



A.S.(MD)No.5 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2023

PRONOUNCED ON:14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.5 of 2014

and

C.M.P.(MD)No.10097 of 2022

1.Jeyalakshmi
2.Vijayalakshmi
3.Susheela
4.Subbiah
5.Shanthi
6.Selvi
7.Senthilkumar
8.Saravanan @ Balamurugan : Appellants/Plaintiffs

Vs.

1.Alagammal
2.Malika
3.Indira
4.Manikandaraja : Respondents / Defendants

PRAYER:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 and 2 of the Code of Civil Procedure against the Judgment and Decree, dated 20.09.2013, made in O.S.No.122 of 2012, on the file of the Additional District and Sessions Court, Dindigul.



WEB COPY



A.S.(MD)No.5 of 2014

For Appellants : Mr.M.Kannan

For Respondents :Mr.H.Lakshmi Shankar
for R.2 to R.4
: No Appearance for R.1

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.122 of 2012, dated 20.09.2013, on the file of the Additional District and Sessions Court, Dindigul.

2. The suit is for partition.

3. The facts not in dispute are

* One Kandasamy Pillai had a son by name Thiagaraja Pillai;

* Thiagaraja Pillai had married one Dhanalakshmi Ammal and they had no issues;

* Thiagaraja Pillai had married the first defendant – Alagammal as second wife and they had five children viz., 1. Thavamani, 2. Chandran, 3.Jeyalakshmi (first plaintiff), 4.Vijayalakshmi (second plaintiff) and 5.Susheela (third plaintiff);



A.S.(MD)No.5 of 2014

WEB COPY

* Even before filing of the suit, Thavamani and Chandran had died;

* The fourth plaintiff is the husband and the plaintiffs 5 to 8 are the children of the deceased Thavamani;

* The second defendant is the wife and the defendants 3 and 4 are the children of the deceased Chandran;

* Thiagaraja Pillai died about 30 years back – around 1982;

* Thiagaraja Pillai's first wife Dhanalakshmi Ammal died about 15 years ago – around 1997;

4. The case of the plaintiffs is that the suit properties belonged to Kandasamy Pillai and after he died intestate, the suit properties came to be owned by Thiagaraja Pillai and his wife Dhanalakshmi Ammal, that after the death of Thiagaraja Pillai and Dhanalakshmi Ammal, the properties were jointly being enjoyed by the plaintiffs 1 to 3, the deceased Thavamani and the deceased Chandran, that since the plaintiffs 1 to 3 and their sister Thavamani got married, the properties were managed by their brother Chandran as joint family manager and was paying the income periodically to his sisters till his death, that when



A.S.(MD)No.5 of 2014

WEB COPY

disputes arose between them in getting their due share, they demanded partition, but their brother Chandran was postponing the same on some pretext or the other, that after the death of their brother Chandran, they demanded partition through the elders, that the second defendant claiming exclusive right over the properties, rejected the plaintiffs' claim for partition and that therefore, the plaintiffs were constrained to file the above suit for partition and allotment of 4/6 shares in the suit properties.

5. The first defendant, second wife of the deceased Thiagaraja Pillai and the mother of the plaintiffs 1 to 3, the deceased Thavamani and the deceased Chandran, has filed a written statement, taking a stand that the suit properties were owned by Kandasamy Pillai and after his death, by his son Thiagaraja Pillai, that Thiagaraja Pillai till his death, has not alienated or encumbered any portion of the suit properties, that after the death of Thiagaraja Pillai, herself and the deceased Chandran were managing the properties, that the property standing in her name was purchased only from the joint family income, as she was not having any separate earnings, that his son Chandran approached her and took her on the pretext of applying patta and obtained signatures in some documents, for taking some documents in his favour and in favour of his minor



A.S.(MD)No.5 of 2014

children and she had not executed any document and that she is not having any objection to partition the suit properties.

