



A.S.(MD)No.221 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

A.S.(MD)No.221 of 2015 &
M.P(MD)No.2 of 2015

1.Aarayee
2.Porut Selvi
3.Srirangammal
4.Angammal

...Appellants

vs.

1.Vijayalakshmi
2.Ahalya
3.Karthik
4.Shalini alias Baby Shalini
5.Jayanthi
6.Mohana
7.Balamurugan

... Respondents

Prayer: Appeal Suit filed under Order 41 Rule 2 read with Section 96 of the Civil Procedure Code against the Judgment and Decree of the First Additional District Judge, Tiruchirapalli dated 24.07.2014 in O.S.No.56 of 2011 in dismissing suit filed by the appellants.



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For Appellants : Mr.S.Ramakrishnan
for Mr.K.S.Vamsidhar
For Respondents : Mr.K.N.Govardhanan

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

This Appeal Suit has been filed to set aside the Judgment and Decree dated 24.07.2014 in O.S.No.56 of 2011 on the file of the First Additional District Judge, Tiruchirapalli.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The plaintiffs have filed a suit for partition and separate possession. The suit came to be dismissed on the ground that the plaintiffs have not produced oral or documentary evidence to prove their case. Challenging the same, the plaintiffs have filed the present appeal.

4. The learned counsel appearing for the appellants / plaintiffs would submit that the plaintiffs are the daughters of one Periyasamy



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through his first wife Thangammal. The father of the plaintiffs purchased various properties from and out of the income derived from the ancestral properties. However, the respondents claim right over the properties through a Will executed by Periyasamy. Since the properties are purchased from and out of the income from the ancestral properties, Periyasamy, the father of the plaintiffs did not have absolute right over the suit properties and hence, he cannot execute a Will. Even assuming that such a Will was executed, that will not bind the plaintiffs' share. In fact, the plaintiffs sent a notice to the defendants 1 to 4 prior to the filing of the suit whereas the defendants 1 to 4 have admitted in the reply notice that the properties were purchased by their father. Since the defendants 1 to 4 themselves have admitted that their father executed a Will and the properties were purchased by their father, the plaintiffs too have a share in it. However, the trial Court without appreciating the evident facts, had chosen to dismiss the suit.

5. Before the trial Court, the plaintiffs marked Exs.A1 to A3 and examined the second plaintiff as PW1. No oral or documentary evidence



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was adduced on the side of the defendants.

6. The plaintiffs have filed the suit for partition claiming that they are the daughters of one Peiryasamy through his first wife Thangammal, who died in the year 1995. The first defendant Vijayalakshmi is the second wife of Periyasamy. The defendants 2 to 4 are the children of Periyasamy through his second wife. The defendants 5 to 7 are the children of one Latha, who is a pre-deceased daughter of Periyasamy through his first wife Thangammal. Though the first defendant is the second wife of Periyasamy, she married Periyasamy when his first wife was alive and hence, the marriage was void *ab initio*. However, the defendants 2 to 4 are the legitimate children of Periyasamy. Hence, they are entitled to share in their father's properties. The above facts are not disputed.

7. A perusal of the records shows that the plaintiffs have marked the genealogy / family tree as Ex.A1, the office copy of the notice sent by them to the defendants 1 to 4 prior to the filing of suit as Ex.A2 and the



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reply notice sent by the defendants 1 to 4 to them as Ex.A3. Except those three documents, the plaintiffs have not adduced any other documents to prove their case. Though the plaintiffs claim 4/8th share over the suit properties, they have not produced any evidence to prove that the suit properties belong to their father and they were purchased from and out of the income derived from their ancestral properties. Thus, the plaintiffs failed to prove that the suit properties either belong to their father or their ancestors.

8. It is settled proposition of law that the plaintiffs who come to the Court have to prove their case on their own strength and they cannot take advantage of the loopholes left by the defendants. Even though the defendants did not enter the witness box to examine witness or mark any documents on their side, the plaintiffs cannot take advantage of the same. Since the plaintiffs have filed the suit for partition, it is for them to prove that the suit properties belong to their father and he has got the properties from and out of the income derived from the ancestral properties. In the absence of the same, the plaintiffs are not entitled to the relief sought for.



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The trial Court has also made an absolute finding in this regard that the plaintiffs have not proved their case that the suit properties are either ancestral properties or purchased out of ancestral nucleus. In such circumstances, this Court does not find any merits in this appeal and therefore, the appeal is liable to be dismissed.

9. Accordingly, the appeal suit is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

(P.V., J.) (K.K.R.K., J.)
05.08.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The I Additional District Judge, Tiruchirapalli
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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