



A.S.(MD).Nos.4 and 9 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

A.S.(MD).Nos.4 and 9 of 2014
and
M.P.(MD).No.1 of 2014

A.S.(MD).No.4 of 2014

1.Sivakumar

2.Guruvammal (Died)

.. Appellants/Defendants

Vs.

Minor Pradeepa

.. Respondent/Plaintiff

*(Minor represented through her mother
and next friend Tmt.Senthil Anandhi)*

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, praying to set aside the maintenance amount in judgment and decree passed in O.S.No.164 of 2007 dated 20.06.2012 on the file of the VI Additional District Court, Madurai.

For Appellants : Mr.T.R.Subramanian

For Respondent : Mr.R.G.Shankar Ganesh



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Prathiba

.. Appellant/Plaintiff

(Sole appellant is declared as Major and the guardianship of her mother Senthilanandhi is discharged vide common order dated 01.12.2023 made in C.M.P.(MD).Nos.16379 and 16380 of 2023 in A.S.(MD).No.9 of 2014)

Vs.

Sivakumar

.. Respondent/Defendant

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, praying to allow this appeal setting aside the judgment and decree dated 20.06.2012 made in O.S.No.164 of 2007 on the file of Motor Accident Claims Tribunal, VI Additional District Court, Madurai.

For Appellant : Mr.R.G.Shankar Ganesh

For Respondent : Mr.T.R.Subramanian

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.

and

C.KUMARAPPAN,J.

The appeal suit in A.S.No.4 of 2014 is filed by the first defendant/father being aggrieved by the maintenance granted by the Trial Court in O.S.No.164 of 2007 by judgment dated 20.06.2012. Aggrieved by



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the dismissal of the said suit, the appeal suit in A.S.No.9 of 2014 is filed by the minor plaintiff/daughter. For the sake of convenience, the parties are referred to as per their rank in the suit.

2. A partition suit was filed by the minor daughter since her parents were at loggerhead and got separated. The contention of the minor plaintiff/daughter is that her father being the owner of the suit schedule property is liable to divide and give 3/8th share to her. The suit was vehemently contested by the first defendant/father on the ground that the suit for partition has been initiated by his wife through the minor daughter, who has been properly maintained, to settle score indirectly. The first defendant/father disputed the fact that he is a dealer in petroleum and having sales outlet. According to him, it is owned by one Thiruppathi Venkatajalapathi and claiming a share in the business, namely, Petrol Bunk, is meaningless and absurd.

3. The Trial Court, on considering the rival submissions, has framed the following issues:



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“(i) Whether the plaintiff is entitled to 3/8th share in the suit property?

(ii) Whether the plaintiff is entitled to the relief of partition as prayed for?

(iii) To what relief the plaintiff is entitled?”

Further, the Trial Court framed the following additional issue:

“a) Whether the plaintiff proved that the suit schedule 5th item also belonged to the defendant and is she entitled to have a partition in that property also?”

4. To prove the claim, one Senthil Anandhi, the mother of the minor plaintiff was examined as P.W.1 and 11 exhibits were marked. Contrarily, on the side of the defendants, three witnesses were examined and eight exhibits were marked.

5. The Trial Court, on considering the facts and evidence, dismissed the suit for partition. However, the Trial Court held that the plaintiff is entitled for a maintenance of Rs.10,000/- per month from the date of filing of the suit till she attains majority. The Trial Court also arrived at the arrears of maintenance as Rs.6,00,000/- and directed the first



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defendant/father to pay a sum of Rs.3,00,000/- within one month and deposit the balance sum of Rs.3,00,000/- within two months and thereafter, continue to deposit the monthly maintenance in the bank account. Being aggrieved by the decree of maintenance, the first defendant/father has preferred A.S.(MD).No.4 of 2014, whereas, the minor plaintiff/daughter has preferred A.S.(MD).No.9 of 2014 aggrieved by the dismissal of the suit.

6. Heard the learned counsels on either side and perused the materials available on record.

7. The points for consideration in these appeals are as follows:

a) Whether the minor plaintiff/daughter is entitled for any share in the suit schedule property?

b) Whether the Trial Court had exceeded the relief sought for and granted maintenance to the minor daughter?

8. The suit was filed in the name of minor daughter when she was 2½ years old. At the time of filing of suit, her parents lived separately and their



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marriage was dissolved by proceedings and maintenance petition was already initiated. All along, the minor plaintiff was brought up by her mother. When the matter was taken up for final hearing, it is stated that the plaintiff has attained majority on 06.12.2022. The Trial Court, after considering the material placed by either parties, has found that except a stray reference about the ancestral house, which stood in the name of the first defendant's father, there is no material to infer that the properties mentioned in the schedule of the plaint are ancestral in nature, which could be subjected to partition, when the father is alive. The Trial Court has rightly reiterated the law on inheritance, but however, taking note of the fact that the plaintiff had been totally left under the care and custody of the mother, fixed a moral obligation on the first defendant/father to pay maintenance of Rs.10,000/- per month from the date of the plaint till the minor plaintiff attains majority.

9. This Court on law on legal principle upholds the findings of the Trial Court in respect of the prayer sought for by the minor plaintiff in the suit for partition. The second limb of the judgment directing the



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respondent/first defendant to pay maintenance of Rs.10,000/-, though cannot be sustained on law, since it is beyond the relief sought, the Trial Court has given its own reasoning as to why such an obligation should be fastened on the respondent/first defendant.

10. When the matter came up for consideration, this Court expressed its view that the respondent, who is the appellant in A.S.(MD).No.4 of 2014, may have strong legal ground to sustain his appeal, but he cannot escape from his moral obligation to maintain his minor daughter and therefore, directed the learned counsel for the respondent/father to come forward and pay a lump sum to the appellant/daughter, who has now attained majority and pursuing her first year graduation. The respondent/father, to give quietus to the partition dispute, has come forward to pay a sum of Rs.6,50,000/- and to prove his bonafide, he has already drawn a Demand Draft for a sum of Rs.5,00,000/- in favour of the appellant/daughter, Prathiba. The respondent/father undertakes to pay the balance sum of Rs.1,50,000/- within a period of two (2) weeks.



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11. In the light of the above fact, the appeal suits are dismissed by recording the undertaking given by the respondent/father to pay a sum of Rs.6,50,000/- (Rs.5,00,000/- already paid vide Demand Draft No.513650 dated 19.01.2024) to the appellant/daughter. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The VI Additional District Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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