



A.S.(MD).No.105 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 23.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.105 of 2013
and
CMP(MD)No.9498 of 2017

M.Angayarkannan

... Appellant

Vs.

1. R.Dhanalakshmi (Died)

2. K.Velammal

3. N.Ramachandran

4. R.Suguna

5. R.Udayakumar

6. R.Gokhilavani

7. R.Kavitha

... Respondents

(Respondents 3 to 7 were brought on record as legal heirs of the deceased 1st respondent vide order dated 21.03.2019 in CMP(MD)Nos. 9572 to 9574 of 2018)

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 16.02.2012 made in O.S.No.83 of 2008 on the file of the learned I-Additional District Judge, Madurai.



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For Appellants : Ms.N.Juliet Latha

For Respondents : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates for R3 to R7

:Ms.S.Jainab Beevi for R2

: R1 died

JUDGMENT

This appeal has been preferred as against the Judgment passed by the learned I-Additional District Judge, Madurai, in O.S.No.83 of 2008 dated 16.02.2012, wherein, the first respondent herein has filed a suit for the relief of partition, separate possession and for costs and other reliefs. The trial Court decreed the suit. Aggrieved by the said judgment and decree, the present appeal has been preferred by the 2nd defendants.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking before the trial Court.



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3. The brief facts before the trial Court are as follows:

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The plaintiff is the daughter of the first defendant and sister of the second and third defendants. The plaintiff and the defendants are the legal heirs of the Late Muniyasamy Naidu. Item 1 & 2 of the suit schedule property are the ancestral properties of the said Muniyasamy Naidu. During his life time out of his income, he purchased item No.3 of the schedule property in his name and items 4, 5 and 8 in the name of his wife/first defendant. The said Muniyasamy died intestate leaving behind him the plaintiff and the defendants as his legal heirs. After his demise, his legal heirs are enjoying the property jointly as co-parceners. They all worked together and developed the property from out of the income generated from the properties left by the said Muniyasamy. Further, they purchased the item 6 & 7 in the name of the first defendant and item 9 to 11 in the name of the second defendant from and out of the income generated through the money lending business. The second defendant taking an upper hand over the first defendant being the son of the first defendant and trying to take over all the properties left by the deceased Muniyasamy, which they were enjoying as co-parceners. Hence, the plaintiff demanded her share in all the properties and demanded partition.



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But the defendants evaded to divide the property and allot 1/4th share to the plaintiff. Hence, the plaintiff issued legal notice dated 21.04.2008.

The second defendant alone replied to the said notice on 16.05.2008 with false averments stating that the first defendant has purchased the other properties by selling jewels and shridhana properties and the same was not known to the plaintiff. The first defendant has also executed a Will in this regard. The plaintiff denied that the first defendant has no right to execute such Will and the said Will was created only to defeat the plaintiff from getting any share of the properties from the joint family properties. Since the properties are co-parceners properties, the second defendant is managing the properties on behalf of the co-parceners. During the pendency of the suit, the first defendant died on 13.08.2008. Being one of the legal heirs, the plaintiff is entitled to share of the deceased first defendant and thereby the plaintiff is entitled to 1/3th share of the properties.

4. The averments made in the written statement filed by the second defendant are as follows:

The second defendant stated that the item Nos.1 and 2 of the



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properties belonged to Late Muniyasamy Naidu and his two brothers and it is a house vacant site. No income was received by Muniyasamy Naidu from the said items and he was working in Harvey Mills Limited, Madurai. His wife, first defendant sold her shridhana jewels and using the sale consideration for her financial business. Muniyasamy Naidu never purchased the item 3 of the schedule properties in his name. It was purchased by the first defendant after the death of her husband. She alone purchased the item 7 of the properties in her husband's (Muniyasamy) name through registered sale deed on 22.05.1971. And also with the help of the second defendant, she purchased item 3 to 11 of the properties. Item 3 of the property was purchased in her name through a registered sale deed dated 26.03.1980. The item 9 of the property was purchased through registered sale deed dated 31.05.1978 and the second defendant purchased item 10 of the property through registered sale deed dated 24.10.1979. The second defendant was doing agricultural operations besides real estate business and earned a lot of amount and purchased item 9 and 10. Item No.11 of the suit property belonged to one Nagappan, who borrowed amount from the 1st defendant and executed Othi deed dated 11.09.1971 and subsequently, the property was sold to



