

SA(MD)No.259 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **31.07.2025**

CORAM

THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

S.A.(MD)No.259 of 2019

1.Petchiyappan

2.Karuppaiah

... Appellants

Vs

1.Kaleeswari (Died)

2.R.Mayakrishnan

3.M.Muthuraj

5.M.Sudha

6.M.Mohana

... Respondents

(R2 to R5 are brought on record as legal heirs of the deceased sole respondent vide Court order dated 10.11.2023 made in CMP(MD)No. 2937 of 2022.

PRAYER: This Second Appeal is filed under Section 100 C.P.C., to pass against the judgment and decree dated 17.11.2017 made in AS No.21 of 2011 on the file of the Sub Court, Srivilliputtur allowing in part of the judgment and decree dated 13.12.2010 made in OS No.426 of 2008 on the file of the Principal District Court, Srivilliputtur.



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For Appellants : Mr.R.Suriyanarayanan

For Respondents : Mr.B.Rajesh Saravanan (R2 to R5)

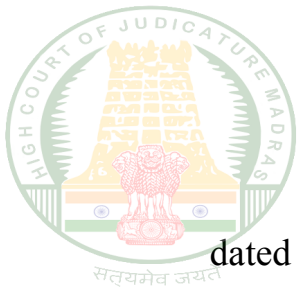
R1 - Died

JUDGMENT

The defendants 2 and 3 are before this Court on appeal. This second appeal is filed challenging the judgment and decree dated 17.11.2017 in AS No.21 of 2011 on the file of the Sub Court, Srivilliputtur, partially modifying the judgment and decree dated 13.12.2010 in OS No.426 of 2008 on the file of the Principal District Munsif, Srivilliputtur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

3. It is the case of the plaintiff that the first defendant is the mother of the plaintiff and the defendants 2 and 3, who were born through their father, Vellaichamy Thevar. The plaintiff's father Vellaichamy Thevar had purchased the properties through sale deeds



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dated 22.09.1955, 01.07.1958, which is the first item of the suit properties. Likewise, other items of the suit properties were also purchased by Vellaichamy Thevar. He is the absolute owner of the suit properties. Though originally some portion in first item of the suit properties was purchased by the plaintiff's father along with his first son, Petchiappan / first defendant, but however, since the first defendant had conveyed his half share back to his father, the plaintiff's father, Vellaichamy Thevar had been in absolute possession and enjoyment of the suit properties. Around 45 years ago, he had constructed a house in the second item of the suit properties. The plaintiff got married in the year 1990 and the plaintiff's father, Vellaichamy Thevar, who owned the suit properties died intestate on 10.12.2005. Since the plaintiff's father died intestate leaving behind the suit properties, the plaintiff being the daughter is entitled to 1/4th share in the suit properties by succession along with her two brothers, defendants 2 and 3 and the mother / first defendant. Since the request made by the plaintiff seeking for partition in the suit properties did not materialize, the plaintiff had come up with the suit seeking for partition.



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4. The defendants 2 and 3 resisted the suit by filing a written statement disputing the claim of the plaintiff. It is the contention of the defendants that items 2, 3 and 4 of the suit properties are the ancestral properties of Vellaichamy Thevar. Since the suit properties are not absolute properties of their father, Vellaichamy Thevar, and it is the ancestral properties, the plaintiff cannot seek any share in the suit properties. It is the contention of the defendants that the plaintiff got married in the year 1983 and during her marriage, they have gifted 15 sovereigns of gold and the utensils to the value of Rs.20,000/- as seedhana and she had left the family and she was never in possession of the suit properties as joint owner. It is further claim of the defendants that in respect of other extent of the property adjoining the first item of the suit properties, which belongs to the first defendant, the mother of the defendants 2 and 3 had executed a settlement deed dated 26.09.2008 in favour of the second and third defendants, whereby she had settled 1/3rd share in the suit properties and along with other items, which belong to her in favour of the defendants 2 and 3. Therefore, the defendants 2 and 3 became the owner of the suit properties and the plaintiff cannot maintain the suit seeking for partition.



