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S.A(MD)No.987 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.987 of 2005

1.Ramayammal (died)

2.Vellaiammal (died)

3.Palaniammal

4.Muthulakshmi

... Appellants 1 to 4/Appellants/
Defendants 1, 2, 4 & 5

5.Selvi

... 5th Appellant/
Lr of the deceased 2nd Appellant

(1st Appellant died and the 3rd appellant, who is already
on record, is recorded as Lr of the deceased 1st appellant
vide order dated 19.09.2024 made in C.M.P(MD)No.12850/2024)

(5th appellant is brought on record as Lr of the deceased
2nd appellant vide order dated 19.09.2024 made in
C.M.P(MD)No.12850 of 2024)

Vs.

Ramayee

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.11.2004 passed in A.S.No.143 of 2002, on the file of the Additional District and Sessions Court (Fast Track Court) Dindigul, confirming the judgment and decree dated 06.03.2002 passed in O.S.No.86 of 1992 on the file of the Additional Sub Court, Dindigul.



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For Appellants 3 to 5 : Mr.G.Gomathi Sankar

For Respondent : Mr.Ramesh @ Ramiah

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No. 86 of 1992 on the file of the Additional Sub Court, Dindigul and in A.S.No.143 of 2002, on the file of the Additional District and Sessions Court (Fast Track Court) Dindigul, are being challenged in the present Second Appeal.

2.The respondent as plaintiff, instituted a suit in O.S.No.86 of 1992, on the file of the trial Court as against the defendants 1 to 3 seeking for the relief of partition of 5/8 share.

3.Pending the Second Appeal, the first appellant died and the third appellant, who is already on record, is recorded as the legal representative of the deceased first appellant and the second appellant also died. Hence, the fifth respondent herein is brought on record as the legal representative of the deceased second appellant.



4.For the sake of convenience, the parties are referred to as, as described before the trial Court.

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5.According to the plaintiff, the suit properties are the ancestral properties which belonged to one Muthu Konar, who was the father-in-law of the plaintiff, the father of the defendants 1 and 2 and the husband of the third defendant. The said Muthu Konar died 30 years back and he left behind the plaintiff's husband Nallu Konar and the defendants 1 to 3 as his legal heirs. The marriage between the plaintiff and Nallu Konar took place at Alagar Koil at Thadikombu Village and through the wedlock, a son by name Sankar was born to them. The said Nallu Konar was managing the suit properties as a family manager and he died 6 years ago. After the death of the said Nallu Konar, the plaintiff, her son and the defendants 1 to 3 were in joint possession and enjoyment of the suit properties and he died in the year 1987. Thereafter, the plaintiff and the defendants 1 to 3 were in joint possession and enjoyment of the suit properties and shared the income between themselves. In the meantime, the defendants 1 to 3, on the advice of some miscreants, refused to share the income due to the plaintiff on and from the year 1991. As the defendants 1 to 3 persisted in sharing the income to the plaintiff, she issued a legal



notice to the defendants 1 to 3 on 08.11.1991. The defendants 1 and 2 received the abovesaid legal notice but did not choose to send any reply. During the pendency of the suit, the third defendant-Pappammal died and the defendants 1 and 2, who are the daughters, are brought on record as Legal representatives of the deceased third respondent. On the death of the third defendant, her 1/3rd share would devolve upon her daughters equally. During the pendency of the suit, the defendants 4 and 5 claimed that the deceased third defendant-Pappammal had executed a registered will in their favour and they contended that the share of the said Pappammal would only devolve upon them and they were added as the defendants 4 and 5 in the suit. Hence, the plaintiff has filed the suit for the abovestated relief.