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the 1st defendant vide registered sale deed dated 19.02.1975. Further, item 6 & 7 in the name of the first defendant and item 9 to 11 in the name of the second defendant was purchased from and out of the income generated through the money lending business. The plaintiff and the defendants never enjoyed the schedule properties jointly during the life time of Muniyasamy or after his demise. Hence, the plaintiff is not entitled to any share in the schedule mentioned property. The 2nd defendant never pressurized the deceased/1st defendant to execute a Will. During her life time, she executed the said Will on 16.02.2004 and registered the same and she died on 13.08.2008. Thereafter, the second defendant is in absolute possession and enjoyment of the schedule mentioned properties and hence, the suit is liable to be dismissed.

5. Based on the above said proceedings, the trial Court has framed the following issues.

1. Whether the plaintiff is entitled to 1/3rd share (i/4th share) in the properties?
2. Whether the properties are joint family properties?
3. Whether the properties items 3,5,6,7,8 and 11 purchased by the



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1st defendant and Will executed by the 1st defendant in favour of the 2nd defendant is valid and binding upon the plaintiff?

4. Whether items 9 and 10 purchased by the 2nd defendants?
5. Whether the 3rd defendant is entitled to share in the properties?
6. To what relief if any the plaintiff is entitled to?

6. Before the trial Court on the side of the plaintiff, PW1 & PW2 were examined and Exs.A1 to A12 were marked. On the side of the defendant DW1 to DW3 were examined and Ex.B1 to Ex.B6 were marked.

7. After analysing the evidence adduced on both sides, the trial Court has decreed the suit in favour of the plaintiff and directed to divide the suit property into three shares and allotted one share to the plaintiff in respect of item Nos.2 and 11 of the properties. As against the first item of the property, the suit was dismissed.

8. Aggrieved over the said decree and judgment, the present appeal has been preferred by the second defendant on the following grounds.



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1. The lower court failed to note the admission of P.W.1 at the time of cross-examination that the item 1 and 2 of the properties are ancestral properties and till the demise of the father Muniyasamy, they are kept as joint family properties. If the item 1 and 2 of the schedule mentioned properties are ancestral property, the respondent is not entitled to any share as per Hindu Succession Act (State Amendment 1989).
2. The lower court utterly failed to dismiss the suit on the admission of the P.W.1 at the time of cross-examination that no document was filed by her to show that her father doing finance business.
3. The lower court ought to dismiss the suit on the admission of P.W.1 at the time of cross-examination that she has not produced any documentary evidence to show that Ex.A9 property was purchased in the name of the Appellant herein out of the joint family income.
4. The lower Court ought to dismiss the suit on the basis of the admission of P.W.1 at the time of cross-



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examination that she does not know whether item 9 and 10 of the schedule of properties are standing in the name of the Appellant or not.

5. The lower court failed to fix the burden of proof upon the plaintiff to prove items 1 to 10 are the joint family properties or purchased out of joint family funds.
6. The lower court failed to discuss the said DW3 evidence in favour of the defendant (i.e.,) she was doing Agriculture; if the lower court accept one statement, then the lower court has to accept the other statement also. Once DW3 admitted that she was doing agriculture, on her own, she earned some income from the agricultural land, it is her individual one.
7. The lower court failed to dismiss the suit as per the provision of Hindu Succession Act 1956. Any female member owns property in her name, it is her self-acquired property or her shridhana property.
8. he lower court failed to discuss the paragraph 5 of the Affidavit that on 11.09.1971 during the life-time of



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defendant's husband, 1st defendant has obtained a re registered mortgage deed dated 11.09.1971 and registered as 3784/1971 in respect of item 11 of the schedule of property and subsequently sold the same to 1st defendant Exhibit D2. The said document clearly shows that 1st defendant was doing money lending business.

