



A.S.(MD)No.93 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.93 of 2015

and

C.M.P.(MD).No.14725 of 2023

1.Chellammal

2.Indirani

3.Shanmuga Raja

... Appellants

Vs.

1.Amutha

2.Narayanasamy Naicker

3.Nallammal

P. Chidambaram (Died)

... Respondents

(The Respondent Nos.2 and 3 / Defendant Nos.1 and 2 were called absent and set ex-parte before the trial court. Hence, notice may be dispensed with in respect of respondent Nos.2 and 3 herein)

PRAYER: Appeal Suit filed under Section 96 of C.P.C. to call for the records relating the judgment and decree dated 24.09.2014 in O.S.No.21 of 2012 on the file of the III Additional District Judge (FAC), Tiruchirappalli and set aside the same and consequently allow this appeal.

For Appellants : Mr.J.Anandakumar

For Respondents : Mr.P.Krishnasamy



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JUDGMENT

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The present Appeal Suit is filed by the defendants 4 to 6 to set aside the Judgment and Decree, dated 24.09.2014 passed in O.S.No.21 of 2012 on the file of the III Additional District Judge (FAC), Tiruchirappalli

2. The plaintiff is the 1st respondent, the defendants 1 & 2 are the respondents 2 & 3 herein and the defendants 4, 5 & 6 are the appellants herein. The 3rd defendant died. For the sake of convenience, the parties are referred to as plaintiff and the defendants as per the ranking in the suit.

3. The plaintiff has preferred suit in O.S No.21 of 2012 for partition to divide the suit property belongs to the plaintiff's father. The said suit was decreed in favour of the plaintiff. Against the said decree, the defendants 4, 5 & 6 had preferred the present appeal suit. The 1st defendant is the father of the plaintiff, the 5th defendant is the paternal aunt of the plaintiff and 6th defendant is the son of the 5th defendant.

4. It is seen from the records that the larger extent of property was belonging to one Narayanasamy Naicker. The said Narayanasamy Naicker was



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having 4 sons namely Rangasamy, Veerappa Naicker, Savariappan and Sadaiyappan. The said Sadaiyappan was unmarried and he has given up his rights over the properties. The 2nd son Veerappa Naicker died. Thereafter, the said Narayanasamy Naicker along with his two sons namely Rengasamy and Savariyappan and the grandchildren namely Narayanasamy and Chinnasamy born to deceased Veerappa Naicker have divided the properties through a partition deed, dated 29.06.1971. The share of the Veerappa Naicker was allotted to the said grandchildren.

5. In the partition the said grandson namely Narayanasamy Naicker was allotted 7.26 acres and Chinnasamy was allotted 7.32 acres.

6. The grandson Narayanasamy Naicker has sold the properties to various persons, namely to (i). Indirani (ii)Nallammal and (iii) Chidambaram which were marked as Ex.B.1 to Ex.B.3 dated 11.05.1979, 29.05.1980 and 29.05.1980 respectively. The plaintiff is daughter of the grandson Narayanasamy. Even though she was the sole daughter of the deceased Narayanasamy, she was not granted any property by her father. As per the judgment rendered in the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others***, reported in **2020 (3) TLNJ 174 (Civil)** any disposition or alienation, partition or testamentary disposition which



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had taken place before 20.12.2004 are saved by the Act. In the present case the said sale deeds was prior to the Hindu Succession (Amendment) Act, 2005 and the same is saved by the Act.

7. The Learned Counsel appearing for the plaintiff submitted that her father Narayanasamy was ready and willing to give some portion of the property. Due to some pressure, he sold his property to his relatives, namely Shanmuga Raja Son of Chinnasamy and to one Indirani and they forced the father to sell the property. But there is no evidence to substantiate the alleged force.

8. By taking all these reasons into consideration, on humanitarian ground and in the interest of justice, since the plaintiff being a sole daughter of the deceased grandson Naryanasamy and the defendants being closely related, this Court directs the appellants to pay Rs.5,00,000/- to the plaintiff.

9. Accordingly, the appellants namely Chellammal, Indirani and Shamuga Raja are directed to pay a sum of Rs.5,00,000/- together to the plaintiff, within a period of eight weeks from the date of receipt of a copy of this Judgment.



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10. With these directions, this Appeal suit partly allowed. No Costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

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To

1.The II Additional District Judge (FAC),
Tiruchirappalli.

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



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S.SRIMATHY, J.

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Judgment made in
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26.07.2024