



S.A. No.561 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.561 of 2023
and
CMP.No.17639 of 2023

1.Punitha
2.Ramya
3.Santhi
4.Sivasankari
5.Rajkumar

...appellants

Vs

Sellammal (Deceased)
Indhirani (Deceased)

1.Geetha
2.Radhika
3.Rajakkannu
4.Sivakamasundari
5.Sundarapandian
6.Gokila

... Respondents



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PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.98 of 2008 dated 28.04.2023 on the file of the III Additional District Court, Kallakurichi in confirming the judgment and decree made in O.S.No.935 of 2004, dated 13.04.2006 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellants : Mr.R.Jayaprakash
For R1 to R2 : Insufficient address
For R3 to R6 : Mr.A.Arumugam

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree passed in A.S.No.98 of 2008 dated 28.04.2023 on the file of the III Additional District Court, Kallakurichi in confirming the judgment and decree made in O.S.No.935 of 2004, dated 13.04.2006 on the file of the Principal District Munsif Court, Kallakurichi.

2. Heard Mr.R.Jayaprakash, learned counsel for the appellants, and Mr.A.Arumugam, learned counsel appearing for the respondents 3 to 6 and



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perused the materials available on record.

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3. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the concurrent findings of the Courts below, defendants 1 and 4 to 7 preferred this appeal.

5. Before the trial court plaintiffs, filed a suit O.S. No. 935 of 2024 praying for partition and claiming 2/3 share in the A-scheduled property, along with a declaration that the B-scheduled property absolutely belonged to the 1st Plaintiff.

6. The suit was filed against the legal heirs of the deceased Saminathan, who was the son of the 1st Plaintiff, Sellammal. After hearing both sides, the trial court concluded that the 1st item of the suit property belonged to RajaManikam, who died intestate, leaving behind his wife Sellammal, daughter Indhirani, and son Saminathan. Accordingly, the trial



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court granted 2/3 share in favour of the plaintiffs and 1/3 share to all the defendants.

7. In respect of the B-scheduled property, which was purchased in the name of Sellammal, the plaintiffs submitted relevant sale deeds (marked as Exhibits P1 to P8). Based on the evidence, the trial court held that the B-scheduled property was the absolute property of the 1st Plaintiff and allowed the suit.

8. Challenging these findings, Defendants 1 and 4 to 7 preferred an appeal, A.S. No. 98 of 2008. Admittedly, Sellammal was the mother, and the 2nd Plaintiff, Indhirani, was her daughter. The defendants were the legal heirs of Samynathan, the deceased son of the 1st Plaintiff.

9. The appeal, filed in 2008, was dismissed for default in 2015. In the meantime, Sellammal passed away in 2010. During her lifetime, she executed a registered will in favour of her daughter Indhirani and her husband Rajakkannu. During this period, the appeal was not active. To



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enforce the will, the beneficiaries filed an application I.A No. 2790 of 2011 before the trial court. The trial court took the application on file and issued notices to the respondents/contesting defendants. To prove the will, one of the attesting witnesses was examined as D.W.2.

10. After cross-examining the witnesses, the trial court concluded that the will was valid and proven. The court held that the beneficiaries were necessary parties to the proceedings and accordingly allowed the application on 05.12.2013. Subsequently, the appeal was restored. After hearing both sides, the appellate court confirmed the findings of the trial court and dismissed the appeal.

11. Challenging the concurrent findings, Defendants 1 and 4 to 7, the legal heirs of the deceased Samynathan, have now preferred this appeal.

12. The learned counsel for the appellants submitted that the respondents who contested the appeal herein is Indhirani and her husband, Rajakannu, as beneficiaries under the Will on behalf of the first plaintiff.



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During the pendency of the proceedings, Indhirani passed away, and her legal heirs were impleaded as Respondents 1 to 6. He further submitted that, regarding the execution of the Will, the respondents, who are beneficiaries of the Will, did not inform the Appellate Court. Therefore, he insisted that the matter be remanded to the Trial Court to prove the validity of the Will.

13. Per contra, the learned counsel for the respondents submitted that the will was already proven in IA No. 2790 of 2011 before the trial court. He produced the order passed in IA No. 2790 of 2011 to substantiate this claim.

14. Upon perusal, the learned Trial Judge held that the will was proved with the help of one attester. However, upon reviewing the findings of the First Appellate Judge, it is observed that the Respondents/Plaintiffs were not informed about the execution of the will concerning the First Plaintiff, nor were they notified of the order passed in I.A. No. 2790 of 2011.



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15. This Court, therefore, inclined to remand the matter for fresh disposal. The learned counsel for the Respondents submits that, since the Second Plaintiff has passed away and her husband, aged about 77 years, has been compelled to endure this prolonged litigation, the situation warrants a resolution. It was further submitted that even during her lifetime, the Second Plaintiff did not enjoy the suit properties, as they remained under the possession and enjoyment of the defendants. In light of these circumstances, the learned counsel suggested settling the issue amicably to bring an end to the prolonged dispute.

16. Considering the submissions of both sides, the said proposal was accepted. After deliberations, it was determined that in the "A Scheduled Property," two-thirds (2/3) share belongs to the Plaintiffs was confirmed. Accordingly, respondents 3 to 6, being the legal heirs of Indhirani, are entitled to a two-thirds (2/3) share as per the will executed by the First Plaintiff. This includes the one-third (1/3) share that belongs to Indhirani,



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which also devolves upon respondents 3 to 6. Thus, they are collectively entitled to a two-thirds (2/3) share in the "A Scheduled Property." The remaining one-third (1/3) share is allocated to the Contested Appellants/defendants (respondents 1 and 4 to 7), who are the mother and daughters.

17. With respect to the B-scheduled property, although the will granted it entirely to Indhirani and her husband, Rajakkunnu, the situation evolved after the death of Swaminathan. He left behind four minor daughters at the time, and therefore, he inclined to resolve the issue by allotting Items No. 6, 7, and 9, along with the house at Natham (Item No. 9), to the appellants (Defendants 1 and 4 to 7).

As a result, regarding the B-scheduled property:

- Respondents 3 to 6, the legal heirs of Indhirani, are entitled to Items No. 1, 2, 3, 4, 5, and 8 (including the Natham plot).
- The remaining Items No. 6, 7, and 9, along with the house, are granted in favor of the appellants, Punitha and her daughters, the legal heirs of Swamynathan.



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18. Accordingly, a final decree was passed. Both parties are directed to approach the trial court to execute the final decree by filing an appropriate application. The court will appoint a commissioner and engage a surveyor to measure the property.

19. If any such application is filed before the court, the learned trial judge is directed to dispose of the case within a period of four months without granting unnecessary adjournments. Since one of the beneficiaries is aged about 77 years and appeared before this court today, the respondent, Rajakkannu, submitted that during his entire lifetime, he took care of the entire family after the demise of Saminathan. It was also submitted that the first appellant, Punitha, who is his close relative, refused to take her belongings, which were kept inside the house listed as Item Number 9. Therefore, in the presence of the Commissioner and without causing any annoyance to each other, Rajakkannu is permitted to take his belongings. The Commissioner is directed to take note of the said inventory as well.



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20. With the above direction, this second appeal is disposed of. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The III Additional District Judge, Kallakurichi.
2. The Principal District Munsif Judge, Kallakurichi.
3. The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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