6. The defence of the defendants 2 to 4 is that the suit properties did not belong to Kandasamy Pillai or to Thiagaraja Pillai, that the plaintiffs or the deceased Thavamani never enjoyed the suit properties either during the life time of Thiagaraja Pillai or after his death, that the said Chandran – husband of the second defendant and the father of the defendants 3 and 4, who is also known as Kandasamy @ Chandran, had been in possession and enjoyment of the suit properties in his own right, that the said Chandran had never acted as joint family manager at any point of time, that there was no water in the well and as such, only meagre income was received from the suit properties and hence, he used to borrow money by mortgaging the suit properties for family expenses and that the plaintiffs never demanded partition during his lifetime.

7. It is the further case of the defendants 2 to 4 that items 1 to 5 and 7 of the suit properties belonged to Kandasamy @ Chandran and had been enjoyed by him, that the item No.6 and 1/6 share in the item No.9 – well, were purchased by the first defendant on 04.04.1962, that items 10



A.S.(MD)No.5 of 2014

WEB COPY

to 15 and 2/9 share in item No.9 Well belonged to Dhanalakshmi ammal, vide sale deed dated 25.05.1994, that the said Kandasamy @ Chandran has purchased 79 cents of land and the remaining 7/9 share in the well in item No.9 on 31.10.1980, that the said Chandran had been enjoying the above properties of the said Dhanalakshmi Ammal during her lifetime as his own property, that the said Kandasamy @ Chandran had entered into a sale agreement with respect to the suit properties and the same was subsequently cancelled, that he had also mortgaged some of the suit properties on 16.09.1997 and redeemed the same on 07.07.1999, that since the pattas were wrongly issued in the name of said Chandran and his paternal uncle Mayaravelu Pillai, they have entered into an exchange deed on 22.03.2000 to rectify the same, that the said Kandasamy @ Chandran along with his mother – first defendant had executed a settlement deed settling of the suit properties in favour of the defendants 2 and 4 on 07.09.1999 and that since all the suit properties have been enjoyed by the said Kandasamy @ Chandran in his own right as the separate properties, the plaintiffs assuming that they had any right, had been ousted and their rights got extinguished.



A.S.(MD)No.5 of 2014

WEB COPY

8. The trial Court, upon considering the above pleadings, has framed the following issues:

(1) Whether the plaintiffs are entitled to get preliminary decree with regard to 4/6 shares in the suit properties and separate possession thereof?

(2) Whether the suit properties are the joint family properties?

(3) Whether the suit properties came to be owned by the defendants 2 and 4, vide settlement deed dated 07.09.1999?

(4) Whether the suit is barred by limitation?

(5) To what other relief, the plaintiffs are entitled to?

9. During trial, the plaintiffs have examined the second plaintiff – Vijayalakshmi as P.W.1 and exhibited six documents as Exs.P.1 to P.6. The first defendant has examined herself as D.W.1 and adduced no documentary evidence. The defendants 2 to 4 have examined the second defendant – Tmt.Mallika as D.W.2 and two other witnesses Thiru.Mayarvelu Pillai and Thiru.James as D.W.3 and D.W.4 respectively and exhibited 11 documents as Exs.D.1 to D.11. The trial Court, upon considering the evidence, both orally and documentary and on hearing both sides, has passed the impugned judgment dated 20.09.2013,



A.S.(MD)No.5 of 2014

dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs have preferred the present Appeal Suit.

10. The points for consideration are

(1) Whether the trial Court erred in rendering a finding that the suit properties are not the joint family properties and the suit properties came to be owned and enjoyed by Kandasamy @ Chandran, despite showing that some of the properties were purchased by the deceased Thiagaraja Pillai and by his wife Dhanalakshmi Ammal and the specific stand of the first defendant that the property in her name was purchased from the income derived from the joint family properties?

(2) In the absence of any specific pleadings and evidence, whether the trial Court erred in giving a finding that the plaintiffs have lost their right in the suit properties by ouster?