6.The defendants 1 & 2 had filed a written statement stating that the suit properties are the ancestral properties which belonged to Muthu Konar. Muthu Konar had another son by name Gurusamy and the said Muthu Konar died leaving behind the said Gurusamy also as one of his heirs, apart from the other son Nallu Konar and the defendants 1 & 2, who are his daughters and the third defendant, who is his wife. Even during the lifetime of the said Muthu Konar, he had 1/3rd share in the ancestral properties and the other



2/3rd share belonged to his sons Nallu Konar and Gurusamy and each had 1/3rd share. The said Gurusamy died some 12 years ago and he left behind his mother, the third defendant as his only heir. Hence, on the death of the said Gurusamy, the defendants 1 and 2 had 1/15 share each, the third defendant had 10/15 share and the plaintiff had 3/15 share in the suit properties and the claim of 5/8 share for the plaintiff is not correct. At the time when the plaintiff's husband was afflicted with Tuberculosis, he was treated at Senjipatti and for that treatment and for family expenses, an amount of Rs.30,000/- was spent and that amount of Rs.30,000/- was obtained as a loan. Even during the lifetime of the plaintiff's husband, the first defendant was managing the suit properties. Hence, a Panchayat was convened relating to the family debts and the division of the properties and a family arrangement was entered into between the parties. In the family arrangement, the plaintiff stated that she did not want a share in the suit properties but received an amount of Rs.10,000/- and a golden chain weighing 5 sovereigns and asked the defendants to discharge the family debts. The same was agreed to by all and the plaintiff was paid the money and the golden chain and on receipt of the same, the plaintiff has given up her share and got divided from the family. As the defendants did not have ready cash to pay a sum of Rs.10,000/- to the



plaintiff, the same was obtained in advance from Vadivelu and in pursuance thereof, the suit properties were given on an oral lease to the said Vadivelu on and from 07.08.1990 and as such, the said Vadivelu was in possession of the suit properties as the lessee and to confirm the above lease, a lease document was also entered into. The said Vadivelu is a necessary party to the suit and the suit is bad for non-joinder of necessary parties. After the said family arrangement, the defendants only are in possession and enjoyment of the suit properties and they have also effected improvements to the suit properties. On receipt of the legal notice sent by the plaintiff, the defendants through some elders asked why she had sent the notice and for that, the plaintiff replied that it had been sent on the compulsion of one Sundarraaj and asked the defendants not to bother about sending any reply as she was not proposing to take any action on the basis of the said notice and believing her words, the defendants did not send any reply. The plaintiff was not residing in the suit house and she was not a co-owner relating to the suit properties and none of the properties are in her possession. The plaintiff was not entitled to any share and prayed for dismissal of the suit.



7.The defendants 4 and 5 had filed a written statement and admitted that the suit properties are the ancestral properties of Muthu Konar, but is not correct to say that he expired leaving behind the plaintiff's husband and the defendants 1 to 3 alone as heirs. In fact, the said Muthu Konar died leaving behind his wife and the defendants 1 and 2, who are his daughters and two sons, namely Nallu Konar and Gurusamy Konar. Hence, on the death of Muthu Konar, the defendants 1 to 3 are entitled to get 1/15 shares and the plaintiff's husband Nallu Konar and other son Gurusamy are entitled to get 6/15 shares each. The said Gurusamy died without any marriage and issueless and he left behind his mother, the third defendant-Pappammal, as his only heir and as such, the said Pappammal became entitled to a total share of 6/15 shares. On the death of the plaintiff's husband, his 6/15 share devolved on the plaintiff as his wife and his mother, the third defendant and as such, the third defendant is entitled to 10/15 shares and the plaintiff is entitled to 3/15 shares. The third defendant on 24.01.1992 had executed a registered will in favour of the fourth defendant-Palaniammal and her sister Muthulakshmi, the fifth defendant. The said will, had come into effect and the defendants 4 and 5 have become entitled jointly to 10/15 shares. The plaintiff was not entitled to any share. For the treatment of Nallu Konar, the plaintiff borrowed huge



sums of money. Since the plaintiff refused to bear the loans, a family arrangement was made and in that family arrangement, the plaintiff demanded a sum of Rs.10,000/- towards for giving up her share and accordingly, that amount was given to her and she has also given up her share in lieu of such payment and has left the village and prayed for dismissal of the suit.

8.Before the trial Court, on the side of the plaintiff, she himself was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendants, the fourth defendant was examined as D.W.1 and Exs.B.1 & B.10 were marked.

9.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has granted a decree in favour of the plaintiff holding that she will be entitled to get 5/15 shares and other incidental reliefs.