9. The lower court failed to note that as per Exhibit A10 the plaintiff alleges that her father was also having an income through the money lending business; but failed to prove the same through documentary evidence; on the other hand Ex.B2 sale deed dated reveals that 11.09.1971 registered usufructuary mortgage deed obtained in favour of the deceased 1st defendant.
- 10.the lower court failed to decide the issues 1 and 2 against the plaintiff by relied on Exhibit B2 document ought to have decided the issue No.3 in favour of the 1st defendant on the basis of the exhibit B2 sale deed and the registered mortgage deed.



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9. The learned counsel appearing for the appellant would contend that the suit properties are not joint family properties. The first and second item of the properties alone are ancestral properties of Muniyasamy Naidu. The other properties were purchased by the first and second defendants. The second item of the property was purchased by the first defendant through her savings and is under the exclusive possession of the second defendant. The item Nos.9 and 10 were purchased by the second defendant through his business earnings and the item Nos.3, 5 and 8 were purchased by the first defendant out of her own cost. Item No.11 also purchased by the first defendant.

10. In order to prove the case of the defendants, they examined DW1 to DW3 and marked Ex.B1 to Ex.B3-sale deeds. As per the sale deed properties are purchased by the second defendant and item No. 9 and 10 were purchased by the second defendant. But the trial Court without considering the said aspect, decreed the suit by holding that the properties were purchased from the income of the other properties. Infact, the first and second items are vacant site and thereby no income



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from the first and second item of the suit schedule property. Item No.3 of the property was purchased through sale deed dated 26.03.1980 and other item Nos.4,5,6 & 8 were purchased by the first defendant out of the income through finance business. The 7th item of the property was purchased by the first defendant in the name of her husband through sale deed dated 22.05.1971. The second defendant was doing Real Estate business and doing various business and earned a lot of income. The 9th item of the property was purchased by the 7th respondent herein through the registered sale deed dated 31.05.1982 and the item No.10 of the property was purchased by the second defendant through registered sale deed dated 21.04.1978. The 11th item was purchased by the first defendant through the registered sale deed dated 16.10.1973 through her own earnings. Prior to that the property was mortgaged and the first defendant was settled the mortgaged money to one Nagappan and obtained mortgage deed and thereafter she purchased the property through sale deed. As such, the properties all are self-acquired properties and of the first and second defendants. But the trial Court erroneously came to a conclusion that though the sale deeds stand in the name of the second defendant, the evidences show that those properties were



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purchased through the income of the joint family property and hence, decreed the suit in favour of the plaintiffs. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

11. The learned counsel for the first respondent herein/plaintiff would contend that the father of the plaintiff and the second defendant and the husband of the first defendant owned the properties through partition deed and he was a hard worker and he earned more money and then he purchased the properties and she has right over the properties belongs to Muniyasamy Naidu and the third item of the property was purchased in the name of Muniyasamy Naidu. Item Nos.4, 5, 6, 7, 8 and 11 of the properties were purchased by the first defendant through the joint family income and the first defendant had no independent income. Therefore, the said properties were purchased from the income of the joint family properties. Item Nos.9 and 10 of the properties were purchased in the name of the second defendant out of the income of the joint family properties. The second defendant was young age at the time of purchase of the properties and he had no independent income at the time of purchase of the properties. Therefore, all the properties have to



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be treated as joint family properties. The trial Court also after elaborate discussion, correctly hold that the properties are joint family properties of the plaintiff and the defendant and thereby granted decree for partition over the 1/3rd share to the plaintiff. As far as the alleged Will is concerned, the alleged Will was executed by the first defendant. The first respondent/plaintiff herein denied the execution of the Will. The mother of the plaintiff, second defendant and third defendant never executed any Will in favour of the second defendant. There is no reason stated in the Will for exclusion of the other legal heirs and the second defendant failed to remove the suspicious circumstances. Further, the properties belongs to the second defendant also included in the list of properties in the Will. Therefore, the Will creates suspicious over the execution and attestation of the Will. Therefore, the defendants failed to prove the Will in accordance with law. Therefore, the trial Court, after considering all the aspects correctly, decreed the suit and the present appeal is liable to be dismissed.

12. This Court has heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and



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perused the records.

