



AS(MD). No.68 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.02.2026

CORAM

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI**

A.S(MD)No.68 of 2020

1.J.Janarthanan
2.J.Vengatesh

... Appellants /
Defendants

Vs

Shanmugasundari

... Respondent /
Plaintiff

PRAYER :-

Appeal Suit is filed under Section 96 r/w Order 41 Rule 31 of C.P.C to to allow the first appeal and set aside the judgment and decree dated 15.06.2019 made in O.S.No.162 of 2014 on the file of the I Additional District Judge, Madurai.

For Appellants : Mr.N.Murugesan

For Respondent : Mr.Babu Rajendran



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JUDGMENT

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(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The defendants in O.S.No.162 of 2014 on the file of the First Additional District Judge, Madurai are the appellants herein. The appeal arises out of a suit for partition. The appellants and the respondent were born to one Jeyaraman and Kamala. Kamala predeceased Jeyaraman in the year 1985 itself. Jeyaraman died intestate on 10.12.2010. The respondent herein filed the said suit seeking 1/3rd share in the suit properties. The suit schedule consists of 4 items. It is not in dispute that all the 4 suit items stood in the name of the late Jeyaraman.

3.The case of the plaintiff was contested by the appellants on the ground that, following the demise of their father, the parties entered into a memorandum of understanding on 26.12.2011 and that therefore the suit is not maintainable. Based on the rival pleadings, the Court below framed the following issues:



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“1. Whether the suit properties are the self acquired properties of late Jeyaraman?

2. Whether the Plaintiff is entitled to the relief of partition as prayed for?

3. Whether the Plaintiff is entitled to the relief of partition as prayed for?

4. Whether the Plaintiff is entitled to mesne profits as prayed for?

5. To what other reliefs?”

4.The plaintiff examined herself as PW1 and marked Ex.A1 to Ex.A18. The first appellant examined himself as DW1. One Rajendran, who endeavoured to mediate between the parties, was examined as DW2. Ex.B1 to Ex.B8 were marked. After considering the evidence on record, the trial Court by judgment and decree dated 15.06.2019 passed preliminary decree holding that the plaintiff is entitled to 1/3rd share in the suit schedule properties. Aggrieved by the same, this appeal has been filed.

5.The learned counsel appearing for the appellants submitted that Jeyaraman suffered from cancer and that the appellants had spent a sum



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of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards his treatment, but the supporting documents were omitted to be marked before the trial Court. Hence, the appellants wanted to adduce additional evidence. The learned counsel further submitted that the appellants purchased the Suit Item No.25 in Item No.2 and Suit Item Nos.5 to 7 in Item No.3 in the name of their father and that the plaintiff cannot claim any share therein. He further contended that towards renovation of Item Nos.1 and 4, the appellants had spent several lakhs. Their grievance was that the Court below brushed aside this evidence and granted a preliminary decree as prayed for.

6.Per contra, the learned counsel appearing for the plaintiff submitted that the impugned judgment is well reasoned and does not warrant interference.

7.We carefully considered the rival contentions and went through the evidence on record.



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8.The point that arises for determination is whether the plaintiff has established that she is entitled to 1/3rd share in the suit items and whether the plaintiff is obliged to make any payment to the appellants towards her share of the cost of their father's treatment.

9.The learned counsel appearing for the appellants placed heavy reliance on Ex.B2. Admittedly, this letter was written by the plaintiff. In this letter, the plaintiff had agreed that she would bear 1/3rd share of the funeral expenses as well as the cost of treatment. We notice that the Court below did not deal with Ex.B2 at all. Though the appellants claim that they had spent Rs.20,00,000/- (Rupees Twenty Lakhs only) towards their father's treatment and have filed a typed set containing some bills, no formal application has been filed under Order 41 Rule 27 of CPC. However, considering the special facts and circumstances of the case, we permit the appellants to adduce evidence during final decree proceedings.

10.The plaintiff appeared before us in person and asserted that whatever amount was spent by the appellants towards their father's



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treatment was duly reimbursed by their employer (TCS). The plaintiff is also permitted to adduce evidence to controvert the claim of the appellants. In any event, apart from the evidence to be marked on either side, Ex.B2 shall be taken note of by the Court below and suitable directions shall be passed apportioning the share, if any, to be paid by the plaintiff to the appellants.

11. Admittedly, all four items stood in the name of the father. Even though the appellants claim that some of the items were purchased by them in the name of their father, in view of the provisions of the Benami Transactions (Prohibition) Act, 1988 such a claim cannot be entertained. The Court below, therefore, rightly held that the plaintiff is entitled to 1/3rd share in all 4 suit items. Interference with the impugned judgment is not called for.

12. Subject to the liberty which we have granted in favour of the appellants to adduce further evidence in final decree proceedings and the direction to the Court below to take note of Ex.B2 to ascertain the monetary liability towards her share of the medical expenses incurred for



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their father, the impugned judgment and preliminary decree are confirmed.

13.This Appeal Suit stands dismissed. No costs.

[G.R.S., J.] [R.K.M, J.]
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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

I Additional District Judge,
Madurai.



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AND

R.KALAIMATHI, J.

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