



A.S.(MD)No.75 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.75 of 2024

and

C.M.P(MD)Nos. 9528, 9912 & 4962 of 2024

Rajeshwari

... Appellant

Vs.

1.Banumathi

2.Ramalingam

... Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C. against the decree and judgment of the III Additional District Court, Thanjavur @ Pattukottai passed in O.S.No.79 of 2018, dated 08.01.2024 in so for us it is against the appellant.

For Appellant : Mr.V.K.Vijayaraghavan

For R-1 & R-2 : Mr.R.Nanda Kumar

JUDGMENT

This Appeal suit is filed by the plaintiff in the suit against the judgment and decree dated 08.01.2024 passed in O.S.No.79 of 2018 on the file of III Additional District Court, Thanjavur @ Pattukottai.



A.S.(MD)No.75 of 2024

WEB COPY

2. The plaintiff in the suit is the appellant herein and the defendants in the suit are the respondents herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff and defendants.

3. The plaintiff has filed the suit in O.S.No.79 of 2018 for partition. The Trial Court after considering the evidence and documents has partly allowed the suit. The Trial Court had held that as far as the Item Nos.1 to 3 of the suit properties are concerned, the plaintiff and the 1st defendant are entitled to $\frac{1}{2}$ share each. However, as far as Item Nos.4 & 5 are concerned, the Court below held that it is not available for partition. As far as Item No.6, the same was left out without rendering any finding.

4. Against that portion of the judgement where it had declined partition as far as items 4,5 and 6 are concerned the present appeal suit is preferred by the plaintiff. The defendants had not filed any cross appeal against items 1 to 3. Therefore, this Court is confirming the Judgment and Decree passed by the Trial Court in O.S.No.79 of 2018, as far as the item Nos.1 to 3 are concerned.



A.S.(MD)No.75 of 2024

WEB COPY

5. The points for consideration in the present appeal suit is that whether the items 4, 5 and 6 are available for partition between the plaintiff and 1st defendant.

6. After hearing the rival submissions this Court had given its anxious consideration. It is an admitted fact that the plaintiff and the 1st defendant are children born to Rethinavel Kacharar and Ayyi Ponnuammal. The 2nd defendant is the husband of the first defendant.

7. The plaintiff had filed petition in CMP(MD)No.9528 of 2024 to receive additional documents. The 1st defendant had filed petition in CMP(MD) No.9912 of 2024 to receive additional documents. On bare perusal of the said documents filed by both the parties it is seen the same is necessary for deciding the issue between the parties. Hence both the petitions are allowed.

8. Having allowed the additional documents, then the case ought to be remanded to the Trial Court. However, prima facie it is seen that the properties



A.S.(MD)No.75 of 2024

WEB COPY

could be divided among the parties based on the patta and other revenue records, hence this Court proceeded to ascertain whether the properties could be divided.

9. As far as 4th item is concerned four door numbers are mentioned, namely New Door Nos.7, 10, 15 & 16 (New Door Numbers). The plaintiff submitted that the New Door No.15 is the correct number, but it was mistakenly mentioned as New Door No.17. Further contention of the plaintiff is that the said four door numbers ought to be divided into equal share, but the defendant vehemently opposed and submitted that the said land belongs to the mother and she had executed Will dated 06.01.1992 in favour of the 1st defendant, hence the same is not available for division.

10. It is seen that the plaintiff is in possession of New Door No.7 (Old Door No.12, S.No.148A/6) and patta is issued in the name of the plaintiff. The 1st defendant is in possession of New Door No.10 (Old Door No.4, S.No. 148A/27) and patta is issued in the name of the 1st defendant. The Tahsildar had passed an order dated 05.03.2008 in Na.Ka.No.001/2005/Aa4 through which “free mania patta” was issued to plaintiff to New Door No.7 and 1st defendant to



A.S.(MD)No.75 of 2024

WEB COPY

the New Door No.10. The said patta is issued based on the possession, hence the issuance of patta to plaintiff and to the 1st defendant is legally valid. Since the said proceeding is produced before this Court by way of filing additional documents and not before Trial Court, hence the Trial Court was not in a position to consider the patta. Therefore, the said document ought to be considered.

11. As far as New Door Nos.15 and 16 are concerned, the contention of the plaintiff is that the property in Door No.15 was inherited by father from one Maniammal through Will dated 25.10.1977. The said Maniammal is the wife of Ramasamy Kacharar, who in turn is the brother of the Rathinavel Kacharar. Hence the mother Ayyi Ponnammal cannot execute any Will to the said property. Hence the Will executed by the mother has become ineffective as far as New Door No.15 in Item No.4 is concerned. Accepting the said contention, this Court is of the considered opinion that the Door No.15 cannot be included in the Will executed by the mother, consequently the property is available for partition.

