



WEB COPY



A.S.(MD)No.199 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.199 of 2023
and
C.M.P.(MD)No.11283 of 2023

Salimullah

...Appellant

Vs.

Nabisathu Dhaira

...Respondent

PRAYER: This Appeal Suit filed under Section 96 read with Order 41 Rule 1 and 2 of C.P.C., against the judgment and decree dated 28.02.2023 made in O.S.No.13 of 2021 on the file of the Principal District Judge, Ramanthapuram.

For Appellant : Mr.D.Nallathambi

For Respondent : Mr.K.Chengizkhan

JUDGMENT

The suit is filed for partition under Muslim law. The plaintiff and the defendant are brother and sister.



2. As far as the first item is concerned, it is a house. As per the Muslim law, the plaintiff is entitled to $\frac{1}{3}^{\text{rd}}$ and the defendant is entitled to $\frac{2}{3}^{\text{rd}}$. The property belongs to the mother and the mother has executed a Will. As per Mohammedan law, the mother is entitled to $\frac{1}{3}^{\text{rd}}$ and she can execute Will only for the said $\frac{1}{3}^{\text{rd}}$ portion, but the mother had executed gift for the entire property. Therefore, the defendant is entitled to $\frac{1}{3}^{\text{rd}}$ and for the remaining $\frac{2}{3}^{\text{rd}}$, the defendant will be getting a share again. Therefore, the plaintiff is entitled to $\frac{4}{9}^{\text{th}}$ share and the defendant sister is entitled to $\frac{5}{9}^{\text{th}}$ share.

3. As far as the second item is concerned, the plaintiff is entitled to $\frac{2}{3}^{\text{rd}}$ and the defendant sister is entitled to $\frac{1}{3}^{\text{rd}}$. However, the defendant submitted that she had purchased a property through Antonysamy and relied on Ex.B.11, which is the patta issued in favour of Antonysamy. The Learned Counsel appearing for the plaintiff submitted that the property belongs to their grandmother for which he relied on Ex.A3, wherein it is shown as Survey No.155/3 stands in the name of Mu.Rahima Beevi, who is the grandmother of the plaintiff and the defendant. The defendant has not proved how the land stands in the name of grandmother as Mu.Rahima Beevi was transferred to Antonysamy. However, the claim of the defendant is that she had



purchased the property from Antonysamy but had not filed any sale deed. In the deposition, it has been admitted that it is only an oral sale deed. Therefore, the said contention cannot be accepted. Hence, the plaintiff is entitled $2/3^{\text{rd}}$ share and the defendant sister is entitled to $1/3^{\text{rd}}$ share.

4. As far as the 3^{rd} item is concerned, the contention of the plaintiff is that the property belongs to his mother's father's father along with his brothers. But there is no pleading to the effect that it belongs to his mother's father's father and his brothers and subsequently, the patta was granted to his mother. The defendant is claiming 3 cents of the property stated as item 3 is granted to the defendant through settlement deed in her favour but these facts are not proved. It is seen that the said property is classified as Natham. Therefore, this court is inclined to remit the case back to the Trial Court, as far as the 3^{rd} item is concerned and accordingly remitted. Both the parties are at liberty to file additional pleadings and documents as far as the 3rd item is concerned.

5. As far as items 1 and 2 are concerned, this Court is granting the above mentioned shares to the plaintiff and the defendant.



A.S.(MD)No.199 of 2023

6. With the above said directions, the appeal suit is partly allowed. No costs.

Consequently, connected miscellaneous petition is closed.

22.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg



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To

1. Principal District Judge,
Ramanthapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

Tmg

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