



S.A.No.83 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.83 of 2024

and

C.M.P.No.2130 of 2024

M.Sriramulu Naicker (Died)

1. M.Jaganathan
2. Kamalakannan
3. Selvakumar
4. Malliga
5. R.Malathi
6. R.Usha
7. Shanthi
8. P.Premkumar
9. P.Mohanakumari @ Geetha
10. Mageshwari
11. B.Prasanth
12. B.Deepalakshmi

... Appellants

Vs.

Devakaimmal

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 29.04.2019 in A.S.No.25 of 2014 on the file of the III Additional District and Sessions Court, Thiruvallur at Poonamallee, confirming the judgment and decree dated 26.02.2014 in O.S.No.250 of 1999 on the file of the Subordinate Court, Poonamallee.

For appellants

: Mr.K.Balaji



JUDGMENT

The unsuccessful defendants in the suit for partition are the appellants before this Court.

2. The facts of the case are set out hereinbelow with the parties referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.250 of 1999 on the file of the Sub Court, Poonamallee, seeking a preliminary decree for partition and separate possession of her 1/5th share in the suit schedule properties. It is her case that she is the daughter and the defendants 1 to 4 are the sons of late Murugesu Naicker and Murugammal. The said Murugesu Naicker had purchased several immovable properties in his name and in the name of his wife Murugammal. He died intestate in the year 1977, leaving behind him surviving his wife Murugammal, the plaintiff and the defendants 1 to 4 to succeed to his estate. Murugammal, the plaintiff's mother had purchased the 5th item of the

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suit properties in her name on 24.01.1978, but the sale consideration had been paid by the plaintiff's father Murugesu Naicker.

2.2. It is the further case of the plaintiff that Murugesu Naicker had settled some of the land properties in the name of his wife Murugammal for the purpose of availing loan. Murugammal died intestate in the year 1991, leaving behind her the plaintiff and the defendants 1 to 4 as her legal heirs and therefore, the plaintiff and the defendants 1 to 4 are entitled to 1/5th share in the suit schedule properties.

2.3. The plaintiff would submit that the defendants are cultivating the suit properties and the defendants 1 to 3 are residing in the house property, which is the 5th item of the suit properties. It is only the defendants who are enjoying the income from the suit properties. The defendants, taking advantage of the plaintiff being away from the suit village, had taken steps to mutate the revenue



records in their name and has also obtained UDR patta in their names.

Making use of this UDR patta, they are trying to effect the partition only amongst themselves leaving out the plaintiff. The plaintiff was, therefore, constrained to issue a legal notice dated 19.09.1997, calling upon the defendants for partition of the suit properties. The reply dated 07.10.1997 has been received, wherein, the defendants had denied the plaintiff's right to the properties.

2.4. The written statement was filed by the second defendant which was adopted by the defendants 3, 5 and 6. The defendants had admitted the relationship of the parties, but, denied the plaintiff's right to claim the partition. It is their case that even during the lifetime of Murugesu Naicker, all the properties have been partitioned and enjoyed separately by the respective sharers. There was no joint possession as claimed by the plaintiff. It is also the case of the defendants that the plaintiff was given a sum of Rs.50,000/- towards her share and with effect from the year 1977, she was ousted from the



suit properties.

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2.5. On 17.02.1996, the said Murugesu Naicker had executed a Will in favour of his wife Murugammal giving her an absolute and exclusive rights with respect to the landed properties comprised in S.No.5/1, at Chettiagaram Village, measuring an extent of 1.71 acres and in S.No.4, measuring an extent of 2.19 acres and an extent of 0.10 cents in S.No.30/1 of the very same village. He had also bequeathed an extent of 0.18 acres in S.No.56/2 and 0.20 acres in S.No.39/6 at Manavoor Village and an extent of 0.99 cents in Rajapadmapuram, Tiruttani Taluk. The said Murugesu Naicker had made it clear in the said Will, that except his wife Murugammal, no other person has right or title to the properties.

