

(1986) 08 MAD CK 0003
In the Madras High Court

Margabandhu and Another		APPELLANT
	Vs	
Kothandarama Mandhiri and Others		RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Citation : (1988) 1 LW 103 : (1987) 2 MLJ 267

Hon'ble Judges : T.N. Singaravelu, J

Bench : Single Bench

Judgement

T.N. Singaravelu, J.—Plaintiffs 2 and 3 in the suit are the appellants in this Second Appeal. They are the children of the 1st plaintiff, who is

the wife of the 1st defendant. According to the plaintiffs, the 2nd defendant is the concubine of the 1st defendant and defendants 3 to 6 are the

children through the 2nd defendant. The suit was laid by the mother and her two children for maintenance of the 1st plaintiff and for partition and

separate possession of the 2/3rd share belonging to plaintiffs 2 and 3.

2. The 1st defendant resisted the suit contending that the 2nd defendant is not his concubine but a lawfully wedded wife and that defendants 3 to 6

are the legitimate heirs of the 1st defendant along with plaintiffs 2 and 3. Thus, plaintiffs 2 and 3 will be entitled each to 1/5th share. The claim for

maintenance is resisted on the ground of voluntary desertion.

3. On these contentions, the trial Court found that plaintiffs 2 and 3 are entitled to partition and separate possession of their 2/3rd share in the suit

properties. A decree for maintenance was granted to the 1st plaintiff at the rate of Rs. 30/- per month from the date of actual partition after passing

of the final decree. The defendants preferred an appeal and the lower appellate Court modified the decree of the trial Court for partition fixing the

share of the plaintiffs 2 and 3 as 1/5th each. In other respects, the judgment of the trial Court was confirmed. Plaintiffs 2 and 3 have now come forward with this Second Appeal.

4. While delivering judgment by me on 8.4.1983, it was held that the illegitimate sons would get what the legitimate sons were entitled to.

Consequently it was ordered that the father 1st defendant, plaintiffs 2 and 3 and defendants 3 and 4 will each have 1/5th share. As a result, the

judgment and decree of the lower appellate Court were confirmed. Thereafter, the appellants herein viz. plaintiffs 2 and 3 filed a review petition in

C.M.P. No. 12508 of 1983 to review the judgment dated 8.4.1983. That petition was ordered and the Second Appeal was restored by consent.

5. Learned Counsel for the appellants/plaintiffs 2 and 3 contended in the review petition that the decision earlier rendered in this Second Appeal is

contrary to the Division Bench ruling of this Court reported in Sivagnanavadivu Nacihar v. Krishnakanthan ILR (1977) Mad. 216, wherein it was

held by the Division Bench that the illegitimate children will be entitled only to a share in the father's share of the property. This Division Bench

ruling was not brought to my notice when the Second Appeal was argued and disposed of on 8.4.1983. The Division Bench has clearly held that

the share of illegitimate children in the properties are confined only to the interest of their parents. Needless to state that I am bound by the Bench

decision. Therefore, the order passed by me earlier requires review.

6. Following the above cited Division Bench ruling of this Court, I modify my earlier judgment dated 8.4.1983 and direct that the illegitimate

children are entitled only to a share in their father's share and they cannot claim equal share. In other words, the judgment and decree of the lower

appellate Court are set aside and that of the trial Court are restored and the appellants/plaintiffs 2 and 3 are held entitled to partition and separate

possession of their 2/3rd share in the suit properties. The Second Appeal is allowed in these terms. No costs.