



A.S.(MD)No.182 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.182 of 2010

P.Muthusamy

...Appellant

Vs.

- 1.Lakshmanan (Died)
- 2.Murugan alias Murugiah Pillai (Died)
- 3.Singaravelu (Died)
- 4.Muthu Irulappan
- 5.L.Piramanayagam
- 6.L.Chidambaram
- 7.S.Pattammal
- 8.S.Piramanayagam @ Siva
- 9.P.Ramalakshmi
- 10.Manickalakshmi
- 11.Murugan Piramanayagam
- 12.Kalyana Kumar Murugan
- 13.Lakshmi Sivasubramanian

...Respondents

(Respondents 5 and 6 are brought on record as LRs of the deceased 1st respondent, vide Court order, dated 15.11.2022, made in C.M.P.(MD)No.9845 of 2022 in A.S.(MD)No.182 of 2010)

(Respondents 7 to 9 are brought on record as LRs of the deceased 3rd respondent, vide Court order, dated 15.11.2022, made in C.M.P.(MD)No.10558 of 2022 in A.S.(MD)No.182 of 2010)



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(Respondents 10 to 13 are brought on record as LR's of the deceased 2nd respondent, vide Court order, dated 12.03.2024, made in C.M.P.(MD)No.16068 of 2023 in A.S.(MD)No.182 of 2010)

PRAYER: This Appeal Suit filed under Section 96 and Order 41 Rule 1 of C.P.C., to against the judgment and decree, dated 01.10.2001, made in O.S.No.25 of 1997 on the file of the II Additional Sub Judge, Tirunelveli.

For Appellant : Mr.J.Alaguram Jothi

R1 to 3 : Died

For R7 to R9 : Mr.M.Gurudas

For R4 to R6 : No appearance

JUDGMENT

The present Appeal Suit in A.S.(MD)No.182 of 2010 is filed by the 1st defendant against the judgment and decree dated 01.10.2001 passed in O.S.No.25 of 1997 on the file of the II Additional Sub Court, Tirunelveli.

2. The suit is filed by the plaintiffs Lakshmanan and Murugan @ Murugiah Pillai for partition claiming 1/5th share each in the suit scheduled properties and the suit was dismissed on 01.10.2001. Aggrieved over the judgment and decree the



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present First Appeal in A.S.(MD)No.182 of 2010 is filed by the 1st defendant.

Aggrieved over the same judgment and decree another First Appeal in A.S.No.74 of 2002 was filed by the plaintiffs.

3. The plaintiffs had filed A.S.No.74 of 2002, pending the first appeal the 1st plaintiff died and his legal heirs namely L.Piramanayagam and L.Chidambaram were impleaded as parties. Likewise, pending first appeal the 2nd plaintiff also died and his legal heirs namely Manickalakshmi, Murugan Piramanayagam, Kalyana Kumar Murugan and Lakshmi Sivasubramanian were impleaded as parties. Even though they were impleaded as parties, the legal heirs had not prosecuted the case properly and the Learned Counsel had reported no instructions before the Court. The same was recorded and the first appeal was dismissed on 22.07.2024 for non-prosecution with an observation that the rights of the said legal heirs would be protected in the present appeal in A.S.(MD)No.182 of 2010.

4. In the present appeal in A.S.(MD)No.182 of 2010 also in spite of notice the legal heirs of the plaintiffs had not appeared in person or through an Advocate. Now the first appeal in A.S.(MD)No.182 of 2010 ought to be considered on its own merits by protecting the rights of the aforesaid legal heirs.



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5. The brief facts are that one Piramanayagam Pillai had married one Mahalakshmi Ammal and had two children namely Periya Sivagami Ammal and Shanmugam Pillai. After the demise of the first wife namely Mahalakshmi Ammal, the said Piramanayagam Pillai had married one Ramalakshmi Ammal and they had nine children namely Lakshmana Pillai (1), Murugiah Pillai @ Murugan (2), Muthusamy Pillai (3), Kaliyani Ammal (4), Singaravelu Pillai (5), Maniammal Pillai (6), Chinna Sivagammi Ammal (7), Pramu Ammal (8) and Muthu Irulappa Pillai (9).

6. The said Piramanayagam Pillai had executed a Will dated 22.06.1956, wherein he had bequeathed the properties to all the children born from 1st wife and 2nd wife, some properties to the 2nd wife herself. Also, he had bequeathed some properties to the 2nd wife as life estate. There is no dispute to the properties executed in the Will. However, the suit is filed for partition to some of the properties which were not included in the Will. The plaintiffs had relied on paragraph 8 of the Will wherein it is stated that the properties which are not shown in the Will and which are purchased subsequent to the Will shall belong to the children born to the 2nd wife. But the Trial Court failed to consider this specific clause in the Will. Had the said clause was considered, the Trial Court would not have rendered a finding that “the



property was purchased in the year 1960 but the Will was executed in the 1956 and so the suit cannot be entertained”. When the Will specifically mentions that the properties which are not mentioned in Will and subsequent purchase of properties would belong to the children of the 2nd wife, then the Trial Court had erred in rendering such finding. Therefore, this Court is of the considered opinion that the case ought to be remitted to the Trial Court for fresh consideration.

7. Further the plaintiffs had relied on a Released Deed dated 07.12.1961 executed by son born through 1st wife namely Shanmugam Pillai, but the same was not produced before the Trial Court. Interestingly the Release Deed refer to one more legal heir namely Nagammal who was minor and ought to have born after the execution of the Will dated 22.06.1956. When the plaintiffs and the defendants are relying on the Release Deed dated 07.12.1961 and the suit schedule properties are referred in the Release Deed, then it is incumbent to implead the said legal heir Shanmugam Pillai who had executed the Release Deed. Further in the Release Deed the said Shanmugam Pillai had stated that he would give up his right over certain properties which were allotted to him in the Will dated 22.06.1956. In order to ascertain the veracity of the said Release Deed then it is incumbent on the plaintiffs to implead the said Shanmugam Pillai as one of the parties in the suit. Hence the



Trial Court is right in holding that the suit is filed without impleading the necessary parties.

8. Further as far as the first item in suit schedule property is concerned, the Learned Counsel appearing for the first defendant / appellant herein relied on the 5th schedule in the Will. However, it is seen that the T.S. number stated therein is 68 part and 69 part. But in the first item of suit scheduled property, T.S. number is stated as 79 part, 80 part, 90 part. When the survey number is not coinciding, this Court is of the considered opinion the plaintiff ought to identify the property and ought to establish by tracing their title. The parties had not taken steps to prove the same that the 5th schedule property stated in the Will is the 1st item in the suit scheduled property.

9. For the reasons stated supra, this Court is inclined to set aside the impugned Judgment and Decree and remit the case back to the Trial Court for considering the case as per the Will and the Release Deed and any other documents. The parties are at liberty to implead the necessary parties. Further the parties are at liberty to amend the pleadings and produce documentary evidence.



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10. With the above said directions, the appeal suit is allowed as stated supra.

No costs.

01.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg

To

1. II Additional Sub Judge, Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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