



S.A.No.291 of 2018 and C.M.P. No.10603 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.291 of 2018

and

C.M.P. No.10603 of 2018

Nanjappan

...Appellant

Vs.

1. Raju @ Karuppa Gounder
Ramayal (deceased)
2. Amutha
3. Punitha
4. Thangamani
5. Poongodi
6. Sernga Gounder
7. Sivasami (died)

... Respondents

R7 died, RR4 and 5 already on record are recorded as LR's of the deceased R7 vide memo dated 23.01.2024 and Court order dated 23.01.2024.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 12.01.2018 passed in A.S. No.37 of 2016, on the file of the Sub-Court, Sathyamangalam, reversing the decree and



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judgment dated 03.09.2015 passed in O.S.No.138 of 2011, on the file of the District Munsif Court, Sathyamangalam.

For Appellant	: Mr.B. Manivannan
For R1 to R5	: Mr.M. Roshan Atiq
R6	: No appearance
R7	: Died (legal heirs already on record)

JUDGMENT

The appellant is the second defendant in the suit in O.S.No.138/2011 on the file of the District Munsif Court, Sathyamangalam. The respondents 1 to 3 and one Ramayal (since deceased) / plaintiffs filed the said suit for partition of the suit property into five equal shares and to allot 3 such shares to them.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit property originally belonged to one Thambi Karuppa Gounder, the father of the plaintiffs 1 and 2 and the defendants 1 and 2 and grand father of the plaintiffs 3 and 4. He purchased the suit property through a registered sale deed dated 20.03.1959 (Ex.A1). After the death of Thambi Karuppa Gounder, the plaintiffs and the defendants were in possession and enjoyment of the suit property. Since the plaintiffs could not enjoy the suit property jointly with the defendants, they requested the defendants to partition the same, which was not acceded to by them. The lawyer's notice dated 07.03.2011 (Ex.A3) issued by the plaintiffs to the defendants did not also evoke any response. Hence the suit.

4. In the trial court, the first defendant remained absent and was set ex-parte. The second defendant resisted the suit on the following grounds:

- i. The plaintiffs did not issue any notice to the defendants claiming partition of the suit property.



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- ii. As per the sale deed dated 20.03.1959 (Ex.A1), Thambi Karuppa Gounder purchased the property along with Appachi Gounder, Ramasamy Gounder and Karuppa Gounder from one Ethirajuluammal. As per the sale deed, the purchasers have purchased 1/6 share in the properties mentioned in the sale deed. The plaintiffs have not added the remaining 1/5 sharers as parties in the suit and therefore, the suit is bad for non joinder of necessary parties.
- iii. On 21.03.1986, Thambi Karuppa Gounder executed a sale deed (Ex.B1) in favour of his sons, ie., the defendants in respect of his 2/3 share in the suit property and ever since the date of said sale deed, the defendants are in possession and enjoyment of the same.
- iv. The second plaintiff and the mother of the plaintiffs 3 and 4, who are the female heirs, have been given in marriage by spending exorbitant amount. Therefore, they are not entitled to get any share in the suit property.

The defendants therefore, prayed for dismissal of the suit.



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5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the suit is bad for non joinder of necessary parties?"*
- ii. *Whether the suit is maintainable?*
- iii. *Whether the plaintiffs have been ousted from the property?*
- iv. *Whether the plaintiffs are entitled for partition of the suit property?*
- v. *To what relief the plaintiffs are entitled?*

6. In the trial Court, the first plaintiff examined himself and marked Ex.A1 to Ex.A5. The second defendant examined himself and marked Ex.B1 to Ex.B16.

7. The learned trial court judge, after analysing the oral/documentary evidence on record, dismissed the suit filed by the plaintiffs, vide his decree and judgment dated 03.09.2015, on the ground that the plaintiffs have not described the suit property properly in the



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plaint.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiffs filed an appeal in A.S.No.37/2016, before the Sub-Court, Sathyamangalam. The learned Subordinate Judge, Sathyamangalam, after analysing the evidence on record allowed the appeal, vide his decree and judgment dated 12.01.2018, on the following grounds:

- i. It is the admitted fact that Thambi Karuppa Gounder purchased 1 acre and 12 cents in survey No.12/4 of Konamoolai Village, Sathyamangalam Taluk, Gopichettipalayam.
- ii. The first plaintiff, as P.W.1, has deposed that her father had sold 74 cents of land out of 1.12 acres in survey No.12/4 in favour of the defendants 1 and 2 and that she has filed the suit only in respect of the remaining extent of land.
- iii. In Ex.B1 sale deed, boundary descriptions are clearly mentioned and therefore, there is no dispute in identifying the property which has to be partitioned among the sharers. In the circumstances, the



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observation of the trial court judge that the plaintiffs have not described the suit property cannot be sustained and therefore, the same is liable to be set aside.

9. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed by the second defendant.

10. The second appeal was admitted by this Court on the following substantial questions of law:

" (a) Whether the suit was incompetent for want of proper description and sufficient identification of the suit land under Order VII Rule 3 and Order XX Rule 9 of the Code?

(b) Whether the Appellate Court below after having found that Ex.B1 describes the property conveyed under it as 2/3 rd UDS, was right in law in passing a preliminary decree for partition of the suit property, which is only 1.3rd UDS?



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(c) Whether the Courts below failed to apply the settled law that a co-sharer cannot transfer specified numbers also is to be treated as sale of share? and

(d) Whether the courts below are right in law under Order 1 Rule 19(2) in refusing to implead parties, the presence of whom are necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit?"