(3) Whether the impugned judgment and decree passed in O.S.No. 122 of 2012 is liable to be interfered with?

(4) To what other reliefs, the parties are entitled?



A.S.(MD)No.5 of 2014

C.M.P.(MD)No.10097 of 2022:

WEB COPY

11. The above application came to be filed by the appellants under Order 41 Rule 27 C.P.C., for reception of additional evidence.

12. The case of the petitioners/appellants is that their trial Court Advocate advised them that filing of the sale deeds are not necessary and pattas are sufficient for seeking partition, as it is not a title suit, but the trial Court has non-suited them, primarily due to the fact that the title to the suit properties have not been adequately proved, that even before filing of the appeal, they have obtained the certified copies of the title deeds, which would prove that the properties mentioned in the title deeds, which are forming part of the suit properties were all purchased by Thiagara Pillai and therefore, the plaintiffs as Class-I heirs are entitled to get equal shares in all the properties, that four sale deeds sought to be received would clearly establish that the suit properties were the absolute properties of the deceased Thiagaraja Pillai and as such, the appellants are entitled to equal shares as that of his brother Chandran, that the delay in not filing the above documents during the trial and at the time of filing the present appeal is neither wilful nor wanton, but due to the above



A.S.(MD)No.5 of 2014

mentioned bonafide reason and that therefore, the appellants will be put to irreparable loss and injury if the additional documents are not received and are necessary for the purpose of pronouncing judgment.

13. The respondents 2 to 4 have filed a counter statement raising objections stating that the additional evidence cannot be produced according to the whims and fancies of the appellants, that the plaintiffs are now attempting to introduce a new case through the above petition for reception of evidence and throwing allegations against their lawyers in the trial Court as well as in this Court is very unfortunate, that the documents produced are only certified copies and they have cleverly and without any basis had alleged that the original documents have been secreted by the deceased Chandran, that the documents do not in any manner establish the appellants to be in possession and enjoyment of the suit properties or in any manner dislodge the finding that their rights have been ousted, that the reason given for the delay in filing the application, after eight years of the pendency of the first appeal is untrue and also puerile and that the above petition is liable to be dismissed.



A.S.(MD)No.5 of 2014

WEB COPY

14. The point for consideration in the above petition is as to whether the documents produced are to be received as additional evidence?

15. At the outset, it is pertinent to note that in a suit for partition, all the parties including the defendants are to be considered as plaintiffs. A learned Judge of this Court in ***Palanisamy Vs. Chinnakandan @ Kandasamy and others*** reported in ***2012-5-L.W.145***, has specifically observed that the case being a partition suit, the court in **loco parentis** should analyse the facts and apply the law and render justice and the relevant paragraphs are extracted hereunder:

“35. The punctilious of court procedure are not for being flouted but the same cannot be pressed into service for denying the valuable rights of women. Technicalities are hand maids of justice and that cannot be used for the purpose of thwarting the Women's Right over the property under any pretext. Simply because the plaintiff did not plead the real facts that it does not mean that the court should close its eyes and simply decide with the available materials. Once this court being the appellate court has come across admitted factual position and genealogy, certainly this court has to



A.S.(MD)No.5 of 2014

WEB COPY

swing into action and mandate the necessary steps to be undertaken.

36. At times, parties might not be able to see the wood for trees but still the court has to do justice cutting across technicalities. I recollect the legal adage that every trial is a voyage, in which quest for truth is the goal as found highlighted in the following precedents of the Hon'ble Apex Court:

(i) 2012(1) MWN (Civil) 840 (S.C.) [[Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack de Sequeria](#) (dead) through L.Rs.] Certain excerpts from it would run thus: "36. [In Ritesh Tiwari and another vs. State of Uttar Pradesh and others](#), 2010(10) SCC 677, this court reproduced often quoted quotation which reads as under:

"Every trial is voyage of discovery in which truth is the quest".

