



WEB COPY

SA No. 520 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 520 of 2024

and

CMP No. 16777 of 2024

Umadevi

...Appellant

Vs

1. Nallammal

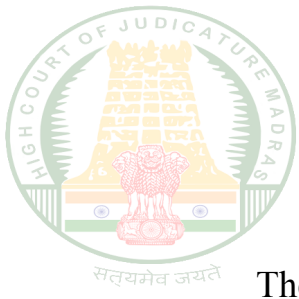
2. Sulochana

...Respondents

PRAYER : Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the judgment and decree dated 12.04.2023 passed in AS.NO. 55/2021, on the file of III Additional District and Sessions Court, Dharapuram. confirming the Judgment and Decree dated 30.11.2018 made in OS No. 86 of 2013 on the file of Subordinate Judge, Dharapuram

For Appellant: Mr.N.Manokaran For
Mr. N.Ponraj

For Respondents: Mr.N. Srinivasan For RR1 And 2



JUDGEMENT

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The appellant, who is the 2nd defendant in the suit in O.S.No. 86 of 2013, against whom the plaintiff filed a suit seeking for the relief of partition claiming 2/3rd share in the suit property. On hearing both sides, the trial judge decreed the suit in favour of plaintiffs. Against which, the 2nd defendant preferred an appeal in A.S.No.55 of 2021 on the file of III Addl. District and Sessions Judge, Dharapuram, wherein the first appellate judge analysed the facts and evidence on record, finally dismissed the appeal by confirming the findings of trial judge. Challenging the concurrent findings of the courts below, the 2nd defendant preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Based on the compromise decree entered between the 2nd defendant and her father in O.S.No.299 of 1998, she claimed half share and remaining half share belong to her father, thereby she denied right and title of plaintiffs over the suit properties, who are the other daughters of Palanisamy Gounder. Hence, before the trial court, the plaintiffs filed a suit seeking for the relief of partition



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claiming 2/3rd share in the suit property. The 2nd defendant contested the said suit stating that plaintiffs already got married long back with all seervarishai, moreover, with regard to suit properties, she filed a suit in O.S.No.299 of 1998 against her father and the said suit was ended in a compromise, in which out of total extent of property, half share was given to her and remaining half share was given to her father. Therefore, she claimed half share in the suit properties. The courts below held that in the alleged compromise decree not in accordance with law for the reason that the plaintiffs are not parties nor the plaintiffs, who are legal heirs of deceased Palanisamy Gounder were not given any share in the suit properties.

4. Admittedly, the said Palanisamy Gounder is having three daughters viz., plaintiffs and 2nd defendant. The suit properties were allotted to plaintiffs' father by way of partition in the family. Therefore, after his demise, all the daughters are entitled for equal share. However, the 2nd defendant claimed that as per the compromise decree, she is entitled for half share and the remaining share goes to her father. If at all, any share available, the plaintiffs have to work out their remedy only in respect of share allotted to their father and not in

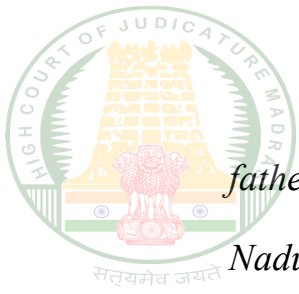


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respect of entire property. But, the courts below held that in the said compromise decree, the plaintiffs, who are legal heirs of Palanisamy Gounder were not impleaded as prescribed under Order XXIII Rule 3 of C.P.C. Therefore, the compromise decree passed in the suit in O.S.No.299 of 1998 is an invalid decree and accordingly, the suit was dismissed.

5. The learned counsel for appellant, by submitting the additional question of law, would argue that as per the ratio laid down in the authority reported in **2014 (2) L.W. 113** in the case of **K.M.Thangavel and others vs. K.T.Udayakumar and another**, wherein this court held in para 48 as follows :-

*“48. All these questions were considered by myself in another case in **Kamalakaran & others vs. Kasthuri & another** reported in **2013 (4) L.W. 193**, therein the position has been made clear that a daughter of a co-parcener, who was alive on the cut off date prescribed by Tamil Nadu Act 1/1990, would have become a coparcener, provided two conditions were fulfilled. They are (1) she should not have been married before the cut-off date and (2) her father should have been alive on the cut-off date. In addition, it was also pointed out that in case a partition had already been effected, the daughter would be entitled to a share, which was allotted to her*



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father, provided the father was alive on the cut-off date as per Tamil Nadu Act 1/1990. It was also made clear in the said judgement that Central Act 39/2005 enlarged the scope by making daughters also as coparcener irrespective of the fact whether she was married or unmarried on the effective date as per the said amending Act..... ”

On submitting the aforesaid proposition, the learned counsel for appellant argues that on the date of amendment, the co-parceners alone shall have right and liability equally to the share, so, in the year of 1998, the 2nd defendant alone was the coparcener along with her father. Therefore, she filed a suit for partition and they have entered into a compromise and hence, the compromise decree passed in O.S.No. 299 of 1998 is the valid decree. But, the courts below held that it would not bind the plaintiffs as such is erroneous one for the reason that on that day, two daughters already got married and they are not co-parceners on the date of amendment. He would also submit that since already partition was effected, the new amendment is not applicable to the present suit.

6. Heard and considered the submissions of learned counsel for appellant and perused the materials available on record.



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7. On seeing the facts, it would reveals that in any valid partition was already effected, new amendment is not applicable to the facts of present case.

To submit that argument, the appellant must prove that compromise decree is true and valid one, but as discussed above, Palanisamy gounder had three daughters viz., plaintiffs and 2nd defendant. In the earlier suit preferred by the 2nd defendant in O.S.No.299 of 1998, the other two daughters were not added as parties. It would clearly reveals that she has not added other legal heirs/her two sisters at the time of of earlier suit. She herself alone is added as a party without including other two daughters. No proof that plaintiffs were given sufficient seervarishai equivalent to share in the suit property. Therefore, the courts below rightly held that the said decree would not bind the plaintiffs, since because all the legal heirs are not impleaded as required under Order XXIII Rule 3 of C.P.C. Therefore, the authority relied on by learned counsel for appellant reported in **2014 (2) L.W. 113** in the case of ***K.M.Thangavel and others vs. K.T.Udayakumar and another*** is not applicable to the facts of the present case and both the courts below rightly appreciated the facts, which needs no interference of this court. Hence, there is no substantial question of law



involved for consideration. Accordingly, this Second Appeal is dismissed and the findings of the first appellate court in A.S.No. 55 of 2021 is confirmed. Suit

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is decreed as prayed for. If any final decree application is filed, the trial court is directed to dispose the same within a period of two months from the date of receipt of copy of this judgement. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. III Additional District and Sessions Court, Dharapuram.
2. Subordinate Judge, Dharapuram.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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