



A.S.No.109 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

A.S.No.109 of 2017
and
C.M.P.No.26088 of 2024

Navab John

...Appellant

Vs.

1.Sakila

2.Rashitha @ Ramya

3.Nasima

4.Aseena

5.Regana

6.Munni

7.Saleembi

8.Rashiya

9.Saida

10.Paritha

11.Kumar

... Respondents



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Prayer: Appeal filed under Section 96 of the Code of Civil Procedure, 1908, praying to set aside the judgment and decree dated 23.12.2016 in O.S.No.22 of 2015 on the file of the court of the District Court, Thriuvannamalai.

For Appellant : Mr. P. Seshadri
For 8th Respondent : Mr. N. Ganesh

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

The plaintiff in O.S.No.22 of 2015 on the file of the District Court, Tiruvannamalai is on appeal. Challenge is to the dismissal of the said suit.

2. The plaintiff sued for partition contending that the suit properties belonged to one Nannu Bai @ Gulamalisaibu. While the suit 'A' schedule property was allotted to the said Nannu Bai @ Gulamalisaibu at a partition that took place between him and his brother on 24th June 1962, the suit 'B' schedule property was purchased in the name of the brother of the plaintiff by the joint exertion of the family members. It is also claimed that some of



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the sharers have executed release deeds in favour of the plaintiff. Therefore, the plaintiff sought for partition and separate possession of her 500/672th shares in the suit 'A' schedule property and 10/96th share in the suit 'B' schedule property.

3. The defendants remained exparte.

4. The plaintiff sought to establish her cause by producing the release deeds that were executed by her sisters in her favour, as well as the legal heirship certificate that was issued on 15.10.1999. The trial Court dismissed the suit on the conclusion that the plaintiff has not proved that the property was allotted to Nannu Bai @ Gulamalisaibu in the partition that took place in 1962 and there was nothing to show that the suit 'B' schedule property was treated as a family property. Hence, this appeal.

5. We have heard Mr.P.Seshadri, learned counsel appearing for the appellant and Mr.N.Ganesh, learned counsel appearing for the 8th respondent. The other respondents though served and their names printed in



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the cause list, are not appearing either in person or through counsel duly instructed. They have also remained *ex parte* before the trial Court.

6. Pending appeal the appellant has come up with the application in C.M.P.No.26088 of 2024 seeking permission to produce the partition deed dated 24.06.1962 entered into between Syed Nannu Bai @ Syed Gulamalisaibu and his brother Syed Kadersaibu.

7. In the affidavit filed in support of the application it is averred that the partition document was not available as the same was with the brother, who died in the year 1999. With great difficulty, the plaintiff was able to get the certified copy of the document pending appeal.

8. Mr.N.Ganesh, learned counsel appearing for the 8th respondent has no objection for the application being allowed

9. From the averments in the affidavit we also find that the petitioner has explained the non-production of document at trial and we also find that



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the document will be helpful in deciding the suit, as the plaintiff claim title to the suit 'A' schedule property only based on this document. Therefore, the application is allowed and the document is received in evidence and is marked as Ex.A7.

10. We do not think further evidence is required inasmuch as the document is not in dispute and it is a registered instrument. The document Ex.A7 shows that Nannu Bai @ Gulamalisaibu was allotted the suit 'A' schedule property at the said partition. As regards the suit 'B' schedule property it is the admitted case of the plaintiff that the property stands in the name of her brother and the trial Court has held that she has not established that the property was purchased out of the joint exertion of the family members and it was treated as the property of the family.

11. Mr.P.Seshadri, learned counsel would fairly submit that since the brother has sold the property, he is not pressing the suit for partition in respect of the suit 'B' schedule property.

12. The only point that arises for determination is as follows:-



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Whether the plaintiff is entitled to a share in the suit 'A'

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schedule property?

13. The trial Court had dismissed the suit solely on the ground that the plaintiff has not established title of Nannu Bai @ Gulamalisaibu, predecessor in interest under whom she claims. That defect in the plaintiff's case has been cured by production of Ex.A7, partition deed dated 24.06.1962, under which the suit 'A' schedule property was allotted to the father of the plaintiff. It is seen from Exs.A3, A4 and A5 that the three of the sisters of the plaintiff have executed release deeds in her favour. Therefore, the plaintiff seeks partition and separate possession of her 500/672 shares in the suit 'A' schedule property.

14. Mr.N.Ganesh, learned counsel appearing for the 8th respondent would submit that her mother relinquished her right in favour of the plaintiff and therefore he has no objection for grant of decree for partition. Therefore, the respondents are not opposing the claim of the plaintiff.

15. Therefore, there is no dispute regarding quantum of share claimed



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by the plaintiff. We therefore find that the plaintiff has established the title of Nannu Bai @ Gulamalisaibu to the suit 'A' schedule property. There is no dispute regarding entitlement of the plaintiff.

16. Hence, the appeal and C.M.P.No.20688 of 2024 will stand allowed. The judgment and decree of the trial Court are set aside. There will be a preliminary decree for partition and separate possession of plaintiff's 500/672th shares in respect of the suit 'A' schedule property alone. The suit in respect of 'B' schedule property will stand dismissed. The parties will bear their own costs in the appeal.

(R.S.M., J.) (C.K., J.)
20.11.2024

Exhibit marked on the side of the appellant in this appeal:

Ex.A7 : Certified copy of the registered partition deed dated 24.06.1962.

(R.S.M., J.) (C.K., J.)
20.11.2024

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Neutral Citation : No
Speaking order



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To

The District Judge,
Thriuvannamalai.



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R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

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