



S.A.(MD).No.470 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2025

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.470 of 2017

S.Meenakshi Sundaram

... Appellant

/Vs./

- 1.Subburaman (Died)
- 2.Arumugathammal (Died)
- 3.Basheera Begam
- 4.Kala @ Janaki (Died)
- 5.Banu @ Banumathi
- 6.Rasu @ Rajeswari
- 7.Ramanathan
- 8.Meenal
- 9.Panneerselvam @ Kalamani
- 10.Blachandar
- 11.Hariharan
- 12.Subha Priyadharshini

...Respondents

(Respondents 4 to 8 are brought on record as LR's of deceased 1st respondent vide Court order, dated 13.07.2017, made in CMP(MD)Nos.4265 and 4266 of 2017 in SA(MD)SR.No.222 of 2010)

(Memo, dated 28.03.2024, presented before the Court on 28.03.2024, is recorded to the effect that R2 died and R4 to R8 who are already on record are recorded as Lrs of the deceased R2, vide Court order, dated 28.03.2024, made in S.A.(MD)No.470



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of 2017)

(Respondents 9 to 12 are brought on record as LR's of deceased 4th respondent vide Court order, dated 22.09.2023, made in CMP(MD)Nos.10250, 10253 and 10255 of 2023 in SA(MD)No.470 of 2017)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 14.08.2009, made in A.S.No.40 of 2008 on the file of the District Court, Sivagangai, confirming the Judgment and Decree, dated 23.10.2007, made in O.S.No.33 of 2006 on the file of the Sub Court, Devakottai.

For Appellant	: Mr.Ramesh @ Ramaiah for Mr.G.D.Manikandan
R1, R2 and R4	: Died
For R3	: Mr.R.Sundar Srinivasan
For R5 to R12	: No appearance

JUDGMENT

The present second appeal is preferred by the plaintiff against the judgment and decree, dated 14.08.2009, passed in A.S.No.40 of 2008 on the file of the District Court, Sivagangai, confirming the judgment and decree, dated 23.10.2007, passed in O.S.No.33 of 2006 on the file of the Sub Court, Devakottai.



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2. The plaintiff in the suit is the appellant herein and the defendants in the suit are the respondents 1 to 3 herein. For the sake of convenience, the parties are referred as plaintiff and defendants, as per the ranking in the suit. The defendants 1 and 2 / respondents 1 and 2 herein died and their legal heirs are impleaded as respondents 4 to 8 herein. Since the 4th respondent herein has also died, her legal heirs are impleaded as respondents 9 to 11 herein.

3. The suit is filed for partition claiming half share right in the suit property. The contention of the plaintiff is that he was adopted by his own sister who has a share in the suit property. Hence based on adoption the plaintiff claims share in the suit property. Originally, the property belongs to two brothers, namely, Venkatachalam and Subburaman, who had purchased the same in their names. The said two brothers had married two sisters namely, Arumugathammal and Vasanthi. The said Vasanthi is not having any legal heirs, hence she adopted her own brother namely, Meenakshi Sundaram who is the plaintiff in the suit. The said Meenakshi Sundaram is a differently abled person. The Trial Court dismissed the suit, aggrieved over the same, the plaintiff had preferred an appeal and the



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same was dismissed. Aggrieved over the same, the present second appeal is preferred by the plaintiff.

4. The contention of the plaintiff is that the said Vasanthi had executed an Adoption cum Will, dated 01.04.1989 and the same was filed as Exhibit A4. The Trial Court has disbelieved the same and has stated that it is only an adoption and it is not speaking about any Will. Even the attesting witness was speaking about the adoption alone and he has not stated anything about the Will. Further the contents of the said Will are that the said Vasanthi's share of the suit property is bequeathed to Meenakshi Sundaram.

5. On perusing the depositions, it is seen that the witness is speaking of adoption only. In a single sentence the witness says it is not a Will. At the most the said sentence can be taken as his opinion. As far as proving the Will the parameters prescribed was totally absent in the depositions. There is no question regarding the veracity of the Will and it is obvious that the case was not dealt by the parties properly. In such circumstances the finding of the both the Courts that



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the Ex.A4 is not a Will is an error. Further on perusing the Will, it is seen the executant had spoken about giving the half share to the said Meenakshi Sundaram. Therefore, this Court is of the considered opinion that the both the Courts have failed to consider the same in proper perspective.

6. Further it is seen that the claim of the plaintiff is that the said Vasantha had adopted the plaintiff, consequently had bequeathed the property to the plaintiff. The Court have held that the said adoption was not proved, hence the plaintiff is not entitled to the share in the property. This Court is of the considered opinion the approach of the Court is erroneous. Even if the adoption is not proved, the claim of the plaintiff ought to be considered, since any person can execute the Will and bequeath the property to any person of their wish. If the said Vasantha had executed a Will bequeathing the property to the plaintiff, who is the brother of the said Vasantha, then the plaintiff is entitled to the share of Vasantha's property.

7. It is pertinent to state that in order to prove the same, the plaintiff has filed an interlocutory application before the Appellate Court and the same was



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dismissed. This Court is of the considered opinion that the same is dismissed due to non-application of mind and the Appellate Court ought to have entertained the said application.

8. At this juncture, the subsequent purchaser submitted that his sale may be protected. However, the Learned Counsel appearing for the plaintiff submitted that the claim of the subsequent purchaser may be entertained at the time of final decree application. The subsequent purchaser is permitted to put forth his case before the Trial Court, at the appropriate time.

9. For the reasons stated supra and in order to grant one more opportunity to the plaintiff to prove the impugned Adoption and Will, this Court is inclined to remit the case back to the Trial Court. The plaintiff and the defendants are permitted to amend or to file additional pleadings and file additional documents and also produce witness. The plaintiff is also permitted to raise any other additional pleadings and also put forth any other facts, if available. The defendants are permitted to file their objections and documents. The Trial Court



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is directed to complete the proceedings within a period of one year from the date of receipt of a copy of this judgment.

10. With the above said observations, the impugned judgement and decree of both the Courts are set aside and the second appeal is allowed. No costs.

30.01.2025

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. District Court, Sivagangai.
2. Sub Court, Devakottai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.470 of 2017

Dated:
30.01.2025