15. Loco parentis is a latin term which would mean “ in the place of a parent or instead of parent”. It is a legal doctrine describing a relationship similar to that of a parent to a child. It refers to an individual or an organisation or an institution to take on some of the functions and responsibilities as that of a parent. In the case on hand, the sisters and the legal heirs of the deceased sister have laid the partition claim against the legal heirs of their deceased brother.



A.S.(MD)No.5 of 2014

WEB COPY

16. The main contention of the learned Counsel for the respondents is that the plaintiffs being the dominus litis should come with a clear cut case and the basis on which the rights are claimed and that they are duty bound to establish or / prove their case. But according to the learned Counsel for the appellants, the technicalities which are handmaids of justice cannot be pressed into service for denying or rejecting the rights of a woman and that even assuming that their pleadings are bereft of necessary particulars, that by itself is not sufficient to reject the claim of the sisters.

17. As rightly observed by the learned Judge of this Court in Palanisamy's case, above referred, the Courts are duty bound to do justice cutting across the technicalities as every trial is a voyage of discovery in which truth is the quest. Considering the above, this Court has to consider the pleadings of the plaintiffs and that of the defendants together and the evidence brought on record and to act as a loco parentis between the parties to the lis, as the partition claim is among the sisters and brother.



A.S.(MD)No.5 of 2014

18. The plaintiffs, by alleging that the suit properties originally belonged to Kandasamy Pillai and after his death, were belonging to Thiagaraja Pillai and his wife Dhanalakshmi Ammal and both of them had died intestate, have claimed partition and allotment of 4/6 shares in the suit properties. The defendants 2 and 4 have taken a defence that since Kandasamy @ Chandran had been in possession and enjoyment of the suit properties for the past three decades as of right, the plaintiffs cannot claim any partition in respect of the suit properties.

19. It is pertinent to note that the defendants 2 and 4 have also taken half hearted defence that since all the suit properties have been enjoyed by Kandasamy @ Chandran in his own right as his separate properties from the beginning, the plaintiffs' right if any had been ousted and their rights got extinguished. In the written statement, the defendants 2 to 4 have pleaded the ouster in the following words;

“ஆதி முதல் வழக்குச் சொத்துக்கள் அனைத்தையும் திரு.கந்தசாமி என்ற சந்திரன் மற்படியாரின் சொந்த சொத்தாகவ வைத்து தனித்த முறையில் அனுபவித்து வந்ததில்இ வாதிகளுக்கு வழக்குச் சொத்துக்களில் எந்தவொரு பாக பாத்தியமும் கிடையாது. விவகாரத்திற்காகஇ வாதிகளுக்கு உண்டென்று கருதினாலும்இ வழக்குச் சொத்துக்கள் அனைத்தையும்இ கந்தசாமி னு@ சந்திரன் தம்முடைய சொந்த சொத்தாகவ வைத்து வெளிப்படையாகவும்இ தொடர்ச்சியாகவும்



A.S.(MD)No.5 of 2014

WEB COPY

வாதிகள் ுகாரும் உரிமைக்கு விராதமாகவும்இ அனுபவித்து வந்து
2இ 4 பிரதிவாதிகளுக்கு தான சாசனம் எழுதிக் கொடுத்து ுமற்படி
பிரதிவாதிகள் செட்டில்மெண்டில் கண்ட சொத்துக்களை அடைந்து
தொடர்ந்து அனுபவித்து வருவதில்இ வாதிகள் ுகாரும் உரிமை
வெகுகாலத்திற்கு முன்பு நசித்து விட்டதாக கருத ுவண்டியுள்ளது.
வாதிகளின் வழக்கும் காலவரைச்சட்டத்தின் கீழ் தடைப்பட்டுள்ளது.”