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13. Points for consideration in this appeal are

1. Item Nos.3,4,5,6,8 and 11 of the properties were purchased by the first defendant through her personal income?
2. Whether the 7th item of the property was purchased by the 1st defendant in the name of her husband Muniyasamy Naidu through sale deed dated 22.10.1971?
3. Whether the item Nos.9 and 10 of the properties were purchased by the second defendant through his income?
4. Whether the Will dated 16.02.2004 was executed by the first defendant in favour of the second defendant?
5. Whether the plaintiff is entitled to partition over the suit properties?
6. Whether this appeal is to be allowed or not?
7. To what other relief, the parties are entitled for?

Point Nos.1 to3:

14. In this case, there is no dispute in respect of the relationship of



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the parties. The plaintiff and the second defendants are the children of the first defendant and one Muniyasamy Naidu. The 1st and 2nd item of the properties belonged to Muniyasamy by ancestrally and the other items of the properties were purchased in the name of first and second defendants from the earnings of the joint family properties and joint family business of money lending run by the father of the plaintiffs and continued by the 1st and 2nd defendants. The plaintiffs and the defendants are in joint possession of the properties. According to the plaintiff, all the properties are purchased from out of the income of the joint family business.

15. Per contra, the defendant's contention is that except the item Nos.1 and 2, all other items of the properties were purchased by them through separate sale deeds. They also produced sale deeds in their individual name.

16. It is admitted fact that the father of the plaintiff and the husband of the first defendant was working at Madura Coats thereby he earned more money and was doing money lending business and 1st and 2nd items of the properties belonged to Muniyasamy Naidu.



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17. On the side of the plaintiff, PW1 and PW2 were examined and marked Ex.A1 to Ex.A12. The PW1 in her evidence deposed that the 1st and 2nd items of the suit properties are ancestral properties of Muniyasamy Naidu and other properties were purchased through joint family business in the name of 1st and 2nd defendants. Further PW2 was also examined. PW2 is the close relative of the plaintiff and the defendants and he also deposed that the properties are joint family properties. The father of the plaintiff, namely, Muniyasamy Naidu, who is the paternal uncle of the witness was working in Madura Coats and he also doing money lending business and the properties were purchased in the name of his wife and his son and from the income of the Muniyasamy Naidu. Therefore, the evidence of the plaintiff's side reveals that the properties were purchased from the income of the said Muniyasamy Naidu.

18. Per contra, on the side of the defendants, the second defendant was examined as DW1 and he deposed that the first and second items of the properties are house sites and no income was derived from the joint



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family properties and his father Muniyasamy has not purchased the property item Nos.3,4 and 8 and the same were purchased by the first defendant through her Sridhana properties, ie., gold jewels, she sold the jewels and was doing money lending business and thereby she earned more money and purchased the properties through her personal income.

19. DW1 in his cross-examination stated that his father worked in Harvey Mills Limited, Madurai and his mother, ie., first defendant Mariayammal is an illiterate and she did not know to read and write and his father after rendering 35 years of service in the said Mill, got voluntary retirement. Further he admitted that he purchased properties through Real Estate business income and he stated that “வட்டி தொழிலை 6, 7 வருடமாக செய்து சரியான வருமானம் இல்லாததால் ரியல்எஸ்டேட் தொழிலுக்கு போய்விட்டேன்.1980 லிருந்து சுமார் 5,6 வருடங்கள் இருக்கும். வட்டி கொடுத்ததற்கு கணக்குப் புத்தகங்கள் பராமரிக்கவில்லை. யார் யாரிடம் கொடுத்தேன் என்ற விபரமும் தற்போது சொல்லமுடியாது. எனக்கு விவரம் தெரிந்ததே 1980 ல்தான் என்றும் அதற்கு முன் நான் வட்டிதொழில் செய்து சம்பாதித்தது



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போய் என்று சொன்னால் சரியல்ல. என் அம்மா என் அப்பா 1977 ல் இறந்த பிறகு வேளியே போவதை நிறுத்தி விட்டதால் நான் போய் வதால் செய்து வந்தேன். 1976ல் என் தகப்பனார் படுத்த படுக்கையாகிவிட்டார். அதற்கு முன்பு நல்ல திடகாத்திரமாக இருந்ததால் அதற்கு முன்பு அவர் வேலைக்குப் போய் வந்ததால் வட்டிக்குப் பணம் கொடுத்து வந்தார்.”

