



A.S.(MD) No.318 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

A.S.(MD) No.318 of 2024

and

C.M.P.(MD) No.16299 of 2024

1.P.K.Nagarajan @
Meenakshi Sundaram

2.Minor.Amirtha Pandian
[A2 is represented by his father A1]

... Appellants

-VS-

1.P.K.N.Karuppasamy

2.P.K.N.Jeyarajan

... Respondents

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree in O.S.No.279 of 2018, on the file of the V Additional District and Sessions Court, Madurai, dated 16.02.2024.



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For Appellants : Ms.P.Jessi Jeeva Priya

For Respondents : Mr.G.Prabhu Rajadurai

J U D G M E N T

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

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

2. The plaintiffs filed the suit in O.S.No.279 of 2018, before the learned V Additional District and Sessions Judge, Madurai, for partition of the suit properties, against the defendants herein, on the ground that the suit properties are joint family properties of their grandfather and in the partition effected between the first defendant / father along with his brothers, shares have been allotted to them also.

3. The mother of the plaintiff is Jeyarani. Due to matrimonial discard between the first defendant / father and mother, they got separated on the allegation that the father (D1) developed extra-marital affairs with one



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Rathna, through whom, the second defendant, by name, Amirtha Pandian, is said to have been born.

4. Initially, the Trial Court appointed a guardian for the minor defendant, who is minor. However, it is represented that at the verge of completion of trial, the first defendant filed an application to recognize him as the natural guardian of the minor second defendant and based on the said application, the first defendant was appointed as natural guardian of the second defendant.

5. The case on hand has got a checkered history. The mother of the plaintiffs filed a petition before the Trial Court seeking maintenance from her husband / first defendant), wherein the first defendant took a plea of adultery and hence, he resisted the claim of maintenance and now, the said case is said to be pending before the Honourable Supreme Court in Special Leave to Appeal (C) No.31732 of 2014, wherein, it appears that no interim order of stay was granted in respect of payment of maintenance.



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6. Furthermore, as per Ex.A19, the first defendant also filed H.M.O.P.No.126 of 2009, seeking divorce, on the ground of cruelty and the same was dismissed, the civil miscellaneous appeal was also dismissed and now the appeal is pending before the Honourable Supreme Court and also the other connected case has been disposed of by this Court in C.R.P.(PD) (MD) No.2115 of 2013, wherein, this Court has directed the Trial Court dispose of the suit, within a time frame.

7. It appears from the records that the second plaintiff was examined as P.W.1 and his cross-examination was also over. The mother of the plaintiffs, namely, Jeyarani (P.W.2) was examined in chief and she was not cross-examined.

8. The learned Trial Judge found that the parties are not cooperating for early disposal of the suit and hence, closed the plaintiffs' side evidence *suo motu*. An endorsement has also been made to the effect there is no oral and documentary evidence.



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9. Thereafter, the learned Trial Judge decided various issues involved in the matter, including the issues as to whether the first defendant is the biological father of the plaintiffs, whether the suit properties are joint family properties, whether the settlement deed, dated 19.02.2016, executed by the first defendant in favour of the second defendant is true and valid and whether the plaintiffs are entitled for partition.

10. Based upon the evidence available on record, the Trial Judge, by Judgment dated 16.02.2024, decreed the suit and ordered 2/3 share in the suit schedule properties. Challenging the same, the present appeal.

11. Heard the learned counsel on either side and perused the materials available on record.

12. Admittedly, Jeyarani (P.W.2) was not cross-examined in view of the matrimonial discard between her and the first defendant. Further, this Court, by order dated 18.08.2014 passed in C.R.P.(PD) (MD) No.2115 of 2013, has fixed a time limit for disposal of the suit filed by the plaintiffs for partition. Since both the parties had not cooperated for trial, the learned Trial Judge closed the evidence. Since it is a partition suit and much reliance has been



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placed upon the matrimonial relationship between P.W.2 and first defendant, the entitlement of the plaintiffs as coparceners in the suit properties, as defined under Section 6 of the Hindu Succession Act, 1956, along with the provisions of the partition deed (Ex.A10) is to be determined.

13. Whether the suit properties are ancestral properties or separate properties has to be determined after giving an opportunity to let in evidence by the first defendant. Hence, this Court is not expressing any opinion with regard to Paragraph Nos.15 to 19 of the Trial Court's Judgement and the same are hereby stand vacated in view of the observations made above.

14. It appears that the suit has been decreed with costs. Learned counsel for the plaintiffs submitted that the costs imposed by the Trial Court may be directed to be deposited by the defendants.

15. The nature and character of the suit properties is to be determined before arriving at the costs. Hence, we have reservation in awarding the costs, while remanding the matter back to the file of the Trial Court.



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16. Accordingly,

- (i) This appeal suit is allowed.
- (ii) The Judgment and Decree, dated 16.02.2024, passed in O.S.No.279 of 2018, by the learned V Additional District and Sessions Judge, Madurai, is set aside.
- (iii) The matter is remanded back to the file of the Trial Court for the cross-examination of P.W.2.
- (iv) P.W.2 has to be cross-examined within a period of fifteen days from the date of the first hearing of the case.
- (v) Thereafter, the defendants can choose to let in any evidence within fifteen days, if so advised.
- (vi) For defendants' evidence, eight weeks time is granted.
- (vii) Within four weeks from the date of recording the evidence, Judgment has to be pronounced.
- (viii) In the event of the defendants are not cooperating, the learned Trial Judge can impose costs for the



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interim application if any filed by the defendants seeking adjournments.

(ix) The first hearing shall be on 23.01.2025.

(x) No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.]

[N.S., J.]

16.12.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Note to Office:

Return the back papers, if any, to the Trial Court before 20.01.2025.

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To:

1.The V Additional District and Sessions Judge,
Madurai.

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



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