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5. During trial, the plaintiff examined herself as PW1 and marked Exs.A1 to A5. On the side of the defendants, 3rd defendant examined himself as DW1 and the first defendant as DW2 and marked Exs.B1 to B7. The trial Court, after analysing the evidences, came to the conclusion that the suit properties are the absolute properties of Vellaichamy Thevar and he having died interstate on 10.12.2005, the plaintiff being the daughter of Vellaichamy Thevar is entitled for 1/4th share in the suit properties and thereby had decreed the suit. On appeal, the lower appellate Court, made reliance on the settlement deed executed by the first defendant in favour of the defendants 2 and 3 in Exs.B4 and B5 and also on finding that 38½ cents in S.No.776/13 had been gifted by the first defendant's mother-in-law on 09.02.1951 in Ex.B2, reversed the judgment and decree of the trial Court in respect of the first item of the suit properties and dismissed the suit, but however, modified the decree in respect of items 2 to 4 of the suit properties and granted 1/3rd share to the plaintiff. Assailing the reversal of the findings and decree by the lower appellate Court, the second and third defendants are before this Court on appeal.



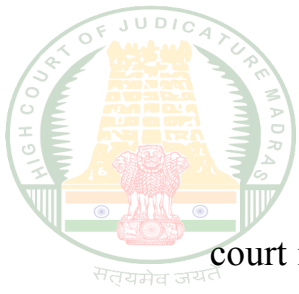
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6. This second appeal has been admitted on 10.02.2019 on the following substantial question of law:-

“When it is not in dispute that the mother of the defendants, who is entitled to $\frac{1}{4}$ share, has executed a settlement deed under Ex-B4 and Ex-B5, is not the lower Court committed a wrong in granting a decree for $\frac{1}{3}$ share?”

7. The learned counsel appearing for the appellants argued that the plaintiff having been married even as per the plaint in the year 1990 itself and who had been gifted with articles and gold, had left the family and she had never been in the joint family along with defendants and therefore, the suit filed seeking for partition is not maintainable. The learned counsel further contended that in view of the settlement given by the first defendant's mother in law, the first defendant became the owner of $38 \frac{1}{2}$ cents. Further, pursuant to the death of her husband, Vellaichamy Thevar, since she was entitled to $\frac{1}{3}$ rd share, the same was gifted to the second and third defendants, the appellants herein and as such, the defendants 2 and 3 alone are the owners of the suit properties. The learned counsel vehemently contended that when the lower appellate



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court rightly reversed the decree and dismissed the suit in respect of first item, the decree granted in respect of items 2 to 4 of the suit properties granting 1/3rd share to the plaintiff cannot be sustained and the findings rendered are perverse and sought for interference of this Court.

8. Contending contra, the learned counsel appearing for the respondent argued that when the plaintiff's father, Vellaichamy Thevar is the absolute owner of the suit properties by purchase and admittedly, when Vellaichamy Thevar died on 10.12.2005 as interstate, the plaintiff being the daughter and class-I legal heir, in view of the mandate under amended Section 6 of the Hindu Succession Act, 1956, as a coparcener, is entitled to 1/4th share. The trial Court having rightly considered the documents decreed the suit, but however the lower appellate Court by relying on Exs.B4 and B5 had erroneously modified the decree, which is erroneous and the partition ought to have been granted as per the rights that are available with the parties pursuant to the death of Vellaichamy Thevar.



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9. Heard the rival submissions and perused the materias available on record.

10. The suit properties in items 1 to 4 are claimed to be the absolute properties of Vellaichamy Thevar. Vellaichamy Thevar had two sons and a daughter namely, Petchiyappan, Karuppaiah and Kaleeswari born through his wife, Krishnammal. The daughter, Kaleeswari had come up with the suit seeking for partition as against her mother, Krishnammal / the first defendant and two brothers, the defendants 2 and 3.

11. The plaintiff has filed sale deeds in Ex.A1 to A3, which are the documents through which the plaintiff's father Vellaichamy Thevar had purchased the suit properties. Infact, in Ex.A2, the mother of Vellaichamy Thevar, Karuppayee Ammal had also been a purchaser. The plaintiff by filing documents established that the suit properties are the absolute properties of Vellaichamy Thevar.



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12. The first defendant's mother in law, Karuppayee Ammal, who had purchased a portion of property lying adjacent to the first item of the suit properties had executed a gift in favour of the first defendant, daughter in law. In view of the settlement executed on 09.02.1951 in Ex.B2, the first defendant became the absolute owner in respect of 38 ½ cents, which lies adjacent to the first item of the suit properties. The defendants have further filed documents in Exs.B4 and B5, whereby the first defendant pending suit had executed two separate settlement deeds in favour of her two sons, defendants 2 and 3, by settling 1/3rd share in the suit properties in favour of her two sons.