20. Therefore, from the evidence of DW1, it reveals that he was doing business from 1980 to 1986 and the properties were purchased in the year 1980. The third item of the property was purchased in the year 1980 and the item No.9 was purchased in the year 1982 and item No.10 was purchased in the year 1979. Therefore, the contention of the second defendant, ie., he purchased the properties through his personal earnings is not acceptable. He has admitted that his father was doing money lending business. Further he admitted that after the demise of his father, his mother stopped to go to outside whereby he collected the money. Hence, it shows that the father was doing money lending business and the same was continued by him. Further, DW1 himself admitted that there is no sufficient income from the money lending business and



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thereby he changed his business. Therefore, the contention of the defendant that the item Nos.9 and 10 of the properties were purchased from his personal earnings is not acceptable and he admitted that his father also was doing money lending business and he collected the money after the demise of his father. Therefore, this Court can infer that the property purchased only from the income of the joint family. As far as the other properties stand in the name of the first defendant is concerned, according to the first defendant, she purchased the properties, but there is no proof to show that she had separate income. There is no evidence to show that the first defendant had jewels and started money lending business by selling her jewels and DW1 himself admitted that he used to collect money and his mother stopped to go outside her house after the demise of his father. PW2 independent witness also stated that the defendants 1 & 2 have no sufficient means to purchase the properties and the second defendant has no employment. Therefore, as admitted by the PW1, the properties were not purchased by her mother through her personal income. In the absence of concrete evidence, to show that through the income of the first defendant, the properties were purchased, it has to be presumed that the properties have been purchased through the



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joint family income. Therefore, the defendant failed to prove that they purchased the properties through her personal earnings. Further, according to the defendant, the 7th item was purchased in the name of the deceased father of the plaintiff in the year 1971 by the first defendant, but no piece of evidence produced to prove the same. But the defendants themselves admitted that the 7th item of the property stands in the name of their father Muniyasamy. Therefore unless the contrary is proved, it is the presumption that the 7th item of the property is belonged to Muniyasamy.

21. Moreover, the plaintiff's side evidence shows that there was money lending business doing by the father of the plaintiff, second and third defendants and through the income derived by money lending business, the properties were purchased. The trial Court also in this aspect elaborately discussed about the purchase of the properties and entitlement of the parties and correctly decided the issues. Therefore, this Court is of the view that the item Nos.3 to 11 of the properties are not separate properties of the first and second defendants and the properties are joint family properties of the plaintiff, second and third defendants.



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Thus the point Nos.1 to 3 are answered.

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Point No.4:

22. According to the defendants, the first defendant is the owner of the item No.3,4,5,8 and 11 of the properties and she executed a Will in favour of the second defendant dated 16.02.2004. In order to prove the same, DW3 was examined. Already this Court in the previous points decided that the properties are not separate properties of the first defendant and the same are joint family properties and thereby the first defendant has no right to execute a Will for the entire properties. Though the defendants examined DW2 & DW3, the defendants failed to remove the suspicious circumstances over the execution of Will. As per the Will, the property purchased by Muniyasamy Naidu and the 9th item of suit property which is said to be purchased by the 2nd defendant were also included in the Will as if they belonged to the 1st defendant. Even as per the Will the 2nd defendant has no permanent job and he is depending the agricultural work and further the 1st defendant purchased the property through her agricultural income and the said statements are totally contra to the plaint averments.



