death of

Karuppaiah, Singaram lived for nearly 10 to 15 years. It is her further

evidence that she does not know how many children were born to

Dhanabackiyam after the death of Karuppaiah. DW.1 also further

deposed that Sampath had died 25 years ago. It is her further

evidence that since she had no issues, her husband married

Valliyammai and the marriage was also divorced and she also has the



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original records pertaining to divorce, which has been marked as

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Ex.A.129. DW.1 has also deposed that she had sold the properties of Singaram.

27. From the admission of DW.1, it emerges that Singaram had three wives. As per the evidence, the first wife is the second defendant / Alagammal, the second wife was Valliyammai. It is also the case of the second defendant that as she had no issues, she herself performed the marriage with Valliyammai. From the evidence, it is clear that a son was born to Valliyammai and Singaram who died, as such, Singaram was issueless. It can also be seen from the evidence that the first defendant / Dhanabackiyam had married Singaram's brother Karuppiah and two children were born out of the marriage, a son named Ramasamy and a daughter named Mariyayee. It could be seen that Karuppiah died in the year 1963 and Dhanabackiyam became a widow. It is the case of the plaintiff and also the evidence of PW.5, that Singaram married the first defendant / Dhanabackiyam through a self respect marriage on 01.08.1966. It is the case of the



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plaintiff that from out of marriage, Sampath and Chelladurai, the plaintiff were born. Sampath was born around 1967 and Chelladurai

was born in the year 1970. From the admission of DW.1 herself, it could be seen that Dhanabackiyam had only two issues born out of marriage with Karuppiah and that she is not aware as to how many children were born to Dhanabackiyam after the death of Karuppiah. From the testimonies of PW.2 to PW.5, it could be seen that after Dhanabackiyam became a widow, she lived with Singaram for long time through the self respect marriage conducted between them.

28. Apart from all the documents and oral evidence let in, document executed by Singaram himself could become the crucial piece of evidence to resolve the dispute and to find out the legal status of the plaintiff. The perusal of the mortgage deed executed by Singaram on 05.02.1971 in Ex.A.31 shows that Singaram had executed the mortgage deed on behalf of four persons ie. one for himself and (2) representing his minor son Ramasamy, (3)



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representing his minor son Sampath and (4) representing his new born un-named minor son. From the document it is found that

Sampath was aged around four years, who was born in 1966 and the plaintiff is the unnamed new born who was born in the year 1970 when the document Ex.A.31 was executed in February 1971. When the document executed by Singaram in Ex.A.31 in favour of Thirumanur Co-operative Land Development Society by mortgaging the suit property clearly established the fact that Sampath predeceased and the plaintiff is the son of Singaram. The fact that Singaram had included Ramasamy as his son in the document further fortifies the fact that after the death of Karuppiah, he had married the first defendant / Dhanabackiyam and two sons were born, viz, Sampath and Chelladurai, the plaintiff. Singaram included Ramasamy, as his son only in view of the marriage. As such, when admittedly Singaram had no issues born out of marriage with the second defendant / Alagammal or through the second marriage

Valliyammai, Sampath and the plaintiff were born to



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Dhanabackiyam after the death of Karuppiah. The over all evidence let in and the documents executed by Singaram himself in Ex.A.31

establishes the fact that the plaintiff was born to Singaram and the first defendant. Even though arguments were made and the learned counsel relied on the citations for the proposition that factum of the marriage cannot be established from the filing of birth certificate, the marriage during the subsistence of previous marriage can be a matter of presumption and the issue to be decided in the present litigation is as to whether the plaintiff was born to Singaram.

29. From the evidence of the parties, it is seen that the divorce of the first wife, Alagammal is disputed, but whereas the divorce of the second wife, Valliyammai is admitted by both the parties and also the documents in Ex.A.129 has been filed. Further, the plaintiff has filed the extract from the birth register in Ex.A.32 where Singaram is shown as father of the plaintiff and the first defendant /

Dhanabackiyam is the mother. The plaintiff has also filed documents



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in Ex.A.29 and Ex.A.30 which are the records from the school certificate and voters list which all fortifies the fact that Singaram is the father and Dhanabackiyam / first defendant is the mother of the plaintiff.

30. From the evidence let in and the document filed in Ex.A.31 coupled with Ex.A.29, Ex.A.30 and Ex.A.32 on the side of the plaintiff, it can be easily concluded that the plaintiff, Chelladurai has born to Singaram and the first defendant / Dhanabackiyam. The Trial Court relied on Section 114 of the Indian Evidence Act for the presumption that when the men and women live as husband and wife for a long time, their marriage between them could be presumed, and the children born to them are not illegitimate. From the records available, it is seen that the plaintiff was born to Singaram and the first defendant and as a son he is having right in the properties of his father.



