



S.A. No. 622 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.622 of 2024
and
C.M.P.No. 19725 of 2024

K.Sudha

.. Appellant

Versus

Kaliammal (died)

1. Nachiammal
2. Chinnammal
3. State of Tamil Nadu,
rep. by District Collector,
Thiruchengode Road,
Namakkal Taluk,
Namakkal Dt.
4. Tahsildar,
Tahsildar Office,
Mohanur Road,
Namakkal Tk., Namakkal Dt.

.. Respondents



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Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 21.12.2020 made in A.S.No.31 of 2019 on the file of Principal Sub-Court, Namakkal reversing the judgment and decree dated 25.02.2019 made in O.S.No.90 of 2014 on the file of Addl. District Munsif Court, Namakkal.

For Appellant : Mr.H.Shabeer Ali

For Respondents : Dr.S.Suriya,
Addl. Govt. Pleader for R3 & R4

JUDGEMENT

The appellant, who is the 1st defendant in the suit in O.S.No.90 of 2014 on the file of District Munsif Court, Namakkal, against whom, the plaintiffs have filed a suit seeking for the relief of declaration and on hearing both sides, the trial judge dismissed the suit. Against which, the plaintiffs preferred an appeal suit in A.S.No.31 of 2019, on the file of Principal Sub-Judge, Namakkal and the same was allowed setting aside the findings of the trial court. Challenging the reversal findings of the courts below, the appellant/1st defendant preferred this Second Appeal.



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

3. Before the trial court, originally, plaintiff Kaliasammal filed a suit for declaration to declare that she is the only legal heir of their only son Kaliannan. She contended that the 1st defendant, who claimed herself as daughter born to the said Kaliannan and one Chinnammal was disputed by the plaintiff stating that alleged Chinnammal, within short span of marriage, he left the family. The daughter, 1st defendant viz., Sudha was not a daughter born to the deceased son Kaliannan and the alleged mother Chinammal. But, however, before the revenue authority, the 1st defendant raised objection and also prayed to include her as one of daughter and as a legal heir of Kaliannan. Therefore, the suit came into force.

4. The 1st defendant also contested the suit. The revenue authorities defendants 3 and 4 filed their objections. Before the trial court, both parties adduced evidence and considering the evidence both oral and documentary, the trial court dismissed the suit stating that the 1st defendant able to establish the fact that her father Kaliannan was married to Chinnammal. To



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that effect, the death certificates, birth certificate, community certificate, which were marked as Ex.B2 to Ex.B4. On relying the said documents, the trial court held that there is no proof on the side of plaintiff that the said Kaliannan and his wife Chinnammal got separated through court of law. Therefore, the plaintiff has not proved that she is the only legal heir. Accordingly, the suit was dismissed.

5. Challenging the said findings, the plaintiffs preferred an appeal suit in A.S.No.31 of 2019 on the file of Principal Sub-Judge, Namakkal, wherein the first appellate judge independently analysed the evidence on record and finally concluded that there is no proof that Kaliannan and Chinnammal was separated, but however, there is a marriage performed between Kaliannan and Chinnammal, but within short span of time, they have got separated. Thereafter, the said Chinnammal filed a maintenance claim M.C.No. 9 of 1996, however, he died during the pendency of the said claim. During the life time of the said Kaliannan, his wife had filed maintenance claim for herself and also for minor daughter. It was considered by the first appellate court and finally held that original plaintiff Kaliammal, who is mother of the said Kaliannan and the 1st defendant Sudha is daughter of Kaliannan are



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equally entitled to half share in the self-acquired property as legal heir of deceased Kaliannan. As per the pleadings, the original plaintiff prayed to declare herself as only legal heir of deceased Kaliannan, but the first appellate judge analysed the facts and evidence on record and held that the 1st defendant also born to the said Kaliannan and she is also one of the legal heir of the said Kaliannan. Accordingly, the first appeal was allowed holding that the original plaintiff and the 1st defendant are legal heirs of deceased Kaliannan. Challenging the said findings, now the 1st defendant preferred this Second Appeal stating that during the pendency of appeal suit, the original plaintiff died. Therefore, her daughters, respondents 1 and 2 have no right to get any share through their mother Kaliasammal. Therefore, she prayed to allow this Second Appeal.

6. The learned counsel for appellant would submit that daughters born to the said Kaliasammal have no share in the suit property. Therefore, they are not legal heirs to proceed further after the death of the said Kaliasammal. After filing the suit, the original plaintiff died and her daughters contested the suit. The legal heir of deceased Kaliannan was already added as a 1st defendant in



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the suit pending between parties. Therefore, the respondents 1 and 2, who are daughters of the said Kaliammal have to work out their remedy by way of filing a partition suit. However, since the nature of property is a self-acquired property or ancestral property, which is the subject in issue, legal heirs of Kaliammal have to proceed with the said case. The objections raised by the respondents 1 and 2 as such is not maintainable. Kaliammal, deceased plaintiff and the 1st defendant/appellant are the legal heirs of deceased Kaliannan. Hence, both the courts below rightly appreciated the facts, which needs no interference and there is no infirmity in the findings of courts below. Accordingly, this Second Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.09.2024

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To

Principal Subordinate Judge,
Namakkal.



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T.V.THAMILSELVI, J.

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