



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2025

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THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP No. 664 of 2025

Murugan

..... Petitioner

Vs

Meenakshi

..... Respondent

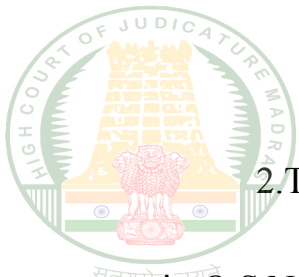
Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order dated 21.11.2024 passed in IA No. 3 of 2024 in OS No. 125 of 2006 on the file of the Principal Subordinate Judge, Dharmapuri

For Petitioner: Mr. R.Selvakumar

For Respondent(s): No appearance

ORDER

This petition has been filed seeking to set aside the fair and decreetal order dated 21.11.2024 in I.A.No.3 of 2024 in O.S.No.24 whereby, the trial court dismissed the petition filed by the petitioner under Order XIII Rule 9 and Section 151 of CPC for return of documents mentioned in D Schedule of the property.



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2. The brief facts of the case is that the respondent/plaintiff had filed a suit in O.S.No.125 of 2006 for partition against the petitioner, his mother and sister in respect of properties mentioned in schedule A to D in the suit. The Trial Court decreed the suit allowing 1/4th share of the properties to all the parties. The schedule D properties are Fixed Deposit receipts in the name of the petitioner. The petitioner filed an appeal in A.S.No.8 of 2011 against the preliminary decree before the Principal District Judge, Dharmapuri and it was dismissed vide order dated 27.12.2012 against which, the petitioner had preferred a Second Appeal in S.A.No.358 of 2013 before this Court.

3. This Court, while partly allowing the second appeal, in paragraphs 10 to 12 has held as under;

10. With regard to 'D' schedule deposit receipts, as per the contention of plaintiff, all these deposits were made out of joint family income, but, as discussed above, there is no proof that the family has sufficient income, on the other hand, in the year 2001, these deposits were made in the name of 3rd defendant, who was at that time, 21 years old and running a grocery business. So, he had sufficient income. Hence, when there is no proof for joint family income, these deposits

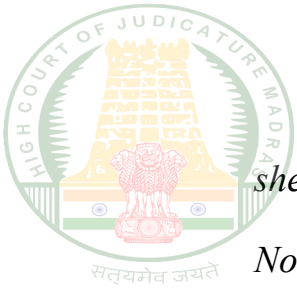


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assumes the character of separate properties of 3rd defendant, in which the plaintiff has no share at all. To that effect, the trial court findings are erroneous and liable to be set aside.

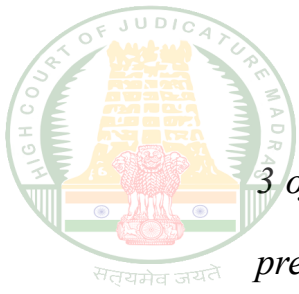
11. With regard to Item No.6 of 'C' schedule of property, it is odai poramboke, but there is no proof that it is separately enjoyed by the 3rd defendant and all the parties are entitled to enjoy their share, but it will not confer any title for the reason that it belongs to the Government. With regard to item Nos.7, 8 and 9 of 'C' schedule, the properties are belong to his father Idumban and his mother. So, they are separate properties, in which this defendant cannot claim absolute right. Likewise, item No.10 of 'C' schedule also belong to Idumban's step-mother, after her demise, as legal heirs of Idumban, all are having share. So, with regard to item Nos.7, 8 and 9, all the legal heirs of Idumban having equal share as it is a separate properties of Idumban. To that effect, the findings rendered by both the courts below are sustainable one.

12. Based upon Act 1 of 1990, as an unmarried daughter, the plaintiff claims share in the property, but as discussed above, 'A' schedule property (item Nos. 1 to 3) are the self-acquired properties of her father and after his demise,



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she along with other legal heirs equally entitled. So also, item No.6 of 'C' Schedule, it is the Government odai poramboke land, they can enjoy the property as per their share not perfected any title. To that effect, the trial court findings are sustainable. Accordingly, the question of law (1) is answered. As there is no ancestral joint family nucleus, Act 1 of 1990 need not be discussed here because the properties are self-acquired properties of her father. Hence, the findings with regard to these items are sustainable in law. Accordingly, the question of law (1) is answered. But, with regard to item Nos. 4 and 5 of 'B' schedule, the properties are separate properties of appellant/3rd defendant. To that effect, the findings rendered by the trial court is erroneous and misconception of law and on facts. Accordingly, it is liable to be set aside and this Second Appeal is partly allowed with regard to item Nos.4 and 5 of 'B' schedule and 'D' schedule deposit receipts. With regard to Item Nos.1,2,3,7,8,9 and 10 of 'A' and 'C' schedule respectively, the plaintiff is entitled to 1/4th share, since the properties are separate properties of her father Idumban and the defendants 1 to 3 also having equal 1/4th share on payment of court fee. Accordingly, the findings of the court below is set aside and the suit is partly decreed in respect of item Nos.1 to

