



S.A.(MD) No.655 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **20.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.655 of 2023

and

C.M.P.(MD) No.15445 of 2023

Ayyammal

..Appellant

Vs.

K.Singh (died)

1.Maragathammal

2.Kuppusamy

3.Indira

4.Arulvasagan

5.Pitchaimani

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.51 of 2012 on the file of the 6th Additional District Court, Madurai, dated 19.07.2013 reversing the judgment and decree in O.S.No.9 of 2011 on the file of the 2nd Additional Sub Court, Madurai dated 07.09.2012 pending disposal of the second appeal.

For Appellant : Mr.S.A.Ajmalkhan

For Respondents : No appearance (R1 to R3)

Mr.G.Sakthi Rao (R4 & R5)



S.A.(MD) No.655 of 2023

JUDGMENT

WEB COPY

This second appeal has been filed challenging the judgment in AS No. 51 of 2012 on the file of the VI Additional District Court, Madurai, dated 19.07.2013.

2. The appellant filed the suit for partition of 1/4th share in the subject properties and for other incidental reliefs. The case of the plaintiff is that she is an elder daughter of one late Kuppusamy Moopanar. The second defendant is the mother of the plaintiff. The defendants 3 and 4 are her own brother and sister born through Mrs.maragathammal / second defendant and late Kuppusamy Moopanar. The first defendant is the son of late Kuppusamy Moopanar through the first wife. After demise of first wife of late Kuppusamy Moopanar, he married the second defendant in 1960. One Periyasamy, who was born along with the plaintiff and the defendants 3 and 4 died as a bachelor.

3. On 12.07.1971, the defendants 1 and 2 have entered into a registered partition, when the plaintiff and the defendants 3 and 4 were minors. The second defendant represented her minor children, namely, plaintiff, defendants 3 and 4 and K.Periyasamy. In partition suit, the suit properties were jointly allotted to the plaintiff and the defendants 2 to 4 as A schedule properties. B schedule properties



S.A.(MD) No.655 of 2023

were allotted to the first defendant. From the date of partition, all are jointly enjoying the suit properties.

4. At the instance of the first defendant, the second defendant was taking steps to dispose some of the suit properties to the third parties. She was also taking steps to execute the settlement deed in favour of the third defendant. When the plaintiff had requested the defendants to effect partition of the suit properties, they have not come forward to effect partition. The first defendant tried to encroach item 9 of the suit properties. In such circumstances, the suit was filed for the aforesaid relief.

5. The first defendant alone contested the suit by filing a written statement. The relationship between the parties is accepted by the first defendant. The partition dated 12.07.1971 was also admitted. The first defendant stated that the claim that he tried to encroach item 9 of the suit property is not correct. The first defendant had purchased item 9 of the suit properties through a registered sale deed on 23.06.1999 in good faith. He built a hut there and is living without any hindrance. He is paying his property tax for the hut in item 9 of the suit properties. The plaintiff knew the sale in favour of the first defendant in May 2008. The first defendant removed the hut and built a house measuring 1200 sq.ft. No objection was made by the plaintiff at the time of construction of the house. Now, she filed the suit only with a view to grab money from the first defendant.



S.A.(MD) No.655 of 2023

WEB COPY

6. In the course of trial, on the side of the plaintiff, PW1 was examined and Exs.A1 and A2 were marked. On the side of the defendants, DW1 and DW2 were examined and Exs.B1 to B11 were marked. On the basis of the oral and documentary evidence produced, the learned trial judge decreed the suit in part, whereby he held that the plaintiff is entitled for $\frac{1}{4}$ share in respect of the suit properties except the portion, which was already sold in item 10 of the suit properties. Accordingly, preliminary decree was passed and permanent injunction was also granted against the first defendant not to construct any construction in $\frac{1}{4}$ share of the plaintiff in item 9 of the suit properties.

7. Aggrieved against the judgment of the trial Court, the first defendant filed an appeal in AS No.51 of 2012. The learned first appellate Judge, while confirming the judgment of the trial Court, observed that the first defendant is in possession and enjoyment of item 9 of the suit properties for a long time and therefore, a direction was issued to pay the plaintiff from other properties of defendants 2 to 4, instead of allotting $\frac{1}{4}$ share to the plaintiff in item 9 of the suit properties, the sum equal to the value of $\frac{1}{4}$ share in item 9 of the suit properties during the final decree proceedings. This finding of the first appellate Court is under challenge now.



