



A.S.No.533 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.09.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.No.533 of 2017

G.Kannammal @ Kannathal

...Appellant

Vs.

1. R. Ramasamy Gounder
2. R. Arumugam
3. R. Kumaresan
4. N. Murugesan
5. N. Palanisamy
6. Anandhi
7. Sangeetha

...Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C against the judgment and decree dated 18.04.2017 made in O.S.No.234 of 2012 on the file of the learned III Additional District Judge, Erode at Gobichettipalayam.

For Appellant	: M/s.A.V.Arun
For R3	: Mr.R.P.Rupanchakravarthy
For R6 & R7	: Mr.S.Kaithaimalai Kumaran
For R2, 4 & 5	: No Appearance
R1	: Died



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JUDGMENT

WEB COPY The Appeal suit has been filed against judgment and decree dated 18.04.2017 made in O.S.No.234 of 2012 on the file of the learned III Additional District Judge, Erode at Gobichettipalayam.

2. The learned Counsel for the Appellant submitted that the Plaintiff in O.S.No.234 of 2012 on the file of the learned III Additional District Judge, Erode at Gobichettipalayam is the Appellant herein.

3. It is the contention of the learned Counsel for the Appellant that the suit was filed by the Plaintiff seeking partition in which the Defendant-1 is the father of the Plaintiff. Defendant-2 is the brother of the Plaintiff. Defendant-3 is the son of the Defendant-1 through his 2nd wife. Defendant-4 and Defendant-5 are the purchasers of the property in item 3.

4. Learned Counsel for the Appellant invited the attention of this Court to the averments in the plaint and written statement filed by Defendant-1 wherein he admits his relationship, but denies the Plaintiff's entitlement to



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partition on the ground that she was married prior to 1989 and hence she cannot seek partition. Also he had in the written statement stated that the 2nd wife and daughter had not been impleaded.

5. In the written statement, he had stated that after the death of the 1st wife only he married 2nd wife and through her, a son and a daughter were born. Also he had disputed that he has acquired the property from the income not derived from the ancestral property. He had claimed that it is the self acquired property of his own income derived from the sale of Item 1 and Item 2 is self acquired property for which he had executed settlement deed in favour of the son born through 2nd wife, the 3rd Defendant.

6. It is the contention of the learned Counsel for the Appellant that the Plaintiff in O.S.No.234 of 2012 had examined herself as P.W-1, the husband of the Plaintiff was examined as P.W-2, who is her maternal uncle and the staff of the temple in which the marriage of the Plaintiff took place was examined as P.W-3. The documents in support of the contention of the Plaintiff were marked as Ex.A-1 to Ex.A-6. Ex.A-1 is the partition deed in



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which the suit property was allotted in favour of the paternal grand father of the Plaintiff. Rakkia Gounder. Ex.A-2 is the sale deed executed by the father of the Plaintiff in favour of the Defendant-4 and Defendant-5. Ex.A-3 is the Partition deed dated 12.06.1986 between the Defendant-1 and Defendant-2 and the paternal grand mother of the Plaintiff. Ex.A-5 is the settlement deed dated 31.08.2012 executed by the Defendant-1 in favour of the Defendant-3. Ex.A-6 is the temple receipt of the marriage of the Plaintiff dated 15.05.1989. The Defendant-1 had examined himself as D.W-1. Defendant-4 was examined as D.W-2 and Defendant-3 was examined as D.W-3.

7. After full trial, the learned Judge had on proper appreciation of evidence, arrived at a conclusion that the Plaintiff is entitled to claim share in the suit properties but had not granted the relief of partition on the ground that all the sharers had not been impleaded in the suit. Aggrieved by the same, the Plaintiff had preferred this Appeal.

8. It is the contention of the learned Counsel for the Appellant that pending Appeal, the father of the Plaintiff/Appellant died. Therefore, all the



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legal heirs were impleaded. Therefore, what had been pointed by the learned

III Additional District and Sessions Judge, Erode at Gobichettipalayam in the judgment had been overcome in the Appeal. Therefore he seeks that the other side, the Respondent can concede to the passing of the preliminary decree by this Court.

9. The legal heir of the Respondent-1 through his 2nd wife, the son of the Defendant-1 through the 2nd wife was already a party as Defendant-3.

10. Learned Counsel for the Respondents 6 and 7 would submit that if the matter is remanded back to the same Court, the impleaded parties, 2nd wife and daughter of Defendant-1 through the 2nd wife may have pleadings to file, in which case, the learned Judge shall hold trial to adduce additional evidence regarding the newly impleaded parties. Therefore, this Court may issue proper direction to the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam to dispose of the suit afresh.

11. In the light of the submission of the learned Counsel for the



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Appellant as well as the learned Counsel for the Respondents, the Appellant/Plaintiff is directed to amend the plaint to implead the 2nd wife of Defendant-1 and the daughter of Defendant-1 born through the 2nd wife as newly added parties / Defendants. The matter is remanded back to the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.

12. The learned III Additional District and Sessions Judge, Erode at Gobichettipalayam is directed to dispose of the case afresh after amendment of the plaint by the Plaintiff impleading the 2nd wife of Defendant-1 and their daughter as Defendants. After such impleading of parties, the newly added parties shall be permitted to file their written statement (written statement of newly added parties). After filing of written statement of newly added parties, the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam shall hear both the Plaintiff and Defendants Counsel regarding additional issues and frame additional issues if any and shall proceed with recording additional evidence in the light of the written statement filed by newly added parties / Defendants.



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13. The amendment of plaint pleadings shall be completed by Plaintiff within a period of two months from the date of receipt of records in the suit after order of remand.

14. The newly added parties shall be granted sufficient time of two months to file their written statement. After filing of written statement by newly added parties (Defendants) the Court shall complete the recording of evidence within a period of two months thereafter. After the completion of recording of evidence, the suit shall be disposed on merits and in accordance with law within a period of three (3) months from the date of completion of recording of evidence and shall report compliance of order of remand and disposal of the suit on merits.

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Index : Yes/No

Speaking/Non-speaking order

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SATHI KUMAR SUKUMARA KURUP, J.

To

1. The III Additional District Judge,
Erode at Gobichettipalayam.
2. The Section Officer,
V.R.Section,
High Court of Madras

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