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S.A.No.449 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 14.02.2024	Judgment Pronounced on 22.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.449 of 2018

1.Rajeshwari

2.Sasirekha

..Appellants

Vs.

1.The Tahsildar,
Mylapore – Triplicane Taluk,
Green ways Road,
Raja Annamalaipuram,
Chennai – 28.

2.M.Sivapragasam

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.07.2017 passed in A.S.No.108 of 2016 on the file of the VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 05.02.2016 passed in O.S.No.3049 of 2014 on the file of the XVII Assistant Judge, City Civil Court, Chennai.



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For Appellants : Mr.P.Sankaranarayanan
For Respondents : Mr.M.Muthusamy
For R1 : Government Advocate
For R2 : Mrs.Revathi G.Mohan
for Mr.A.J.Alwyn Prabakar

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 13.07.2017 passed in A.S.No.108 of 2016 on the file of the VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 05.02.2016 passed in O.S.No.3049 of 2014 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

2.The unsuccessful plaintiffs, who suffered concurrently before the Trial Court as well as the First Appellate Court in a suit for partition and separate possession, are the appellants herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The brief material facts that are necessary to decide the Second



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Appeal are as hereunder:

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The plaintiffs claim that one Munusamy, who was employed as Deputy Secretary in the Government of Tamil Nadu, died in harness on 17.09.2011, as a bachelor. His parents also predeceased him and said Munusamy was survived by two brothers, namely M.Pichandi and M.Sivapragasam. The plaintiffs are wife and daughter of said M.Pichandi. According to the plaintiffs, they, along with the 2nd defendant M.Sivapragasam, have succeeded to the estate of Munusamy. However, when the plaintiffs approached the Tahsildar, Mylapore – Triplicane Taluk, who has been arrayed as the 1st defendant, he has expressed his inability to issue legal heirship certificate as the plaintiffs are not Class – I legal heirs of the deceased Munusamy and advises the plaintiffs approach the Civil Court. The plaintiffs, thereafter issued a notice under Section 80 of Code of Civil Procedure, and as there was no reply/response from the 1st defendant, the suit has been filed seeking declaration that the plaintiffs and the 2nd defendant are the legal heirs of the Munusamy with a consequential direction to the 1st defendant, the Tahsildar, to issue a legal heirship certificate.

5.The suit was resisted by the 2nd defendant stating that the late



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Munusamy had nominated his mother Lakshmi Ammal for all benefits and the plaintiffs were only trying to grab and usurp the properties of the deceased Munusamy, who died in harness. According to the 2nd defendant, the plaintiffs are not legal heirs of deceased Munusamy as per the Hindu Succession Act. Further, a writ petition has been filed by the 2nd defendant, seeking stay of the disbursement of death cum retirement benefits of deceased Munusamy, before the High Court in its writ jurisdiction and that the said writ petition is pending. The suit was therefore sought to be dismissed.

6.The Tahsilar, Mylapore – Triplicane Taluk, filed a written statement stating that the suit is bad for non-joinder of the District Collector and further, there is no cause of action against the 1st defendant and the plaintiffs are not entitled to the relief as prayed for and it was for the plaintiffs to prove that they were entitled to be declared Class-II legal heirs of late Munusamy. According to the 1st defendant, M.Sivapragasam alone was entitled to claim to be the legal heir of Munusamy and not the plaintiffs.

7.In view of the technical objection taken by the 1st defendant, Tahsildar, the plaint was also amended and the District Collector, Chennai,



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was impleaded as party in I.A.No.15205 of 2014 by order dated 16.10.2014.

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8.The Trial Court dismissed the suit, holding that the brother, M.Sivapragasam alone is entitled to be declared as Class II legal heir and the plaintiffs are not entitled for any relief.

9.The plaintiffs preferred an appeal and the First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings rendered by the Courts below, the plaintiffs had preferred the Second Appeal.

10.On 13.11.2018, the above Second Appeal was admitted by this Court, on the following three substantial questions of law:

(1) Whether the Courts below were correct in interpreting Section 8 of the Hindu Succession Act and the Schedule there under in his correct manner in consultation of the facts of the case in hand.

(2) Whether the Courts below were correct in not deciding the suit as per Section 8 of the Hindu Succession Act as on the date of the death of M.Munusamy (i.e.) 17.09.2011 and applying the rules under the schedule in



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his correct perspective.

(3) Whether the Courts below were correct in dismissing the suit and appeal when the facts remains that though the contesting second respondent having filed his written statement had not bothered to subject himself to chief and cross examination which is to deemed to have contested only formally.

11.I have heard Mr.P.Sankaranarayanan, learned counsel for the appellants, Mr.M.Muthusamy, learned Government Advocate for the 1st respondent and Mrs.Revathi G.Mohan, learned counsel for the 2nd respondent.