20. Ouster is nothing but adverse possession against the co-owner.

It is settled law that there could be no adverse possession between the co-owner, unless there has been a denial of title and a ouster to the knowledge of the other. Generally, ouster is a weak defence in a suit for partition of family property, but the defendant can make it strong by establishing consistent and open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner. The Hon'ble Supreme Court in *Syed Shah Ghulam Ghouse Mohiuddin and others Vs. Syed Shah Ahmed Moriuddin Kamisul Quadri (dead) by LRs and another* reported in (1971)1 SCC 597 has held that possession by one co-owner is presumed to be the possession of all the co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them.



A.S.(MD)No.5 of 2014

WEB COPY

21. It is settled law that in order to establish adverse possession of one co-heir as against the other, it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties and ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse should be made out. The possession of co-heir is considered, in law as possession of all the co-heirs. In ***Vidya Devi @ Vidya Vati (dead) by L.Rs., Vs. Prem Prakash and Others*** reported in ***(1995)4 SCC 496***, the Hon'ble Supreme Court has held as follows:

“ "Ouster" does not mean actual driving out of the co- sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law.”



A.S.(MD)No.5 of 2014

WEB COPY

22. In the case on hand, it is admitted by all the parties to the lis, that items 10 to 15 and 2/9 share in the item No.9 well, were belonging to Dhanalakshmi Ammal – first wife of Thiagaraja Pillai. It is also not in dispute that Dhanalakshmi Ammal had no issues and died intestate. It is also not in dispute that item No.8 and 1/6 share in 9th item Well, are standing in the name of the first defendant – Alagammal – second wife of the Thiagaraja Pillai, vide sale deed dated 04.04.1962. As already pointed out, the first defendant herself has taken a stand that she was not having any source of income and the said property was purchased from the income derived from the joint family properties.

23. According to the plaintiffs, Thiagaraja Pillai is also called as Devaraj Pillai and the same was evident from Ex.A.5 mortgage deed executed by Thiagaraja Pillai representing himself and his minor children and his wife Dhanalakshmi Ammal and in the third page of the said document, it has been mentioned,

“எட்களில் 1 – வது நபர் தியாகராஜபிள்ளை என்று குறித்தாலும் உதவராஜ பிள்ளை என்றுதான் கையெழுத்து ஁பாடும் வழக்கம்.”



A.S.(MD)No.5 of 2014

WEB COPY

24. As rightly pointed out by the learned Counsel for the appellants, in Ex.A.3 patta pass books, patta No.67 was shown to be owned by Devaraju Pillai and the first item of the suit properties was found therein. Moreover, the plaintiffs have produced Ex.A.4 – sale deed dated 13.12.1944 standing in the name of Devaraj Pillai and Arumugam Pillai, with regard to the second item of the suit properties.

25. On the other hand, the learned Counsel for the respondents 2 to 4 would submit that Ex.A.2 (Exs.B.8 and B.9) patta would clearly reflect the properties in the name of Chandran and that Ex.B.8 – chitta of the year 1985 covers items 9 to 11, 13 to 18 of the suit properties. It is the further case of the defendants 2 to 4 that Kandasamy @ Chandran for himself and on behalf of his minor children has entered into a sale agreement dated 26.12.1989 with one Paramasamy in respect of two items of properties, which includes portion of item No.9.

26. No doubt, as rightly pointed out by the learned Counsel for the defendants 2 to 4, Kandasamy @ Chandran has purchased 79 cents of land and 7/9 shares in the well in item No.9 and 17 cents in S.No.690/3 on 31.10.1980 under Ex.B.2, for which property, as already pointed out,



A.S.(MD)No.5 of 2014

the said Chandran has entered into a sale agreement under Ex.B.3 and that thereafter, the sale agreement came to be cancelled.