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10. Aggrieved by the Judgment and decree passed by the trial Court, the defendants 1, 2, 4 & 5 herein as appellants, had filed an Appeal Suit in A.S.No.143 of 2002 on the file of the first Appellate Court.

11. The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal suit and confirmed the judgment and decree of the trial Court.

12. Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendants 1, 2, 4 & 5 as the appellants.

13. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:



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'(1) Whether the Courts below have erred in decreeing the plaintiff's suit and title to 5/15 share merely on the basis of an Advocate's notice and the birth extract of one Shankar which was not properly proved?

(2) Whether the Courts below ought to have held that the plaintiff was not entitled to 4/15 share of Sankar claimed to be her son without any proper proof of his birth and death of such a son?

(3) Whether in view of the family arrangement the plaintiff had relinquished her claim for her share in the suit property?'

14.The learned counsel appearing for the appellants/defendants would submit that the courts below ought to have held that the plaintiff was not entitled to claim 5/15 share in the suit properties; the courts below have failed to see that the plaintiff has not filed any documents of title to prove her case; the courts below have failed to see that the mere filing of the notices sent by the plaintiff will not prove the plaintiff's claim to a share in the suit properties; the courts below have failed to see that the suit for

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declaration cannot be granted on the mere uncorroborated testimony of P.W.1 and her lawyer's notice; the courts below ought to have accepted the genealogy filed by the defendants and marked as Ex.B.1; the courts below ought to have held that the plaintiff has not proved that a son called Sankar was born to her and her husband Nallu Konar and that 4/15 share of the deceased son Sankar came to the plaintiff; the courts below have failed to see that Ex.A.4-the birth extract of one Sankar filed by the plaintiff had not been properly proved; the courts below have failed to see that while the plaintiff has filed Ex.A.4 to show the birth of Sankar, no document has been filed by the plaintiff to prove Sankar's death; the courts below ought to have held that the plaintiff had accepted to give up her right to a share in the suit property accepting Rs.10,000/- with no liability towards the family debts as per the Panchayat and therefore, she was not entitled to claim any share in the suit property; the courts below have erred in holding that the plaintiff was entitled to 4/15 share of Sankar alleged to be a son when there was no acceptable records to prove that a son called Sankar was born to the plaintiff and he died as a child and the courts below ought to have held that the plaintiff had already given up her rights to the suit property under the family arrangement and prayed for allowing the Second Appeal.



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15.The learned counsel appearing for the respondent/plaintiff reiterated the averments made in the suit and the appeal suit and prayed for the dismissal of the Second Appeal.

16.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and also perused the records carefully.

17.According to the plaintiff, the suit properties are the ancestral properties which belonged to one Muthu Konar, who was the father-in-law of the plaintiff, the father of the defendants 1 and 2 and the husband of the third defendant. The said Muthu Konar died 30 years back and he left behind the plaintiff's husband Nallu Konar and the defendants 1 to 3 as his legal heirs. The marriage between the plaintiff and Nallu Konar took place at Alagar Koil at Thadikombu Village and through the wedlock, a son by name Sankar was born to them. The said Nallu Konar was managing the suit properties as a family manager and he died 6 years ago. After the death of the said



Nallu Konar, the plaintiff, her son and the defendants 1 to 3 were in joint possession and enjoyment of the suit properties and he died in the year 1987. Thereafter, the plaintiff and the defendants 1 to 3 were in joint possession and enjoyment of the suit properties and shared the income between themselves. In the meantime, the defendants 1 to 3, on the advice of some miscreants, refused to share the income due to the plaintiff on and from the year 1991. As the defendants 1 to 3 persisted in sharing the income to the plaintiff, she issued a legal notice to the defendants 1 to 3 on 08.11.1991. The defendants 1 and 2 received the abovesaid legal notice but did not choose to send any reply. During the pendency of the suit, the third defendant-Pappammal died and the defendants 1 and 2, who are the daughters, are brought on record as Legal representatives of the deceased third respondent. On the death of the third defendant, her 1/3rd share would devolve upon her daughters equally. During the pendency of the suit, the defendants 4 and 5 claimed that the deceased third defendant-Pappammal had executed a registered will in their favour and they contended that the share of the said Pappammal would only devolve upon them and they were added as the defendants 4 and 5 in the suit.



