



S.A.No.1150 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1150 of 2013 &
M.P.No.1 of 2013

Sri Panchanathan

... Appellant

-Versus-

1.Jayabalan

Murugesan

2.Padma Ammal

3.Mammu @ Munusamy

4.Umapathy

5.Rani

6.Subramani

7.Amutha

8.Jayabarathy (minor)

9.Jayamurugan (minor)

... Respondents

(Respondents 8 and 9 minor
represented by their mother &
Guardian - 7th respondent)

Appeal filed under Section 100 of C.P.C. against the judgement and decree in A.S.No.54 of 2007 on the file of the Subordinate Judge Court at Arni, Thiruvannamalai District, dated 22.12.2011 confirming the Final Decree in I.A.No.141 of 2004 on the file of the District Munsif Court at Arni (Previously in I.A.No.78 of 2001 on the file of the Sub Court, Arni) in O.S.No.75 of 1999 on the file of the District Munsif Court at Arni, Thiruvannamalai District dated 30.10.2006.



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*For Appellants : Mr.V.Jayachandran for
Mr.P.Seshadri*

For Respondent 1 : Mr.S.Umapathy

*For Respondents : No appearance
2 to 4, 6, 7, 8 & 9*

JUDGEMENT

This second appeal arises out of the appeal filed against the final decree in A.S.No.54 of 2007. Originally the suit for partition was presented in O.S.No.75 of 1999 on the file of the learned Subordinate Judge at Arni, Tiruvannamalai District. Subsequently, it was transferred to the file of the learned District Munsif at Arni in O.S.No.54 of 2004.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. An ex parte preliminary decree was passed on 16.11.2000 and to put that decree into an executable decree, an application was taken for passing a final decree in I.A.No.78 of 2001. The said application was renumbered before the learned District Munsif at Arni as I.A.No.141 of 2004. As against the preliminary decree, no appeal has been preferred by any of the parties.

4. In order to set aside the ex parte preliminary decree, an application was taken out and the same was dismissed and the ex parte decree was confirmed in



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CMA.No.7 of 2007 before the District Judge at Tiruvannamalai. In other words, the preliminary decree had attained finality. As against the preliminary decree, no appeal has been preferred before this Court as well as before the District Court at Tiruvannamalai.

5. The learned Subordinate Judge at Arni took up the application for final decree and passed the final decree on 30.10.2006. Agitating the correctness of the final decree, an appeal was filed before the learned Subordinate Judge at Arni in A.S.No.54 of 2007. The said appeal has been dismissed by confirming the decree passed in O.S.No.54 of 2004. Against which, the present second appeal.

6. This Court did not admit the second appeal but had ordered notice regarding admission on 22.11.2013. The matter is listed before me for the purpose of admission and orders in the appeal.

7. Mr.V.Jayachandran, appearing for Mr.P.Seshadri would contend that after passing of the amendment in the Hindu Succession Act, 39 of 2005, a daughter will also be entitled to an equal share as a son in the joint family properties.

8. I am afraid, I cannot permit the appellant to raise objection as regards the validity of the preliminary decree, when he had not filed any appeal against



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the same. This is barred by virtue of section 97 of the Code of Civil Procedure.

He is right in law that the daughter has been given a right to claim a share by virtue of the amended Hindu Succession Act, but the Appellant cannot plead that position before me, because he has not challenged the preliminary decree at all and cannot get over a bar under section 97 of the Code of Civil Procedure. If at all, it is for the daughter to workout her right independently, in case she so desires.

9. The appeal being barred under section 97 of the Code of Civil Procedure, no orders on admission are necessary, but the only order necessary is that of dismissal. Accordingly, I dismiss the appeal.

10. In fine, the judgment and decree of the Court of Subordinate Judge at Arni in A.S.No.54 of 2007 dated 22.12.2011 in confirming the final decree in I.A.No.141 of 2004 in O.S.No.54 of 2004 dated 30.10.2006 stands confirmed. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

- 1.The Subordinate Judge Court at Arni, Thiruvannamalai District,
- 2.The District Munsif Court at Arni



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V.LAKSHMINARAYANAN, J.

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