



WEB COPY



S.A.No.92 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.92 of 2021
and C.M.P.No.1995 of 2021

Kandasamy

...Appellant

Vs.

1.Parvathy

2.Muruganandham

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code,1908, against the judgment and decree of the Additional District and Sessions Court at Ariyalur dated 21.11.2019 in A.S.No.7 of 2019 partly reversing the judgment and decree passed by the Sub-ordinate Judge at Ariyalur, dated 10.01.2019 in O.S.No.31 of 2013.

For Appellant	: Mr.P.Valliappan Senior Counse for Mr.N.Loganathan
For Respondents	: Mr.B.Balavijayan for M/S.C.S. Associates

ORDER

The unsuccessful plaintiff in the suit for partition is the appellant. The appellant/ plaintiff filed a suit for partition claiming plaintiff's 4/6th share in the suit properties. The suit was dismissed by the Trial Court. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.7 of 2019 on the file of Additional District cum Sessions Court, Ariyalur and the first appellate Court



S.A.No.92 of 2021

concurrent with the findings of the Trial Court. Aggrieved by the concurrent findings, the appellant/plaintiff has come up by way of second appeal.

2. According to the appellant/plaintiff, the suit property originally belonged to one Chinnapillai Ammal, who is the legally wedded wife of one Ganesan and mother of appellant herein. She died intestate on 01.06.1994 leaving behind her husband Ganesan and the plaintiff as her legal heirs. The said Ganesan had married one Ammakannu Ammal, sister of Chinnapillaiammal and defendants are the children born through his 2nd wife. The said Ganesan died on 11.10.2012 leaving the plaintiff and the defendants as his legal heirs. The plaintiff and said Ganesan are each entitled to $\frac{1}{2}$ share in the suit property. After the death of Ganesan, his father's $\frac{1}{2}$ share devolve upon the plaintiff and the defendants 1 and 2. Hence, both the plaintiff and defendants are entitled to $\frac{1}{3}$ of $\frac{1}{2}$ i.e., $\frac{1}{6}$, accordingly, the plaintiff is entitled to $\frac{1}{2} + \frac{1}{6} = \frac{4}{6}$ and defendants are entitled to $\frac{1}{6}$ share each. Since the defendants and plaintiff's father denied the plaintiff's right over the joint family property, the appellant/plaintiff was constrained to file a suit for partition. Pending suit, the said Ganesan died and the defendants are attempting to grab the suit property. In these circumstances, the plaintiff was constrained to file a



S.A.No.92 of 2021

suit for partition and possession of plaintiff's 4/6th share in the suit property.

WEB COPY

3. The respondents/ defendants filed a written statement stating that during the lifetime of Chinnapillai Ammal, she had executed a Will, Ex.B1 in favour 2nd defendant and thereafter, he had been in possession and enjoyment of the suit property and hence, he is the absolute owner of the property as per Ex.B1 and also perfected title on the doctrine of ouster. On this pleading, he prayed for dismissal of the suit.

4. Before the Trial Court, the plaintiff was examined as P.W.1 and no documents were marked on his side. The 2nd respondent was examined as D.W.1 and an independent witness was examined as D.W.2. Four documents were marked on behalf of the defendants as Ex.B1 to Ex.B4.

5. At the time of admission, this Court formulated the following substantial questions of law vide order dated 12.02.2021 and the same reads as follows:-

1. Whether the Lower Appellate Court is correct in law



S.A.No.92 of 2021

WEB COPY

in granting only 1/3rd share to the appellant despite rejecting Exhibit B1, Will dated 19.05.1994 and the plea of ouster raised by the respondent?

6(a). The Trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the scribe of the Will cannot be equated with the attester so as to satisfy the criteria laid down under Section 68 of the Indian Evidence Act and held that Ex.B1, Will is not proved in the manner known to law and dismissed the suit.

(b) Aggrieved against the said dismissal order, the plaintiff has preferred an appeal in A.S.No.7 of 2019 before the learned Additional District and Sessions Judge, Ariyalur. The Lower Appellate Court has also observed that failure on the part of the defendants to examine anyone of the attester of Ex.B1, Will, the case of the defendants was rejected. Taking into consideration that there are 3 persons in the partition suit, each persons are entitled to 1/3rd share and accordingly, preliminary decree of partition for 1/3rd share was granted.



S.A.No.92 of 2021

7. Aggrieved against the said judgment on the point of quantum of share, the present appeal is filed by the appellant.

8. Admittedly, the properties stands in the name of Chinnapillai Ammal. She died in the year 1994. On her death, 1/2 share of the properties devolve upon the plaintiff and another 1/2 share devolve upon her husband Ganesan. The said Ganesan died on 11.10.2012. On his death, both the plaintiff and defendants are entitled to 1/3 of $\frac{1}{2}$ i.e., $\frac{1}{6}$ th share each and hence, the plaintiff is entitled to $\frac{4}{6}$ th share while the defendants are entitled to $\frac{1}{6}$ th share each and accordingly, the quantum of the share is re-modified on the above facts and circumstances of this case.

9. Accordingly, this Second Appeal is partly allowed to the limited extent indicated above whereby the decree in O.S.No.31 of 2013 which was modified by an order of the lower Appellate Court on 10.01.2019 shall stands further modified into that preliminary decree for partition was granted and the plaintiff is entitled to $\frac{4}{6}$ th share and the defendants 1 and 2 are entitled to $\frac{1}{6}$ th share each.



S.A.No.92 of 2021

b) In view of the above facts and circumstances of the case, there will be
no order as to costs.

c) Consequently, the connected miscellaneous petition is closed.

15.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
nr

To

- 1.The Additional District and Sessions Court, Ariyalur
- 2.The Sub-ordinate Judge, Ariyalur



WEB COPY



S.A.No.92 of 2021

RMT.TEEKAA RAMAN,J.,

nr

S.A.No.92 of 2021
and C.M.P.No.1995 of 2021

15.04.2024.