S.A.(MD) No.655 of 2023

8. It is the submission of the learned counsel appearing for the appellant that the first appellate Court has issued direction as if passing a final decree that, the plaintiff may be paid equivalent to value of $\frac{1}{4}$ share in item 9 of the suit properties from and out of other properties of the defendants 2 to 4. This is not correct. Therefore, this appeal has been filed.

9. The learned counsel appearing for the respondents 4 and 5, who are the legal heirs of the deceased first defendant submitted that there is nothing wrong in the direction given by the learned first appellate Judge. The learned first appellate Judge has only suggested that during the final decree proceedings, the plaintiff may be given compensation from other properties of defendants 2 to 4 instead of allotting $\frac{1}{4}$ share in item 9 of the suit properties. Hence, there is nothing wrong in the said direction.

10. In answering to this submission, it is the submission of the learned counsel appearing for the appellant that item 9 of the suit properties consists of 10 cents. A building was constructed only in an extent of 1200 sq.feet. There is sufficient space available for allotting 2.5 cents to the plaintiff. Therefore, the direction given by the first appellate Court is unwarranted. Only in the final decree proceedings, this issue has to be decided.



S.A.(MD) No.655 of 2023

11. I have considered the rival submissions and perused the records. From the pleadings of the parties and judgments of the Courts below, the parties are not challenging the judgments of the Courts below with regard to allotment of $\frac{1}{4}$ share to the plaintiff. The only contention of the plaintiff is the direction issued by the first appellate Court to give her compensation from other properties of the defendants 2 to 4 instead of allotting $\frac{1}{4}$ share in item 9 of the suit properties is not correct.

12. This Court finds from the judgment of the first appellate Court that his suggestion has to be implemented during the final decree proceedings. Prima facie, it appears that this observation is suggestive in nature. However, in the light of the submission of the learned counsel appearing for the appellant that out of 10 cents, in item 9 of the suit properties, sufficient space is available for allotting 2.5 cents to the plaintiff, this Court is of the view that this particular observation of the first appellate Court has to be removed, giving liberty to the parties to make these submissions in the final decree proceedings. In the final decree proceedings, the learned Judge can decide the matter as to whether the plaintiff should be allotted $\frac{1}{4}$ share in item 9 of the suit properties or she should be paid the value of her $\frac{1}{4}$ share in item 9 of the suit properties from other properties of the defendants 2 to 4.



S.A.(MD) No.655 of 2023

13. In this view of the matter, this particular part of the judgment in A.S.No.51 of 2012 on the file of the 6th Additional District Court, Madurai, dated 19.07.2013 that ☐ 1ம் பிரதிவாதி நெடு நாளாக 9ம் அயிட்ட சொத்தை அனுபவித்து வருவதால் இறுதிநிலை தீர்ப்பாணையின் போது 2 முதல் 4 பிரதிவாதிகளின் வேறு சொத்துக்களில் இருந்து தாவா சொத்தில் உள்ள வாதியின் பாகத்தில் உள்ள 1-4 பங்கு சொத்துக்கு ஈடான தொகையை வாதிக்கு பிரித்து கொடுப்பதற்கு 1ம் பிரதிவாதி நடவடிக்கை எடுத்துக் கொள்ளலாம் எனவும், ☐ is beyond the scope of appeal and that part is set aside and ordered to be deleted from the judgment of the first appellate Court and its decree.

14. As already observed, it is open to the parties to agitate this issue before the first appellate Court in the final decree proceedings. Accordingly, the judgment of the first appellate Court in A.S.No.51 of 2012 on the file of the 6th Additional District Court, Madurai, dated 19.07.2013 is modified to this effect and all other aspects in the judgment of the first appellate Court in A.S.No.51 of 2012 on the file of the 6th Additional District Court, Madurai, dated 19.07.2013 is confirmed. This second appeal is partly allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No

20.11.2023



S.A.(MD) No.655 of 2023

Internet : Yes / No & Index: Yes / No

G.CHANDRASEKHARAN, J.

WEB COPY

sm

To

- 1.The 6th Additional District Court, Madurai.
- 2.The 2nd Additional Sub Court, Madurai.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.(MD) No.655 of 2023

20.11.2023