12.Mr.P.Sankaranarayanan, learned counsel for the appellants would state that when admittedly the husband and father of the plaintiffs survived Munusamy they were entitled to claim legal heirs' status to the said Munusamy along with the brother of Munusamy, namely M.Sivapragasam. He would also state that the Courts below have misinterpreted the provisions of the Hindu Succession Act. He would also place reliance on the recent G.O.(Ms) No.478 dated 29.09.2022 where the Government, in pursuance of the directions given by this Court in a batch of writ petitions filed by



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P.Venkatachalam and 44 others etc., issued new guidelines for issuance of legal heirship certificates. The learned counsel for the appellants would therefore contend that even Class II legal heirs are entitled to legal heirship certificates in terms of the recent Government Order. He would therefore pray for the Second Appeal being allowed.

13.Per contra, the learned counsel for the respondents would contend that the Court belows have rightly applied the provisions of the Hindu Succession Act and therefore, absolutely no interference was warranted with the concurrent findings rendered by the Courts below. Admittedly, the parties are litigating over their status/relationship with regard to the deceased Munusamy. It is also an admitted that the said Munusamy died intestate as bachelor. Therefore, we have to fall back on with the provisions viz., Section 8 of the Hindu Succession Act.

14.The relevant Sections of the Hindu Succession Act, 1956, are extracted for easy reference.

“8.General Rules of Succession in the case of males. - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-



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(a) *firstly, upon the heirs, being the relatives specified in class I of the Schedule;*

(b) *secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

(c) *thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*

(d) *lastly, if there is no agnate, then upon the cognates of the deceased.*

9.Order of succession among heirs in the Schedule.- *Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.*

11.Distribution of property among heirs in class II of the Schedule.- *The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally.”*

15.Admittedly, none of the class I legal heirs are available as set out in the Schedule to Section 8 of the Hindu Succession Act, 1956. The dispute is only amongst Class II legal heirs and it is not in dispute that the husband and



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father of the plaintiffs, namely, M.Pichandi was alive on the date of death of Munusamy. The estate opens on the death of said Munusamy and therefore, on the said date, it cannot be disputed that the two brothers, namely M.Pichandi and M.Sivapragasam were alone alive. In Class II in 1st entry, brother and sister are entitled, in the absence of the father. Here, admittedly, the father predeceased Munusamy and therefore, only the two surviving brothers are the Class II legal heirs of Munusamy.

16. Merely because one of the brothers (i.e.) the husband of the 1st plaintiff and father of the 2nd plaintiff died subsequently, it would not take away the right vested with the brother, M.Pichandi, the husband of the 1st plaintiff. On the death of Munusamy, his estate would be inherited by the two surviving brothers namely M.Pichandi and M.Sivapragasam, (i.e.) husband and father of the plaintiffs respectively and the 2nd defendant. Unfortunately, the Courts below, without proper application of the provisions of the Hindu Succession Act, have held that the 2nd plaintiff would come under entry four of Class II and the 1st plaintiff would come under the entry six of Class II in the Schedule in Section 8 of Hindu Succession Act and that applying the mandate of Section 9 of Hindu Succession Act, the brother M.Sivapragasam alone would be entitled to claim status of the legal heir of Munusamy.



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17.The approach of the Courts below is totally incomprehensible for the reason that the rights of the parties have to be decided on the date of death of Munusamy and not on the date of filing of the suit. The plaintiffs, being class I legal heirs of M.Pichandi, would step into the shoes of said M.Pichandi's share, namely 1/2rd share and they cannot be relegated to entries 4 and 6 respectively of Class II of Schedule 8 of the Hindu Succession Act, 1956. The Courts below have totally ignored the mandate of Sections 8, 9 and 11 of the Hindu Succession Act and on an erroneous application of the statutory provisions, have rejected the plaintiffs' claim.

18.However, as regards, the direction to issue legal heirship certificate to the plaintiffs, I do not deem it necessary since even a legal heirship certificate issued by the Tahsildar clearly states that it has no evidentiary value in a Court of law. Only in pursuance of the advise of the Revenue Authorities, the suit has been filed to declare the status of the plaintiffs, in so far as the estate of late Munusamy is concerned. Thus, in my opinion, it would suffice if the first relief is granted to the plaintiffs.

19.In fine, the Second Appeal is allowed in part and judgement of the First Appellate Court dated 13.07.2017 in A.S.No.108 of 2016 on the file of



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the VII Additional Judge, City Civil Court, Chennai, is set aside and consequently, the plaintiffs are declared to be the legal heirs of late Munusamy, along with the 2nd defendant, M.Sivapragasam, the plaintiffs being jointly entitled to one half share and the 2nd defendant, being entitled to other half. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI, J.

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To

- 1.The VII Additional Judge, City Civil Court, Chennai.
- 2.The XVII Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in

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