27. It is the specific contention of the defendants 2 to 4 that since pattas were issued in favour of Kandasamy @ Chandran and his paternal uncle Mayaravelu Pillai, both of them have entered into an exchange deed dated 17.09.1990 under Ex.B.5, whereunder item No.6 of the suit properties was given to Kandasamy @ Chandran. It is pertinent to note that three properties situated in Survey Nos.556/4, 560/1 and 690/3 which were shown to be owned by Kandasamy @ Chandran ancestrally, were given to Mayaravelu Pillai. No doubt the defendants have produced pattas standing in the name of Kandasamy @ Chandran and also in favour of the defendants 2 to 4. As rightly contended by the learned Counsel for the appellant, the trial Court has given much importance to the pattas above referred.

28. As rightly contended by the learned Counsel for the appellant, though the defendants 2 to 4 have taken a stand that all the suit properties are the separate properties of the deceased Kandasamy @ Chandran, they have neither pleaded nor adduced any evidence as to how he got the



A.S.(MD)No.5 of 2014

properties. Moreover, though they have also taken a defence that Kandasamy @ Chandran has ousted the rights of the plaintiffs, they have not raised any pleadings nor adduced any evidence to prove the ingredients necessary for establishing the plea of ouster. Though the defendants 2 to 4 have alleged that Chandran had been in possession and enjoyment of the property from the very beginning, they have not whispered anything about the time from which he was asserting, hostile title.

30. Before invoking the plea of ouster, they must admit that the plaintiffs are the co-owners. In the case on hand, as already pointed out, it is the specific case of the defendants 2 to 4 that the suit properties were not belonging to Kandasamy Pillai or to his son Thiagaraja Pillai, but on the other hand, to the Kandasamy @ Chandran. In the absence of necessary pleadings and evidence, the trial Court, without considering the legal position in proper perspective, has mechanically come to a decision that the plaintiffs have lost their right by ouster. Moreover, by giving much importance to the contention of the plaintiffs that Thiagaraja Pillai has not alienated or encumbered any portion of the suit properties, the trial Court by considering the mortgage deed executed by Thiagaraja



A.S.(MD)No.5 of 2014

WEB COPY

Pillai under Ex.A.5 and the purchase made under Ex.A.4, has come to a decision that the documents produced by the plaintiffs are very much against the case put forth by them and that therefore the plaintiffs have failed to prove their case.

31. The plaintiffs have now produced the registration copies of four sale deeds standing in the name of Thiagaraja Pillai, which are sought to be received as additional evidence. It is the specific case of the plaintiffs that Thiagaraja Pillai has purchased part of items 1 and 2, vide sale deed dated 25.05.1954, part of item 7 under sale deed dated 11.10.1960, part of item 2 vide sale deed dated 19.03.1964 and part of item 7 vide sale deed dated 04.02.1967.

32. No doubt, as already pointed out, the learned Counsel for the defendants 2 to 4 have raised objections for the reception of additional evidence. The plaintiffs in their affidavit filed in support of the above petition, have stated that the original title deeds are not available with them and it must have been secreted by their deceased brother Chandran. No doubt, the same is disputed by the other side in the counter statement. In the counter statement, they have not disputed the genuineness of the



A.S.(MD)No.5 of 2014

documents sought to be received But the fact remains that the plaintiffs have only produced the registration copies of the sale deeds. Moreover, the other side has not stated no objections for marking the same. In the above scenerio, this Court cannot admit the evidence directly.

33. On considering the entire pleadings of both parties, this Court is constrained to say that both the plaintiffs and the defendants are not clear about the nature of the properties and the basis on which, they are claiming rights over the suit properties. Though the plaintiffs in the plaint have alleged that the suit properties were owned originally by Kandasamy Pillai and after him, Thiagaraja Pillai and Dhanalakshmi Ammal, during the trial, they have taken a stand that the suit properties are the joint family properties. As rightly pointed out by the learned Counsel for the defendants 2 to 4, in the affidavit filed in support of the petition for reception of additional evidence, they have claimed that the suit properties are the properties of Thiagaraja Pillai and as such, they are entitled to get shares as Class-I heirs.