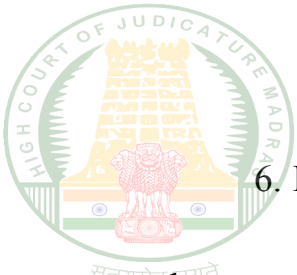


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3 of 'A' schedule and item Nos. 7 to 10 of 'C' schedule and the preliminary decree is granted allotting 1/4th share to the plaintiff. With regard to item Nos.4 and 5 of 'B' schedule, the suit is dismissed. With regard to item No.6 of 'C' schedule, it is a odai poramboke, the plaintiff is entitled to enjoy only 1/4th share along with others. In the result, this Second Appeal is partly allowed. There is no order as to costs.

4. The respondent/ plaintiff had not proceeded further and thereafter had filed I.A.No.2 of 2024 seeking for passing of final decree. While so, the petitioner had filed an application in I.A.No.3 of 2024 in O.S.No.125 of 2006 under Order XIII Rule 9 and Section 159 of CPC seeking for return of Fixed Deposit Receipts mentioned under 'D' schedule properties to him claiming them to be his self acquired properties. The said application was dismissed by the Court below observing that there was no direction in the second appeal for return of D schedule property to the petitioner. Against which, the present CRP has been filed.

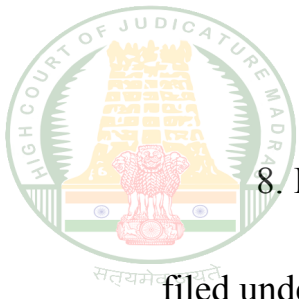
5. Heard Mr. Selvakumar, the learned counsel for the petitioner.



6. Despite service of notice and printing of the name of the respondent in the cause list, there is no representation for the respondents.

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7. Mr. R. Selvakumar the learned counsel for the petitioner would submit that this Court in Second Appeal 358/2013 had set aside the findings rendered by the trial Court in respect of item nos. 4&5 based on the evidence of PW1 concluding that they were purchased out of joint family income. This Court had also held that the respondent/plaintiff had failed to discharge her liability to prove that family had sufficient joint family income and that the petitioner/3rd defendant had proved that he had sufficient income and thereby the properties in Item Nos.4 and 5 assumes character of self acquired properties of the petitioner herein and deemed to be the separate properties of the petitioner, in which the respondent/plaintiff has no share and in such circumstances the petitioner is entitled for return of those documents to him without waiting for passing of final decree and the trial Court ought not to have dismissed the application on the ground that there is no finding of this court in second appeal directing the Court to return the documents to the petitioner.



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8. Learned counsel would further submit that though the petition has been filed under the wrong provision of law, the trial Court may be directed to accept the petition and order for return of the D schedule properties/ Deposit Receipts without waiting for passing of final decree in respect of the other properties since the deposit receipts are held to be exclusive properties of the petitioner.

9. The petition in I.A.No.3 of 2024 has been filed under Order XIII Rule

9. For the sake of convenience the provision is extracted hereunder:

"9.Return of admitted documents.

(1). Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of,.....".....

10. The plain reading of Order XIII Rule 9(1) speaks about return of admitted documents produced by such person/petitioner in the suit and placed on record. The literal meaning is that the application can only be filed by the person who has produced the documents in the suit. Admittedly the petitioner is not the person who had produced the same before the court. The trial Court had dismissed the said application filed by the petitioner on the ground that there is



no direction from the High Court for return of the documents in the Second Appeal. In such circumstances I do not find any infirmity in the order.

11. However, considering the fact that this Court while disposing the Second Appeal has categorically held that the Fixed Deposit receipts mentioned under D Schedule are exclusively the self acquired and separate property of 3rd respondent who is the petitioner herein and that no appeal has been preferred against the finding, this Court is of the view that the petitioner is entitled for return of the same and there cannot be any impediment on the part of the trial court to return the said Deposit Receipts under D Schedule properties to the petitioner on proper application being filed and it can be done even without waiting till passing of final decree.

12. In view of the above, the revision is disposed with the following direction; The petitioner is directed to file a fresh application seeking for return of Fixed Deposit Receipts mentioned in the D schedule and the trial court shall return the same without waiting for passing of final decree.



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13. With the above directions, the Civil Revision Petition is disposed of.

No costs.

23.04.2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Principal Subordinate Judge,
Dharmapuri.



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A.D.JAGADISH CHANDIRA J.

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