



A.S.No.796 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 25.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.796 of 2023
and CMP.Nos.28034 of 2023 and 7682 of 2025

Minor Kaveena
D/o.Senthil Kumar
Rep by her mother/next friend
Ilavarasi

... Appellant

Versus

1.Sengoda Gounder
2.Senthilkumar
3.Balasubramaniam
4.Aravinth
5.Minor Harshini Priya

... Respondents

Prayer: Appeal filed under Section 96 read with Order 47 Rule 1 of Code of Civil Procedure, to set aside the judgment and decree dated 22.08.2023 made in O.S.No.55 of 2014 on the file of I Additional District Court, Namakkal.

For Appellant : Mr.N.Manoharan

For Respondents : Mr.A.Rajakumar



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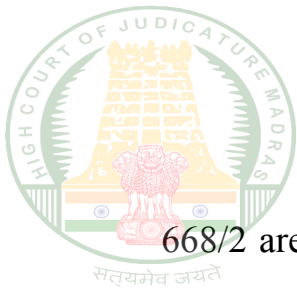
JUDGMENT

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Challenge has been made to the decree and judgment of the Trial Court dismissing the suit filed by the minor through her mother.

2. The suit has been filed by the minor through her mother pleading that the entire property is ancestral property held by one Sengoda Gounder/first defendant. The second defendant is the son and the defendants 3 to 5 are the legal heirs of one Kalaichelvi, the daughter of the first defendant. The marriage between the plaintiff's mother Ilavarasi and the second defendant was dissolved by way of decree of divorce dated 30.10.2019 passed in HMOP.No.48 of 2019 on the file of Principal District Court, Namakkal. Hence, the plaintiff proceeded that since the property is an ancestral property, the plaintiff is entitled to share of 1/6th share in the suit properties.

2. The first defendant took a stand that item No.1 and 2 is the absolute self acquired properties and S.No.667/3 belongs to defendants 1, 2, Rajeswari alias Paapathi and Murugesan. In respect of S.Nos.670/5 and 668/2, the property is bequeathed in favour of the second defendant. Since those properties are self acquired properties. The second defendant also took a stand that S.Nos.670/5 and



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668/2 are the self acquired property bequeathed through will. Hence, opposed the suit.

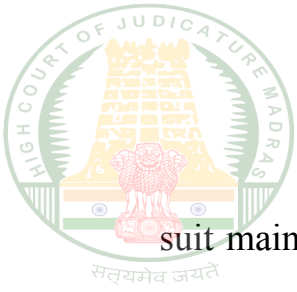
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3. Based on the above pleadings, the Trial Court framed the following issues:

- a. Whether the plaintiff is entitled to preliminary decree and separate possession of 1/6th share from the suit property?
- b. Whether the plaintiff's claim that suit properties are joint family properties purchased out of joint family nucleus and the properties of the defendants 1 and 2 should be considered as ancestral properties is true ?
- c. Whether the suit is bad for non-joinder of necessary parties?
- d. To what other reliefs?

4. On the side of the plaintiff, plaintiff's mother was examined as PW1 and marked Exs.A1 to A6. On the side of the defendants, no oral evidence adduced, however, Ex.B1 marked.

5. Though the defendants were set exparte, the Trial Court dismissed the



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suit mainly on the ground that as far as S.Nos.S.Nos.670/5 and 668/2 bequeathed

to the second defendant by way of will has been admitted by the plaintiff's mother.

With regard to other items, except the revenue records, no other documents have been filed. Challenging the said decree and judgment, the present appeal has been filed.

6. The learned counsel for the appellant submitted that even assuming that there was a will in respect of S.Nos.670/5 and 668/2 in favour of the second defendant, in respect of the other items, the plaintiff is certainly entitled to her share. The plaintiff is also ready to confine her right only in respect of other items of the property other than S.Nos.670/5 and 668/2. Hence, prayed for her share in the suit property

7. Whereas, the learned counsel for the respondents submitted that the Trial Court has rightly dismissed the suit and the same does not require interference from the hands of this Court. Hence, seeks for dismissal of the appeal.

8. In the light of the above submissions, now, the following issue arises in



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this appeal

WEB (i) Whether the minor plaintiff is entitled to share in the suit properties?

Issue No.(i)

9. Though a stand taken by the defendants that the properties are the absolute properties of the first defendant, no materials whatsoever has been placed before the Court. In fact, they remained exparte after cross examination of PW1, only for the first time, that too, in the appeal stage, xerox copy of the document is sought to be filed as an additional evidence, however, there was no reasons whatsoever assigned for non production of original document. Therefore, as a matter of right in the absence of reasons for non accounting the original document, xerox copy of the document cannot be relied. That apart even the document placed before this Court indicate that some properties were purchased in the name of the second defendant when he was 11 years old. This itself clearly indicates that the properties have been purchased only from the income through the joint family properties since he had no income at the relevant point of time. Such view of the matter, petition in CMP.No.7682 of 2025 filed for receiving the additional documents along with xerox copy is rejected. Similarly, the will has not been



proved in the manner known to law. Though the will has not been exhibited before the Trial Court, the learned counsel for the appellant fairly submitted that since PW1 herself had admitted about the existence of will, the plaintiff is not claiming her share in respect of the S.Nos.670/5 and 668/2.

10. Such view of the matter, the Trial Court non-suited the plaintiff merely on the ground that only the revenue records is produced is nothing but clear non application of mind. As far as the ancestral properties are concerned, normally, revenue records will alone be available. Hence, when the defendants are not in a position to establish their stand that the suit properties are self acquired properties, it has to be held that the suit properties are ancestral one except S.Nos.670/5 and 668/2. Hence, the plaintiff is certainly entitled to 1/6th share in item Nos.1 to 4, 7 and 8. Accordingly, these points are answered.

11. In the result, appeal is allowed in part and the suit is dismissed. The judgment and decree of the Trial Court passed in O.S.No.55 of 2014 is set aside and the preliminary decree is passed granting 1/6th share in respect of item Nos.1 to 4, 7 and 8. Since, the only apprehension of the learned counsel for the



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respondents that the minor's share shall not be dealt by the mother of the minor determinant to her interest. It is needless to state that the Guardian while dealing with the property of the minor has to necessarily obtain permission from the concerned Court. To this, the learned counsel for the appellant submitted that till the minor attains majority, the property will not be dealt with by the mother of the plaintiff. Such statement is also recorded.

No costs. Consequently, connected miscellaneous petition stands closed.

25.03.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The I Additional District Judge,
I Additional District Court
Namakkal

2.The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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