



S.A. No.657 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.657 of 2024

and

C.M.P.No.20939 of 2024

Kishtappa Naicker (died)

1. Manikandan
2. Bhavani

Valliammal (died)

3. Maari
4. Egavalli
5. Sanker
6. Saravanan

Pavun (died)

7. Kanniammal
8. Mariammal
9. Sarala
10. Sulochana
11. Poovarasana

... Appellants

Vs.



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1. M.Rani

2. Saravanan

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 18.04.2023 made in A.S.No.13 of 2019 on the file of Subordinate Judge, Arakkonam confirming the judgment and decree dated 28.09.2018 passed in O.S.No.213 of 2008 on the file of District Munsif Court, Sholinghur.

For Appellants : Mr.A.Gouthaman

For Respondents : Mr.A.K.Raghavan for R1

JUDGMENT

The appellants, who are the defendants 2 to 4, 5, 7, 8, 9 and legal heirs of 10th defendant have preferred this Second Appeal. Challenging the concurrent findings of the courts below rendered in A.S.No. 13 of 2019 by the Subordinate Judge, Arakkonam arising out of trial court findings in O.S.No.213 of 2008 on the file of District Munsif Court, Sholinghur, this Second Appeal was preferred by defendants 2 to 4, 5, 7 to 9 as well as legal heirs of 10th defendant.

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2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for partition praying to allot 1/3rd share in the entire suit properties. According to her, the suit property belong to his father Manicka Naicker, who purchased the suit properties by way of registered sale deeds dated 21.03.1955 and 01.05.1943. Those sale deeds were marked as Ex.A1 and Ex.A2 on the side of plaintiff. Till his death, upto 1972, he possessed and enjoyed the properties and thereafter, he died leaving behind two sons and one daughter viz., Kishtappa Naicker, 1st defendant and one Thulasi Naicker and Rani, plaintiff herein. The said Thulasi Naicker died in the year of 1992 leaving behind the defendants 2 to 4. During the pendency of proceedings, the 1st defendant Kishtappa Naicker died leaving behind defendants 7 to 10 as his legal heirs. Before the trial court, on the side of plaintiff, she was examined as P.W.1 and the documents Ex.A1 to Ex.A13 were marked. On the side of defendants, D.W.1 to D.W.5 were examined and documents Ex.B1 to Ex.B9



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were marked. Before the trial court, both sons have contested the suit stating that during the life time of Manicka Naicker, there was a oral partition held in the family. Accordingly, each of the parties are entitled for equal share in the suit properties. The plaintiff being a daughter, she has no right in the suit properties, since because she got married long back. So also, she was not in possession of the property. Therefore, the plea of ouster of co-sharer was claimed. Considering that, the trial court framed four issues and the foremost issue is whether the plaintiff is entitled for 1/3rd share in the suit properties, whether the oral partition is true and valid one and whether the defendants have conferred their right as well as possession. Before the trial court, the plaintiff proved her claim through title deeds stand in the name of his father and established that it is his self-acquired properties. On the other hand, the defendants have to prove the plea of ouster of co-sharer nor they proved that they have right over the suit properties, however, the possession claimed by the plaintiff was not accepted and accordingly, the suit was partly decreed granting 1/3rd share in respect of item Nos.1 and 4 of suit properties. Against which, the defendants preferred an Appeal Suit in A.S.No. 13 of 2019, wherein the



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first appellate court also confirmed the findings of the trial court and held that they have not proved the plea of oral partition as well as plea of ouster of co-sharer. Accordingly, the appeal was dismissed. Challenging the said findings, the contesting defendants have preferred this Second Appeal.

4. The learned counsel for appellants would submit that the courts below failed to take note of the fact that the patta passbook stands in the name of 1st defendant viz., Thulasi Naicker under Ex.B1. But, without appreciating the documentary evidence adduced on the side of defendants, the courts below erroneously granted 1/3rd share in favour of plaintiff, as such is liable to be set aside.

5. Considering the facts and circumstances and on perusal of records, it would clearly reveals that the suit properties are self-acquired properties of father of plaintiff and 1st defendant. It is an undisputed fact that plaintiff also produced title deeds of his father, which clearly proves that the suit property is a self-acquired properties of plaintiff's father. Her father died intestate leaving behind his sons and one daughter, who is plaintiff herein.



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It is an undisputed fact that there is no Will executed by father of plaintiff during his life time. As the suit properties are self-acquired properties, in which the plaintiff is entitled for 1/3rd share. On the other hand, the defendants plead that a oral partition was held in the family and accordingly, they are entitled for equal share in the suit properties, but it was not proved. Moreover, they took the plea of adverse possession and the same was also not proved. They have also took a specific plea that she has got married long back and hence, she is not entitled for the relief as claimed. Therefore, there is no proof on the side of defendants in respect of oral partition as well as the plea of ouster of co-sharer. So, the courts below rightly observed that the defendants not proved their claim, which needs no interference of this court. Hence, I do not find any merit in this Second Appeal as there is no question of law involved for consideration as claimed by the appellants. Accordingly, this Second Appeal is dismissed as no merit. Moreover, the learned counsel for appellant produced a plan before this court, but the 1st respondent/plaintiff is not inclined to accept the said proposal for the reason that there is no facility and no such road in the property. However, as the 1st respondent/plaintiff is aged about 70 years



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old, she is entitled to initiate final decree proceedings. Hence, she is directed to file a final decree application before the trial court within a period of three months from the date of receipt of copy of this order and if any deviation, it will be viewed seriously. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Sub-Judge,
Arakkonam.

T.V.THAMILSELVI, J.

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