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31. As per Section 16(1) of the Hindu Marriage Act, 1955 the child born out of the void marriage is having a right in the properties of the father. In the recent decision of the Hon'ble Supreme Court in **Revanasiddappa and Another vs. Mallikarjun and Others** reported in **2023 SCC online SC 1087**, it has been held that even the child born out of a void marriage is entitled to a share of the properties of his father.

32. Further in a recent decision of the Hon'ble Division Bench in **Kavitha vs V.Damodaran & Ors** reported in **2024(1) CTC 449**, marriage during the subsistence of previous marriage can be a matter of presumption and by operation of Sub Section (1) of Sec.16, children born in second marriage become legitimate and entitled to property of father. Para 16.1, 16.2, 16.7 and 16.8 are usefully extracted hereunder:

“16.1. The object of the enactment of Section 16 has been held to be a laudable object by the



Hon'ble Supreme Court in Parayankandiyal Eravath Kanapraavan Kalliani Ammal v. K.Devi and others, reported in (1996) 4 SCC 76. While considering the reform sought to be achieved by Section 16, the Hon'ble Supreme Court in the said judgment had observed as follows:

"Legitimacy is a matter of status:

Illegitimate children are children as are not born either in lawful wedlock, or within a competent time after its determination. It is on account of marriage, valid or void, that children are classified as legitimate or illegitimate. That is to say, the social status of children is determined by the act of their parents. If they have entered into a valid marriage, the children are legitimate; but if the parents commit a folly, as a result of which a child is conceived, such child who comes into existence as an innocent human baby is labelled as illegitimate. Realising this situation, Parliament enacted Section 16 of the Hindu Marriage Act. The object of Section 16 was to protect legitimacy of children born of void or voidable marriages."



16.2. This laudable Object sought to be achieved by introduction of Section 16 cannot be defeated by adopting a very narrow interpretation of the documents or the provision itself. The issue as to whether a second marriage could be a matter of presumption had daunted the Courts for some time before it was settled by the Hon'ble Supreme Court in S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and others. The Hon'ble Supreme Court had held that a marriage during the subsistence of a previous marriage can be a matter for presumption.

...

16.7. As we had already pointed out the Hon'ble Supreme Court itself has in S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and others, cited supra, held that the second marriage can be a matter of presumption also. We find very strong evidence, in the form of an admission by the first defendant, is available in the case on hand, which cannot be disbelieved. We therefore find that the Trial Court was not correct in



denying a share to defendants 5 and 6, to that extent the judgment of the Trial Court needs interference.

*16.8. In fact a recent judgment of the Larger Bench of the Hon'ble Supreme Court in **Revanasiddappa and another v. Mallikarjun and others**, reported in **2023 SCC Online SC 1087**, had concluded that Section 16 confers a statutory legitimacy on children born out of void marriages. In doing so, the Hon'ble Supreme Court has held as follows:*

74. ... (i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten



or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

The other clauses are not relevant to our purposes. In view of the above dictum, the argument of Mr.Gururaj is unacceptable. We therefore conclude that the defendants 5 and 6 would inherit under the Will as children of Damodaran”.

33. Therefore, in view of the overwhelming evidence to the



effect that the plaintiff was born to the deceased Singaram and the first defendant and as it is held that the second marriage could be presumed, naturally the plaintiff being the legitimate legal heir by operation of Sec.16(1), is having a right in the properties of his father. Therefore, the courts below have rightly arrived at the finding of fact and passed the preliminary decree granting 1/4th share in favour of the plaintiff in the suit properties.

34. Further from the evidence available on record, it can be seen that the purchaser examined as PW.4 admitted that he is not aware of the extent of property purchased by him and at the time of purchase he did not enquire whether the plaintiff has right over the property.

35. By taking note of all these aspects, both the courts below have rightly arrived at a finding of fact that the plaintiff is the legal heir of Singaram and is entitled to the preliminary decree in respect



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of 1/4th of the suit property. The finding arrived at is based on the materials available on record and does not suffer from any perversity or illegality.

36. In view of the above findings, the substantial questions of law are answered against the appellant and in favour of the respondent. As such, the second appeal stands dismissed. However, there is no order as to costs.

26.03.2024

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Index : Yes / No

Neutral Citation : Yes / No

To

1.The Additional District Judge,
(Fast Track Court), Ariyalur,



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2.The District Munsif Court, Ariyalur.

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G.ARUL MURUGAN.,J.

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Pre-delivery judgment in
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