13. As referred earlier, relationship between the parties is admitted. The plaintiff is the daughter born to Vellaichamy Thevar and the first defendant, Krishnammal. Admittedly, Vellaichamy Thevar died interstate on 10.12.2005. On the death of Vellaichamy Thevar, the properties in the hands of Vellaichamy Thevar would devolve on the legal heirs as per Section 8 of the Hindu Succession Act, 1956. The plaintiff and the defendants 1 to 3 being the class-1 legal heirs of Vellaichamy Thevar are entitled to 1/4th share each in the suit properties.

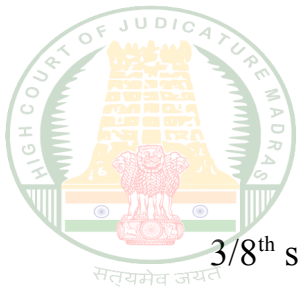


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Though the first defendant has exclusive right in respect of 38 ½ cents, which is the property lying adjacent to the first item of the suit properties that was gifted in her favour by her mother-in-law in Ex.B2, but however, in respect of suit properties, the first defendant is only entitled to 1/4th share in the suit properties being wife of Vellaichamy Thevar.

14. The perusal of the settlement deed executed by the first defendant Krishanammal in Ex.B4 and B5 in favour of the second and third defendants sons goes to show that she had settled 1/3rd share in the suit properties, when she was only entitled to 1/4th share in the suit properties. The settlement executed by her by settling 1/3rd share ie., more than to which she was entitled to, cannot be sustained. However, when she was having 1/4th share in the suit properties, the settlement deeds in Exs.B4 and B5 would be valid to that extent.

15. All the four legal heirs having been entitled for 1/4th share and now, the first defendant mother having settled her 1/4th share in favour of her two sons, they are entitled to her 1/4 share. As such, the plaintiff will be entitled to 2/8th share and the defendants 3 and 4 will be entitled to

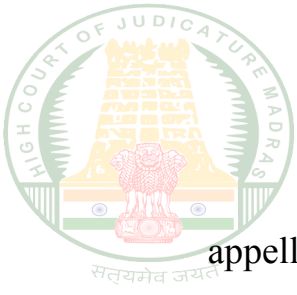


3/8th share each in the suit properties.

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16. The lower appellate Court had reversed the decree in respect of 1st item of the suit property measuring 38½ cents, holding that it was the independent property of the first defendant, which was gifted in Ex.B2. However, that portion of the property has nothing to do with the 1st item of the suit property. The lower appellate Court, simply by relying Ex.B4 and B5 had concluded that the parties are entitled to 1/3rd share in items 2 to 4 and by wrongly interpreting that 38 ½ cents in Ex-B2, is the first item of the suit properties, had dismissed the suit for 1st item. The 38 ½ cents which was settled in favour of 1st defendant, by her mother-in-law, actually lies adjacent to the 1st item of the suit property, which will go the 2nd and 3rd defendant, as it has been settled in their favour by their mother, the 1st defendant. But, the 1st item of the suit property absolutely belonged to Vellaichamy Thevar.

17. The findings rendered by the lower appellate Court in modifying the decree is not based on the documents and evidences available on record and therefore, the findings rendered by the first



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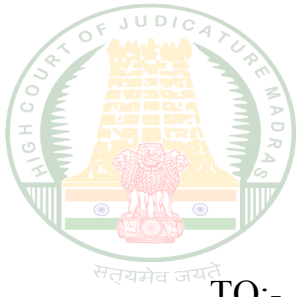
appellate Court is perverse and are sought to be interfered with. In view of the above discussions, the substantial question of law is answered in favour of the appellant and as against the respondent.

18. In view of the above deliberations, the judgment and decree of the lower appellate Court is set aside and the judgment and decree of the trial Court is restored by modifying the preliminary decree to the effect that the plaintiff will be entitled to $2/8^{\text{th}}$ share and the defendants 2 and 3 will be entitled to $3/8^{\text{th}}$ share each in all the 4 items of the suit properties.

19. With the above observations, this second appeal stands allowed. No costs.

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NCC :Yes/No
Index :Yes/No
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1. The District Munsif Court, Periyakulam
2. The Subordinate Judge, Periyakulam
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgement made in
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