18. According to the defendants 1 & 2, the suit properties are the ancestral properties which belonged to Muthu Konar. Muthu Konar had another son by name Gurusamy and the said Muthu Konar died leaving behind the said Gurusamy also as one of his heirs, apart from the other son Nallu Konar and the defendants 1 & 2, who are his daughters and the third defendant, who is his wife. Even during the lifetime of the said Muthu Konar, he had 1/3rd share in the ancestral properties and the other 2/3rd share belonged to his sons Nallu Konar and Gurusamy and each had 1/3rd share. The said Gurusamy died some 12 years ago and he left behind his mother, the third defendant as his only heir. Hence, on the death of the said Gurusamy, the defendants 1 and 2 had 1/15 share each and the third defendant had 10/15 share and the plaintiff had 3/15 share in the suit properties and the claim of 5/8 share for the plaintiff is not correct. At the time when the plaintiff's husband was afflicted with Tuberculosis, he was treated at Senjipatti and for that treatment and for family expenses, an amount of Rs.30,000/- was spent and that amount of Rs.30,000/- was obtained as a loan. Even during the lifetime of the plaintiff's husband, the first defendant was managing the suit properties. Hence, a Panchayat was convened relating to the family debts and the division of the properties and a family arrangement was entered into between the



parties. In the family arrangement, the plaintiff stated that she did not want a share in the suit properties but received an amount of Rs. 10,000/- and a golden chain weighing 5 sovereigns and asked the defendants to discharge the family debts. The same was agreed to by all and the plaintiff was paid the money and the golden chain and on receipt of the same, the plaintiff has given up her share and got divided from the family. As the defendants did not have ready cash to pay a sum of Rs.10,000/- to the plaintiff, the same was obtained in advance from Vadivelu and in pursuance thereof, the suit properties were given on an oral lease to the said Vadivelu on and from 07.08.1990 and as such, the said Vadivelu was in possession of the suit properties as the lessee and to confirm the above lease, a lease document was also entered into. The said Vadivelu is a necessary party to the suit and the suit is bad for non-joinder of necessary parties. After the said family arrangement, the defendants only are in possession and enjoyment of the suit properties and they have also effected improvements to the suit properties. On receipt of the legal notice sent by the plaintiff, the defendants through some elders asked why she had sent the notice and for that, the plaintiff replied that it had been sent on the compulsion of one Sundarraaj and asked the defendants not to bother about sending any reply as she was not



proposing to take any action on the basis of the said notice and believing her words, the defendants did not send any reply. The plaintiff was not residing in the suit house and she was not a co-owner relating to the suit properties and none of the properties are in her possession. The plaintiff was not entitled to any share.

19. According to the defendants 4 and 5, the suit properties are the ancestral properties of Muthu Konar, but it is not correct to say that he expired leaving behind the plaintiff's husband and the defendants 1 to 3 alone as heirs. In fact, the said Muthu Konar died leaving behind his wife and the defendants 1 and 2, who are his daughters and two sons, namely Nallu Konar and Gurusamy Konar. Hence, on the death of Muthu Konar, the defendants 1 to 3 are entitled to get 1/15 shares and the plaintiff's husband Nallu Konar and other son Gurusamy are entitled to get 6/15 shares each. The said Gurusamy died without any marriage and issueless and he left behind his mother, the third defendant-Pappammal, as his only heir and as such, the said Pappammal became entitled to a total share of 6/15 shares. On the death of the plaintiff's husband, his 6/15 share devolved on the plaintiff as his wife and his mother, the third defendant and as such, the third defendant is entitled to 10/15 shares and the plaintiff is entitled to



3/15 shares. The third defendant on 24.01.1992 had executed a registered will in favour of the fourth defendant-Palaniammal and her sister Muthulakshmi, the fifth defendant. The said will have come into effect and the defendants 4 and 5 have become entitled jointly to 10/15 shares. The plaintiff was not entitled to any share. For the treatment of Nallu Konar, the plaintiff borrowed huge sums of money. Since the plaintiff refused to bear the loans, a family arrangement was made and in that family arrangement, the plaintiff demanded a sum of Rs.10,000/- towards giving up her share and accordingly, that amount was given to her and she has also given up her share in lieu of such payment and has left the village and prayed for dismissal of the suit.