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23. The learned counsel for the appellant would contend that there is suspicious circumstance over the Will and there is no reason stated in the Will in respect of the exclusion of the legal heirs. In this aspect, he relied upon the judgment of **G.Lalitha v.G.Ponnurangam and others** reported in **2011(5)CTC262** wherein this Court in para 26 held as follows:

“26. As regards the legal enforceability and validity of Ex.D1, what are all the discussions undertaken for Ex.P1, Will have to be adopted. In the Will Ex.D1, even though the sons were directed to defray the marriage expenses of their sisters, still there is no reason contained in the Will for exclusion of daughters from inheritance. Bearing the marriage expenses is different from excluding the daughters from inheritance. There is no evidence on record to show that as per the Will and pleasure of the testatrix, the Defendants celebrated the marriages of their sisters by incurring the marriage expenditure. The proper persons to speak about this are the Defendants. But they did not enter into the box. DWs.2 & 3 have only identified the signatures of their fathers. In the absence of any material or evidence to show that as



stipulated in Ex.D1, that the Defendants incurred the marriage expenses of their sisters, the necessary corollary would be that they did not perform their marriages. Hence, unnatural disposition in Ex.D1, will excluding the daughters from inheritance would constitute a valid suspicious circumstance which the Defendants have failed to remove. What are all the principles allowed in respect of Ex.P1 have to be followed in the case of Ex.D1 also.”

24. In the case of ***V.Selvarani (died) and others v. R.Balakrishnan*** reported in **2024(1)CTC 561**, this Court in para 30 held as follows:

“30.As rightly pointed out by the learned Counsel for the Plaintiff in O.S.No307 of 2004, Sowdammal, who was the mother of atleast seven children would not have, but for very strong reason, executed a Will excluding six of her children from inheriting her property. We do not find any explanation either in the Will or in the evidence of DW2 & DW3.”

25. On careful perusal of the above judgment, it is clear that without any reasons, the Will was executed by excluding the other legal



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heirs would create suspicion over the Will, thereby execution of the Will is not proved in the case on hand also, though the defendants were examined DW3, attesting witness of the Will, this Court already discussed as per the above judgments, the defendants failed to clear the suspicious circumstances over the Will and thereby the Will has not been proved by the defendants.

26. This Court in the previous points, discussed and decided that the defendants failed to prove that the properties are self-acquired properties of the first and second defendants and thereby also, the first defendant has no right to execute the Will for the entire properties. Therefore, the defendants failed to prove the Will in accordance with law. Thus, this point is answered.

Point No.5:

27. Whether the plaintiff is entitled for the relief of partition:

In this case, the suit is for the relief of partition and no dispute in respect of the relationship of the parties. In the previous points, this Court already decided that item Nos.3 to 11 of the properties were



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purchased from the income of the joint family properties. Therefore, the properties of Muniyasamy have to be divided into four equal shares.

After the demise of wife of Muniyasamy, ie., 1st defendant, the property has to be divided into 3 equal shares. During the pendency of the proceedings, first defendant died and thereby the plaintiff, second and third defendants are equally entitled to the properties of the deceased Munisasamy Naidu and the first defendant. Therefore, the plaintiff is entitled to 1/3rd share of the schedule properties.

28. The third defendant filed written statement and she did not claim over the properties. Since she is one of the legal heirs of the deceased Muniyasamy, she is also entitled to share of the properties. It is for her to whom she has to give her share of the property. Thus the point No.5 is answered.

Point Nos.6&7:

29. In this case, the plaintiff has filed the suit for partition and the trial Court has decreed the suit by holding that the properties are joint family properties and the trial Court has elaborately discussed about the



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evidence adduced on both side and fairly came to the conclusion that the properties are joint family properties and the plaintiff is entitled for 1/3rd share of the properties namely, item Nos.2 to 11.

30. The trial Court also held that the first item of the property not belonged to the family and cannot be partitioned among the members of the family. By leaving the first item, the other items are ordered to be partitioned, and the the plaintiff has 1/3 share of the property. The plaintiff has not filed any appeal in respect of the first item of the property. The present appeal is filed by the defendant only as against the decree for partition of other properties. Therefore, this Court do not find any perversity or infirmity in the judgment passed by the trial Court and hence, the order of the trial Court does not warrant any interference.

31. In view of the above said discussion, this Appeal Suit has no merits and deserves to be dismissed and the appellant is not entitled to any relief through this appeal. Thus the points 6 & 7 are answered.



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32. In the result, this Appeal Suit stands dismissed by confirming the judgment of the trial Court. Considering the relationship of the parties, there shall be no order as to Costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJJ

To

1. The I-Additional District Judge, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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