



A.S.No.401 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.401 of 2022

and

C.M.P.No.14347 of 2022

1. Kalamurthi
2. Pachhamuthu
3. Ashok Kumar

... Appellants/Defendants

-VS-

1. Dhanabhakiyam
2. Pachhayammal

... Respondents/Plaintiffs

Prayer: Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree in O.S.No.90 of 2019 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam dated 31.03.2022 as illegal, incompetent and without jurisdiction.

For Appellants : Mr.V.Raghavachari, Senior Counsel
For M/s.V.Srimathi
For Respondents : Mr.C.Munusamy

J U D G M E N T

Challenging the decree and judgment of the Trial Court, granting 1/9th share in favour of the 1st plaintiff, dismissing the suit as against the 2nd plaintiff, the present appeal has been filed by the defendants.



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2. The suit has been filed by the plaintiffs, claiming that one

Mayyamuthu Udayar was the original owner and the 2nd plaintiff is the 2nd wife of the said Mayyamuthu Udayar. The 1st plaintiff was born to the 2nd plaintiff. The defendants 1 to 3 were born through the 1st wife of Mayyamuthu Udayar, namely, Dhanabakkiyam. According to the plaintiffs, after the death of the 1st wife 57 years ago, the said Mayyamuthu Udayar married the 2nd plaintiff. It is the case of the plaintiffs that two daughters were born to the 2nd plaintiff through Mayyamuthu Udayar, out of whom, the 1st daughter died at the age of six months and therefore, the plaintiffs are entitled to 13/25 shares in the property.

3 It is the stand of the defendants that the 2nd plaintiff was never married to Mayyamuthu Udayar and she was kept as a concubine. However, it was admitted that the 1st plaintiff was born to Mayyamuthu Udayar through the 2nd plaintiff. It was contended that the 1st plaintiff cannot claim any share in the ancestral property and similarly, the 2nd plaintiff is also not entitled to any share, as she is not a legally wedded wife. It was the contention that Item Nos.18, 19, 24, 25, 29, 32, 37 are separate properties of the 1st defendant, which has been disputed by the plaintiffs.



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4. The Trial Court, on the basis of the aforesaid pleadings,

framed the following issues:

i) Whether it is true that Pachhayammal is not the wife of Mayyamuthu Udayar?

ii) Whether it is true that suit properties belong to the plaintiffs and defendants?

iii) Whether the plaintiffs are entitled to share in the property?

iv) Whether the plaintiffs are entitled for the relief of permanent injunction?

v) To what other relief do the plaintiffs are entitled for?

5. On the side of the plaintiffs, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A17 were marked. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex.B1 to Ex.B9 were marked. The evidences of P.W.2 and D.W.2 were eschewed.

6. The Trial Court, after considering the entire evidence, held that the marriage of the 2nd plaintiff with Mayyamuthu Udayar has not been established and since the 1st plaintiff is born out of the relationship, she is entitled to a share from Mayyamuthu Udayar and accordingly, granted 1/9th share in the property.



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7. Learned Senior Counsel for the appellants challenged the decree and judgment of the Trial Court on the ground that the marriage of the 2nd plaintiff with Mayyamuthu Udayar has not been established and the Trial Court ought not to have granted any share in the property to the 1st plaintiff.

8. Per contra, learned counsel for the respondents contended that P.W.3 in his evidence clearly deposed that after the death of the 1st wife of Mayyamuthu Udayar, he married the 2nd plaintiff legally to take care of children born to the 1st wife. It was his contention that the Trial Court ought to have considered this aspect and granted share to the 2nd plaintiff.

9. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether the marriage of the 2nd plaintiff with Mayyamuthu Udayar is proved in the manner known to law?
- ii) Whether the 2nd plaintiff is a legally wedded wife of Mayyamuthu Udayar



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iii) To what other relief do the plaintiffs are entitled for?

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10. The parties have not disputed the relationship. The core contention of the 2nd plaintiff is that she is a legally wedded wife of Mayyamuthu Udayar and after the death of the 1st wife of Mayyamuthu Udayar, she married him. Out of their marriage, the 1st plaintiff was born and the other daughter born to them died. Whereas it is the specific case of the defendants that there was no marriage between the 2nd plaintiff and the said Mayyamuthu Udayar and the 2nd plaintiff was kept as a concubine all along by Mayyamuthu Udayar.

11. Though D.W.3 stated in his evidence that there was a marriage between the 2nd plaintiff and Mayyamuthu Udayar, during cross examination, he stated that he is not aware whether the marriage took place or not. When he was questioned as to whether the 1st plaintiff was born to the 2nd plaintiff through Mayyamuthu Udayar, he was silent for long time and his demeanor was noted by the Trial Court. Therefore, only on the basis of the evidence of D.W.3, it cannot be held that there was a valid marriage.

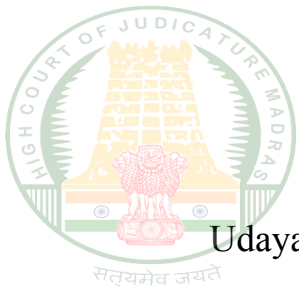


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This fact has been fortified by the very recital in the document Ex.B6, which shows that the property has been purchased in favour of the 1st plaintiff by the mother, namely, the 2nd plaintiff, wherein the status of the 2nd plaintiff has been clearly mentioned as concubine. When the document clearly recites that the 2nd plaintiff was kept as a concubine, it is to be held that there was no valid marriage between the 2nd plaintiff and Mayyamuthu Udayar.

12. It appears that there was a long cohabitation between the 2nd plaintiff and the said Mayyamuthu Udayar. However, the factum of marriage between them has not been established. In the document / Ex.B6, the 2nd plaintiff has been described as a concubine and the benefit was also taken by her in the document. Merely because children were born out of such cohabitation, it cannot be said that she is entitled to claim the status of wife and also claim the share in the property of Mayyamuthu Udayar. The points are answered accordingly.

13. It was admitted by the defendants that the 1st plaintiff was born out of the relationship between the 2nd plaintiff and Mayyamuthu



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Udayar. Considering the said admission, the Trial Court has granted 1/9th

share to the 1st plaintiff. Though there was no marriage that took place between the 2nd plaintiff and Mayyamuthu Udayar to consider the 1st plaintiff as an illegitimate child, in view of the admission by the defendants that the 1st plaintiff was born out of the relationship and in view of long cohabitation, this Court is of the view that the 1st plaintiff has to be considered as an illegitimate child of Mayyamuthu Udayar and she is entitled to her father's share, which was rightly allotted by the Trial Court.

The finding in respect of allotment of share to the 1st plaintiff does not require any interference by this Court. Since the 2nd plaintiff has not filed any appeal or cross objection as against the judgment and decree of the Trial Court, the instant Appeal Suit is dismissed and the judgment of the Trial Court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2025

Index: Yes / No
Internet: Yes / No
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N.SATHISH KUMAR,J.,
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To:

1. The III Additional District
and Sessions Judge,
Cuddalore at Virudhachalam
2. The Section Officer,
V.R.Section,
High Court,
Madras.

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