34. Similarly, the defendants 2 to 4, though admitted that some of the properties are standing in the names of Thiagaraja Pillai and his wife



A.S.(MD)No.5 of 2014

Dhanalakshmi Ammal and the second wife Alagammal, they have not stated as to how the deceased Kandasamy @ Chandran has got the properties from them. During trial, the defendants 2 to 4 have also taken a stand that the properties standing in the name of Alagammal and the deceased Kandasamy @ Chandran were purchased from the funds supplied by the second defendant's father. As rightly pointed out by the learned Counsel for the appellants, the deceased Kandasamy @ Chandran has purchased a part of 9th item in the year 1980, whereas he married the second defendant in the year 1983. Moreover, the first defendant's purchase was in the year 1962. Admittedly, the defendants 2 to 4 have not produced any evidence to show that the suit properties were purchased only from the money given by the second defendant's father.

35. As already pointed out, the defendants 2 and 4 have claimed shares over the suit properties on the basis of the settlement under Ex.B. 7, dated 07.09.1999 alleged to have been executed by the first defendant and the deceased Kandasamy @ Chandran. The first defendant has taken a specific stand that she has not executed any such settlement deed, but the signatures were taken from her for patta mutation.



A.S.(MD)No.5 of 2014

WEB COPY

36. The learned Counsel for the appellants would submit that since the first defendant is a widow, illiterate and aged and was living under the care and custody of the deceased Kandasamy @ Chandran, the burden of proving the good faith of the transaction is upon the defendants 2 to 4 and relied on the decision of the Hon'ble Supreme Court in ***Krishna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and Others***, reported in ***AIR 2003 SC 4351***. But the trial Court, by observing that there was no pleading with respect to Ex.B.7 in the plaint and as the first defendant has not disputed her signatures found in Ex.B.7 and also the contradictory version of the first defendant, has come to a decision that the first defendant and Chandran had executed Ex.B.7 in favour of the defendants 2 and 4. Considering the above, the trial Court, without considering the evidence available on record and the legal position in proper perspective, has mechanically dismissed the suit and as such, the findings of the trial Court are liable to be set aside.

37. The learned Counsel for the appellants would submit that in case, if the Court comes to the conclusion that the trial Court has not considered the evidence in proper perspective and recorded the mechanical findings and taking note of the additional documents now



A.S.(MD)No.5 of 2014

produced, the case may be remitted back to the trial Court for deciding the issues afresh.

38. Considering the facts that both the plaintiffs and the defendants have not come up with clear cut case with regard to the nature of properties and the trial Court, without considering the documentary evidence, by giving importance to the pattas and kist receipts, has decided the issues relating to the rights of the parties and that the appellants have produced some additional evidence, this Court is in agreement with the submissions made by the learned Counsel for the appellants that the case has to be remitted back to the trial Court for deciding the issues afresh, after giving opportunity to both parties to file additional pleadings if any and adduce additional evidence. Considering the other facts and circumstances, the parties are directed to bear their own costs and the above points are answered accordingly.

39. In the result, the Appeal Suit is allowed and the judgment and decree passed in O.S.No.122 of 2012, dated 20.09.2013, on the file of the Additional District and Sessions Court, Dindigul are set aside and the case is remitted back to the trial Court. Both parties are at liberty to file



A.S.(MD)No.5 of 2014

WEB COPY

additional pleadings if any and adduce additional evidence. The trial Court is further directed to dispose of the case within four months from the date of appearance of the parties. Both parties are directed to appear before the trial Court on 11.10.2023. Consequently, the connected Miscellaneous Petition is closed. Both parties are directed to bear their own costs. The Registry is directed to return the Court fees to the appellants.

14.09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

SSL

Note: The Registry is directed to return the original documents filed in C.M.P.(MD)No.10097 of 2022 to the Counsel for the appellants, after getting appropriate acknowledgment.

To

1. The Additional District and Sessions Court, Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.5 of 2014



WEB COPY



A.S.(MD)No.5 of 2014

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.5 of 2014

14.09.2023