12. As far as New Door No.16 is concerned, is a store room and it was assessed to tax in the name of the paternal grandmother namely Samiammal,



A.S.(MD)No.75 of 2024

thereafter the father Rathinavel Kacharar had inherited the same. When the same is in the name of paternal grandmother, the mother Ayyi Ponnammal is not having any power to execute Will regarding the Door No.16.

13. The main contention of the 1st defendant for executing the Will is that the plaintiff was not having smooth relationship with the father as well as mother. Further the plaintiff had never taken care of parents at all. Infact the mother was living separately in Onbaththuvveli village and not with the plaintiff and also not with the 1st defendant. But at the end of her life, she had shifted to 1st defendant's house and where she died. Therefore, the 1st defendant vehemently contended that the mother had executed the Will so that the item 4 would be bequeathed to the 1st defendant. This Court is of the considered opinion when the paternal grandmother and father's brother's wife was the original owners, then the father can inherit the property. After the demise of father then the same would be inherited by the mother and two daughters. But being ancestral property the mother has no right to execute any Will regarding the ancestral property of the father.



A.S.(MD)No.75 of 2024

WEB COPY

14. Based on the above discussions, this Court is of the considered opinion that the New Door No.7 (Old Door No.12) in Suit Item No.4 shall be allotted to the plaintiff and the said New Door No.10 (Old Door No.4) in Suit Item No.4 shall be allotted to the 1st defendant. Then the property in New Door No.16 shall be allotted to the plaintiff (which has lesser extent than the Door No.15) and the 1st defendant shall be allotted New Door No.15.

15. As far as item No.5 is concerned, it is an admitted fact until the death of the father in the 1988, the father was doing the cultivation in the said property. On the demise of the father the legal heirs are entitled to claim the cultivating rights. But when the mother was alive, the plaintiff had not claimed any rights. It is after the death of the mother in the year 2016, the plaintiff had claimed share in the cultivating rights. Even though the Trial Court had accepted that the father Rathinavel Kacharar was the cultivating tenant, but held as on date the 1st defendant is doing the cultivation, the name of the 1st defendant is entered in the revenue records, then the 1st defendant is entitled to. This Court is of the considered opinion that the Trial Court is incorrect in coming to such conclusion. When the father is the cultivating tenant under the original owners namely



A.S.(MD)No.75 of 2024

Akilandam and Kalyaniammal, then on demise of the father all the legal heirs are entitled to claim the cultivating tenancy rights. Simply because the 1st defendant name is entered in the revenue records subsequent to the father death or mother death, the same cannot be criteria for granting the cultivating tenancy right to the 1st defendant alone. The said right arises from the cultivating tenancy rights from the father Rathinavel Kacharar, then the plaintiff and 1st defendant as legal heirs of Rathinavel Kacharar is entitled to the said cultivating tenancy rights. Therefore, this Court is of the considered opinion the plaintiff and the 1st defendant are entitled to equal share in the cultivating tenancy rights in Item No.5.

16. At this juncture the Learned Counsel appearing for the defendants submitted that the S.No.227/1 was purchased by the defendant and prayed the same may be considered. This Court is of the considered opinion that the said contention may be considered in the final decree application.

17. As far as Item No.6 is concerned, the plaintiff is claiming half share in the tenancy rights. It is the cultivating land belonging to Akiladammal and the plaintiff's father was having cultivating tenancy rights. This Court has already held that the father was having cultivating tenancy rights, on his demise the



A.S.(MD)No.75 of 2024

plaintiff and the 1st defendant are having equal rights. Therefore, this Court is of the considered opinion that both the plaintiff and the 1st defendant is entitled to equal share in the 6th item of the property.

18. The Revenue Divisional Officer had entered the 1st defendant name. Since this Court had held that the plaintiff is also entitled to, then the order ought to be modified accordingly. Therefore, the plaintiff is permitted to submit an appropriate application before the competent revenue authorities and the authorities shall pass order as per law.

19. With these modifications, this Appeal is allowed as stated supra. Consequently, connected miscellaneous petitions are allowed. No Costs.

29.07.2024

Index : Yes/No
Internet : Yes/No
KSA



WEB COPY



A.S.(MD)No.75 of 2024

To

- 1.The III Additional District Court,
Thanjavur @ Pattukottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.75 of 2024

S.SRIMATHY, J.

KSA

A.S.(MD)No.75 of 2024

29.07.2024