



A.S(MD)No.16 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

A.S(MD)No.16 of 2017

and

C.M.P(MD)No.1109 of 2017

Mydeen Pathu (Died)

1.Mohamed Mehraj

2.Mohamed Ismail
(A.2 represented through her
Power Agent 1st appellant herein)

3.Mohideen Meeran Seyad Akbar

4.Seyathali Fathima

... Appellants /
Plaintiffs 2 to 5

Vs.

Shakila Banu

... Respondent /
Defendant

Prayer: Writ Appeal filed under Section 96 of CPC r/w Order 41 Rule 1 & 2 of CPC to allow the appeal to set aside the judgment and decree dated 21.12.2016 made in O.S.No.20 of 2013 on the file of IV Additional District Court, Tirunelveli and to decreed the suit by allowing the appeal.



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For Appellants : Mr.G.Prabhu Rajadurai
for M/s.Ajmal Associates

For Respondent : Mr.M.P.Senthil

JUDGMENT

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

The plaintiffs in O.S No.20 of 2013 on the file of the IV Additional District Judge, Tirunelveli are the appellants herein. The appeal arises out of a suit for partition. The parties are Mohammedans.

2.The suit was instituted by one Mytheen Pathu against one Shakila Banu seeking half share in the suit property. The case of Mytheen Pathu was that she and one Kalwath Beevi were born to one Sheik Peer Mohideen. Sheik Peer Mohideen had begotten a son, namely, Meeran Mohideen, and two daughters, namely, Kalwath Beevi and Mytheen Pathu. Meeran Mohideen predeceased his sisters. Kalwath Beevi died leaving behind the defendant Shakila Banu, who is her daughter. As per Mohammedan's Law, daughter is entitled to half share in the property if there is no son. The parties belong to the Sunni School of Islamic law.



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3.The defendant resisted the suit on the ground that Mytheen Pathu was not the full sister of Kalwath Beevi but only a consanguineous sister.

In other words, according to the defendant, Sheik Peer Mohideen married three persons successively. Through his first wife Mohammed Fathima, four children including Mytheen Pathu were born. The defendant / Shakila Banu firmly contended that Kalwath Beevi and Mytheen Pathu were not full sisters.

4.Based on the rival pleadings, the Court below framed the following issues :

- 1) Whether the plaintiff is the legal heir of the Kalwath Beevi?
- 2) Whether the suit is bad for non-joinder of necessary parties?
- 3) Whether the plaintiff is entitled $\frac{1}{2}$ share of the suit schedule properties?
- 4) What other relief the plaintiff is entitled to?

5.During the pendency of the suit, Mytheen Pathu passed away and her legal heirs were brought on record. Prior to her demise, Mytheen Pathu examined herself as PW.1. Four other witnesses were also examined on the side of the plaintiffs. Exs.A1 to A9 were marked.



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Shakila Banu examined herself as DW1 and marked Exs.B1 to B5. After considering the entire evidence on record, the Court below dismissed the suit vide judgment and decree dated 21.12.2016. Challenging the same, this appeal came to be filed. The learned counsel on either side reiterated their respective contentions.

6.The points that arises for determination are whether the Court below was justified in non-suiting the plaintiffs on the ground of non-joinder of necessary parties and whether the plaintiff was the full sister of Mytheen Pathu / Kalwath Beevi.

7.The oral evidence adduced by Mytheen Pathu speaks for itself. During cross-examination, Mytheen Pathu fairly admitted that her mother was Mohamed Fathima whereas Kalwath Beevi's mother was Fathima. Mytheen Pathu did not produce any legal heir certificate. There is no documentary evidence to show that she was the full sister of Kalwath Beevi. Therefore, the Court below rightly held that the suit was bad for non-joinder of necessary parties. Mytheen Pathu ought to have impleaded her siblings and other legal heirs. It is relevant to note that after the demise of Mohammad Fathima and Fathima, the first and second wives,



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Sheik Peer Mohideen married one Jameela Beevi and through the third wife, three children were born, namely Jinna, Fathima and Rasul. This is the admitted case of Mytheen Pathu herself. Therefore, the legal heirs of the third branch also ought to have been impleaded.

8.This is a partition suit. Instead of driving the parties to file one more partition suit, we deem it fit and appropriate to remand the matter to the file of the Court below so that the plaintiffs can implead all the other legal heirs also. Such an approach was adopted by this Court in the decision reported in **1998 (II) CTC 403 (Sebasthi Nadar Vs Savurimuthu Nadar & Another)**. Paragraph 13 of the said decision reads as follows:

*“13. On the other hand the decision of the learned single Judge of this Court reported in **Swayamprakasam Chidambaranathan v. R.Vijayarangam, 1970 (1) M.L.J 243** is more practical as it holds that Order 1 Rule 10(2) of the Civil Procedure Code gives power to the Court to implead parties at any stage of the proceedings in a partition suit. The proceedings do not come to an end till the passing of the final decree and therefore at the stage of final decree proceedings also, parties can be impleaded. Similarly the judgment of the Division Bench of the High Court of Andhra Pradesh reported in*



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A.I.R. 1976 A.P 226, it is also to the effect that a party who was impleaded only after passing of the final decree, can seek for setting aside the preliminary decree and the court in appropriate cases can set aside the preliminary decree to do substantial justice between the parties having regard to the circumstances of the case.”

9.We are inclined to adopt the very same approach in this case also. Though the court below rightly dismissed the suit, we still set it aside only to serve the ends of justice. We want to avoid multiplicity of proceedings. Even though the defendant has been successful in getting the suit dismissed, the defendant is still entitled to only half share in the suit property. The plaintiffs may not be able to claim the other half in its entirety. But they do have a definite share. The shares of all the claimants can be worked out only if all of them are brought on record. One may wonder why the siblings of the mother should have half share in the property and why the only daughter's share should be confined to half alone. If a Hindu mother had died leaving behind a daughter alone as her surviving legal heir, she would take the entire estate. These differences are bound to remain till uniformity is attained in the matter of civil laws. In the realm of criminal law, such uniformity had been



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attained even during colonial times. That is why, Article 44 of the Constitution of India speaks of Uniform Civil Code. Since the parties before us are Muslims, we are duty bound to apply the Islamic law as in force.

10.The suit is of the year 2017. The plaintiffs shall take steps to bring all the legal heirs on record within a period of three months from the date of receipt of a copy of this order. The suit itself should be disposed of within a period of six months thereafter. This Appeal Suit is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P, J.]
02.04.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

IV Additional District Court,
Tirunelveli.



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