11. Heard Mr.B. Manivannan, learned counsel appearing for the appellant and Mr.M. Roshan Atiq, learned counsel appearing for the respondents 1 to 5.

12. Mr.B. Manivannaan, learned counsel appearing for the appellant contended that when the suit property has not been described properly in the plaint, the plaintiffs cannot claim partition of the suit property. His further contention is that even if a decree is granted in favour of the plaintiffs, the third parties may intervene at the time of partition and therefore the suit filed by the plaintiffs has to be dismissed.



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13. Per contra Mr. M.Roshan Atiq, learned counsel appearing for the respondents 1 to 5 contended that since the trial court dismissed the suit only on the ground that the plaintiffs have not described the suit property properly, the plaintiffs filed an application in I.A. No.152/17 in A.S. No.37 of 2016 in the first appellate court to show that the properties sold in favour of the defendants have been properly described in the sale deed dated 21.03.1986 (Ex.B1). The first appellate court after verifying the documents adduced by the defendants had come to a conclusion that there is no dispute with regard to the identity of the property which has been sold in favour of the defendants. In the circumstances, there is no reason for this Court to reverse the findings rendered by the first appellate court.

14. At the outset it may be observed that the defendants have not disputed the plaintiffs' right to claim 3/5 share in the suit property. Their only contention is that the suit property has not been described



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properly in the plaint. However, a perusal of sale deed dated 21.03.1986 (Ex.B1) shows that boundary descriptions are mentioned therein. The second defendant also dealt with the property by executing a sale deed in favour of his son-in-law Mayilsamy on 23.08.1990 (Ex.B2). In Ex.B2 also, specific boundaries are mentioned. The first defendant sold his half share in favour of the second defendant vide a registered sale deed dated 06.06.1994 (Ex.B3). In all these documents, including the rectification deeds (Ex.B4 to Ex.B6) and settlement deeds (Ex.B7 and Ex.B8), the boundary descriptions are clearly indicated. In the circumstances, the first appellate court was right in granting a decree in favour of the plaintiffs. The observations of the first appellate court is extracted hereunder:

“16.1. பிரச்சனை 1 முதல் 3 வரையில் தீர்மானிக்கப்பட்டபடி விசாரணை நீதிமன்றத்தின் தீர்ப்பை பரிசீலிக்கும் போது இந்த மேல்முறையீட்டாளர்களுக்கு பாகபிரிவினையில் சொத்து கிடைக்க கூடியது என்று தீர்மானிக்கப்பட்டு சொத்தை காணும் அளவிற்கு சொத்து விவரம் குறிப்பிடப்படவில்லை என்ற காரணத்திற்காக மட்டுமே வழக்கு தள்ளுபடி செய்யப்பட்டுள்ளது. இது தொடர்பாக இந்த மேல்முறையீட்டு நீதிமன்றம் மேற்படி



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வழக்குரையில் சொல்லப்பட்டுள்ள சொத்து விவரம் சொத்தை பாகபிரிவினை செய்வதற்கு சரியான முறையில் கொடுக்கப்பட்டுள்ளது என்பது பி.வா.சா.ஆ.1 ஆவணத்தின் அடிப்படையிலும், பி.வா.சா.ஆ.2,3 ஆவணங்களின் அடிப்படையில் சொத்தின் எல்லைகளை அடையாளம் காண முடியும் என்று நீதிமன்றம் கண்டு உணர்வதாலும் மேற்படி பிரதிவாதிகளின் ஆவணங்களின் அடிப்படையிலேயே சொத்து விவரத்தை காண முடியும் என்பதால் வழக்குரை சொத்து விவரம் தவறானது என்று தீர்மானிக்க தேவையில்லை என்று இந்த மேல்முறையீட்டு நீதிமன்றம் கருதுகிறது.

16.2. எனவே விசாரணை நீதிமன்றம் வழக்குரை சொத்து விவரத்தையும், பி.வா.சா.ஆ.1, 2, 3 சொத்து விவரத்தையும், பி.வா.சா.1 சாட்சியத்தையும் தெளிவாக பார்வையிட்டிருந்தாலும் பாகபிரிவினை வழக்குகளை பொறுத்தவரையில் பாகம் கிடைக்கும் அனைவருமே வாதிகளாக பாவிக்க வேண்டுமென்ற கோட்பாட்டின் அடிப்படையிலும் மேற்படி விசாரணை நீதிமன்றம் சொத்து விவரம் அடையாளம் காண முடியவில்லை என்று தீர்மானித்து வழக்கை தள்ளுபடி செய்துள்ள விவரமானது தவறானது என்று இந்த மேல்முறையீட்டு நீதிமன்றம் கருதுகிறது.”

In the circumstances, this Court does not see any reason to interfere with



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the findings recorded by the first appellate court and the substantial questions of law are answered against the appellants.

15. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 03.09.2015 passed in O.S.No.138 of 2011, on the file of the District Munsif Court, Sathyamangalam is set aside.
- iii. The decree and judgment dated 12.01.2018 passed in A.S. No.37 of 2016, on the file of the Sub-Court, Sathyamangalam, is upheld.

15.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Judge, Sathyamangalam.
2. The District Munsif, Sathyamangalam.
3. The Section Officer, VR Section, High Court, Madras.

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R. HEMALATHA, J.

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