

**Venkitusamy and Others Vs. Murugesan and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1187708](http://sooperkanoon.com/1187708)

**Court :** Chennai Madurai

**Decided On :** Oct-21-2016

**Judge :** S.S. Sundar

**Appeal No. :** S.A(MD)No. 652 of 2016 & C.M.P(MD).No. 9841 of 2016

**Appellant :** Venkitusamy and Others

**Respondent :** Murugesan and Others

**Judgement :**

(Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree of the learned Additional Subordinate Judge, Dindigul, in A.S.No.192 of 2007 dated 29.04.2010 in reversing the judgment and decree of the District Munsif -cm-Judicial Magistrate, Veda sandhu, in O.S.No.110 of 1996 dated 27.02.2007.)

This second appeal has been filed by the plaintiffs 2,3,5,6 and 9 in the suit in O.S.No.110 on the file of the District Munsif -cum- Judicial Magistrate, Veda sandur.

2. The brief facts as set out in the plaint in O.S.No.110 of 1996 are summarised as follows:-

One Thagapillai is the original owner of the property. He had three sons, by names, (1) Thiruvapillai (2) Pazhaniyappapillai and (3)Kuppapillai. One

Azhagapillai was the only son of Thiruvapillai and the second defendant is the son of the said Azhagapillai. One Ramasamy Pillai and Periyanna Pillai are two sons of Pazhaniappapillai and the defendants 3 and 4 are the sons of Ramasamy. The defendants 1 and 4 to 6 are the children of Periyanna Pillai. The plaintiffs stated that the said Nagapillai was the son of Kuppapillai. Since the Nagapillai died leaving behind two daughters, namely, Meenatchi and Pitchaiammal, the plaintiffs being the legal heirs of Meenatchi and Pitchaiammal are entitled to 1/3rd share in all the suit properties, which are the properties belonging to the family of Nagapillai after his death.

3. The suit was resisted by the defendants on various grounds particularly, the genealogy that was pleaded by the plaintiffs. According to the defendants, the plaintiffs are not the legal representatives of the Kuppapillai as contended by the plaintiffs.

4. The trial Court decreed the suit as prayed for, accepting the genealogy that was marked and pleaded by the plaintiffs. Since the relationship of the parties as pleaded by the plaintiffs are accepted by the trial Court, based on the evidence of the second defendant, the trial Court found that the plaintiffs are entitled to claim partition in respect of 1/3rd share as legal representatives of Kuppapillai.

5. Aggrieved by the judgment and decree of the trial Court, the defendants 2 to 7 and 12 preferred an appeal before the Additional Sub- Court, Dindigul. The lower appellate Court, on the admission of plaintiffs, recorded a specific finding that Kuppapillai died before the first plaintiff was born. The first plaintiff also as PW.1, admitted the fact that the wife of Kuppapillai, one Periyakall died even before the death of Kuppapillai. It is also admitted by PW.1 that her father Thagapillai also died within a short time after the first plaintiff was born.

6. From the categorical admission of the plaintiff the lower appellate Court found that Kuppapillai and his son Thagapillai died before 1934. As per Hindu Law, prior to 1956, in the absence of male heirs to Thagapillai, the property would go only to the other branches namely the other two brothers of original owner Kuppapillai by survivorship. The plaintiffs on the death of Thagapillai and Kuppapillai before 1934 are not entitled to any right in the joint family properties of their grandfather.

7. Hence, the judgment and decree of the lower Court dismissing the suit for partition is perfectly valid and hence, I do not find any reason to interfere with the findings of fact. No other substantial question of law is raised for consideration in this appeal.

8. Hence, the second appeal is dismissed. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

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