2.6. The said Murugammal had executed a Will dated 21.05.1990 in favour of the defendants and bequeathed all the properties got by her under the Will executed by her husband and also



the properties purchased by her. She had, in her Will, mentioned that for the welfare of the plaintiff, an extent of 0.18 cents in S.No.56/2, 0.20 cents in S.No.39/6 situate at Manavoor Village and in S.No.114/1 measuring an extent of 0.99 cents situate at Rajapadmapuram were purchased in the name of the plaintiff, out of the funds of Murugesu Naicker for the purpose of giving her some share. Therefore, they contend that the suit is not maintainable and sought for the dismissal of the suit.

TRIAL COURT:

3. The suit was originally filed before the Subordinate Court, Poonamallee, and in the year 2004, it was transferred to the file of the Principal District Court, Chengalpattu and re-numbered as O.S.No.79 of 2004 and then, it was once again transferred to the Additional District Judge III, Poonamallee. Ultimately, the learned Judge decreed the suit as prayed for.



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4. Challenging the said judgment and decree, the defendants had filed an appeal in A.S.No.393 of 2012 on the file of this Court and by judgment and decree dated 04.01.2012, this Court allowed the appeal and had remitted the matter back to the Trial Court and framed an issue as follows:

“Whether the suit properties viz., item nos.1 to 5 should be treated as the joint family properties or the joint properties or the self-acquired properties of Murugesha Naicker?”

5. On remand, in view of the pecuniary jurisdiction, the plaint was returned by the learned Additional District Judge III, Poonamallee. The plaint was then, presented before the Subordinate Court, Poonamallee, and assigned the same number as O.S.No.250 of 1999.

6. After remand, P.W.1 and D.W.1 adduced additional evidence and D.W.5 was examined. However, no documents were



marked on the side of the plaintiff. On the side of the defendants, Exs.B14 to B16 were marked. Ultimately, the learned Judge has held that the properties were the self acquired properties of Murugesha Naicker and Murugammal and therefore, the plaintiff is entitled to an equal share.

7. As regards the two Wills produced by the defendants, the Courts had held that the Wills have not been proved by them. Therefore, the only issue placed for the consideration of the Court was only with reference to the nature of the properties. The learned Judge had held that the properties, as stated *supra*, are self-acquired properties of Murugesha Naicker and Murugammal and that the plaintiff, on their demise as intestate, was entitled to an equal share and therefore, decreed the suit as prayed for.

LOWER APPELLATE COURT:

8. The said judgment and decree was taken on appeal by the



defendants before the learned III Additional District and Sessions Judge, Poonamallee. The Lower Appellate Judge had also confirmed the judgment and decree of the Trial Court.

9. Challenging the same, the defendants are before this Court.

10. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

11. The only defense that was put forward by the defendants was that Murugesu Naicker and Murugammal had executed two Wills dated 17.02.1976 and 21.05.1990 respectively, bequeathing the property of Murugammal and the defendants respectively. In the earlier round of litigation, it was held that the two Wills have not been proved and therefore, the defendants cannot claim under the said Wills. It is an admitted fact that the properties belonged to Murugesu



Naicker and Murugammal.

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12. Both the Courts have held that on perusal of the evidence let in both orally and documentary, it was clear that item nos.1 to 4 and 6 are self-acquired properties of Murugesu Naicker and the 5th item of the properties stood in the name of Murugammal, the mother of the plaintiff and the defendants and therefore, it is her individual property. Taking note of the fact that the parents had died intestate (considering the fact that the Will had not been proved) and the plaintiff being their first class legal heir, she is entitled to an equal share in the properties and the Courts below have rightly decreed the suit and I see no reason to interfere with the well-considered judgements of the Courts below.

Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Subordinate Judge, Poonamallee.
- 2.The III Additional District and Sessions Judge, Poonamallee.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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