20. On a perusal of the materials available on record, it is seen that since the properties are ancestral properties, the father Muthu Konar and his two sons viz., Nallu Konar and Gurusamy, had 1/3rd share in the family properties and from the share of Muthu Konar, all the five heirs viz., two sons, wife and two daughters, each got 1/15 share each. Due to the death of Muthu Konar, Nallu Konar got $(1/3 + 1/15)$ 6/15 share and Gurusamy got $(1/3 + 1/15)$ 6/15 share. The daughters, viz., Palaniammal/the fourth defendant and Vellaammal/the fifth defendant got 1/15 share each and the third



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defendant/mother got 1/15 share. So far as Nallu Konar is concerned, he had one son by name Sankar and as ancestral property, Nallu Konar and his son Sankar would have 3/15 each. When Nallu Konar died, out of his 3/15 share, 1/3 share would go to his mother/the third defendant, 1/3rd share would go to his wife/the plaintiff and the other 1/3rd share would go to his son Shankar. Shankar has got 3/15 share on his own and he got 1/15 share as heir of his father Nallu Konar. Hence, Shankar was entitled to a $3/15 + 1/15 = 4/15$ share. After the death of Shankar, the plaintiff, who already got a 1/15 share from Nallu Konar as his wife, got a 4/15 share from her son Sankar and thus, she has got a total of 5/15 shares. When Gurusamy died issueless, his 6/15 share would go to his mother/the third defendant alone. Thus, the third defendant's share would be 1/15 on her own + 1/15 from Nallu Konar as mother + another 6/15 share from Gurusamy and her total share is 8/15. Further, it is seen that both the courts below have disbelieved the family arrangement pleaded by the defendants and also the alleged lease in favour of Vadivel, who is the husband of the fourth defendant-Palaniammal. Hence, both the Courts below have correctly arrived at the shares of the plaintiff by granting 5/15 shares in the suit properties.



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21.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the defendants and in favour of the plaintiff.

22.The learned counsel appearing for the respondent/plaintiff would submit that the third defendant/Pappammal died during the pendency of the suit and she alleged to have left behind a will bequeathing her share to the fourth defendant/Palaniammal and the fifth defendant/Muthulakshmi under Ex.B.10. When that being the case, the fourth defendant/Palaniammal, who already got 1/15 share as the daughter of Muthu Konar, now would get an additional share of 8/30 share as per the will of Pappammal. Hence, her total share would be 10/30. Another daughter Vellaiammal/the second defendant got a share of 1/15 share as the daughter of Muthu Konar and when she died during the pendency of the Second Appeal, that share of 1/15 would be divided between her own daughters by name Muthulakshmi/the fifth defendant and one Selvi, who was impleaded as fifth appellant in the Second Appeal, and as such, each would get 1/30 share each. Hence, the fifth

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defendant/Muthulakshmi, who is the daughter of Vellaiammal, got 1/30 share as stated above and got another 8/30 share by way of the will of Pappammal under Ex.B.10. Hence, the fifth defendant/Muthulakshmi's total share would be $1/30 + 8/30 = 9/30$ and the other daughter of Vellaiammal, who has been impleaded as the fifth appellant in the Second Appeal, would inherit the other 1/30 share from her mother Vellaiammal and her share would be 1/30.

23.Further, the learned counsel stated that only the plaintiff had paid the Court fee for dividing the suit properties by metes and bounds and her share would have to be divided and allotted and so far as the defendants 4 and 5 and the fifth appellant are concerned, they can seek division and allotment of their share of properties on payment of the requisite Court fees before the trial Court in the final decree proceedings.



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24.In the result, the Second Appeal stands dismissed.

However, the parties are at liberty to approach the trial Court seeking final decree as per their entitlement. No costs.

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To

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- 1.The Additional District and Sessions Court/
(Fast Track Court),
Dindigul.
- 2.The Additional Sub Court,
Dindigul.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
S.A(MD)No.987 of 2005

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