



A.S.No.633 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.633 of 2019
and
C.M.P.No.19086 of 2019

Kannan

...Appellant

Vs

1. Padmavathy
2. Sournu Rani

...Respondents

Prayer: Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of C.P.C against the Judgement and Decree dated 31.01.2019 and made in O.S.No.83 of 2016 on the file of the II Additional District Judge, Chidambaram.

For Appellant : Mr.B.Ramamoorthy

For Respondents: Mr.T.Saravanan



A.S.No.633 of 2019

JUDGMENT

The parties for ease of understanding are referred to in the same ranking as before the trial Court.

Relief claimed in the suit

2. The suit is filed for partition and separate possession of the plaintiff's half share in the suit schedule property. The suit schedule property has been described in the plaint as follows:

DESCRIPTION OF SUIT PROPERTY

சிதம்பரம் ரீ.டி. சிதம்பரம் சப்டி, சிதம்பரம் வட்டம், சிதம்பரம் டவுன், வ.உ.சி. தெரு, கதவு எண் 85 உள்ள வார்டு நெ.4, பிளாக்.நெ.5, டவுன் சர்வே எண். 430ல் அடங்கிய 1918 சதுரடி விஸ்தீரமுள்ள வீட்டு மனை.

நான்கெல்லை: வ.உ.சி. தெருவுக்கும் மேற்கு,

தங்கவேலு பத்தர் வீடு தோட்டத்திற்கு தெற்கு, டாக்டர்

கிருஷ்ணசாமி வீடு தோட்டத்திற்கு வடக்கு,

சீனுவாச செட்டியார் சொத்துக்கு கிழக்கு



A.S.No.633 of 2019

PLAINTIFF'S CASE:

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3. The case of the plaintiff is that he is the youngest son and Palaniappan is the eldest son of one Thangavel Padayachi and Seethalakshmi. The suit property originally belonged to Alamelu Ammal, who had executed a registered Settlement Deed dated 01.06.1955 in favour of the said Thangavel Padayachi and Seethalakshmi. By reason of this settlement deed, which had been executed at the time of marriage of Thangavel Padayachi and Seethalakshmi, each of them were entitled to a $\frac{1}{2}$ share in the said property.

4. It is the case of the plaintiff that settlement deed was executed and acted upon. Two of the settlees have been in possession and enjoyment of the property ever since the date of the settlement deed.



A.S.No.633 of 2019

WEB COPY

5. On 09.05.2000, Seethalakshmi Ammal had executed a registered settlement deed in respect of her undivided share in favour of her eldest son, Palaniappan. The remaining half share belonged to her husband Thangavel Padayachi . Thereafter, Thangavel Padayachi had executed a registered Will dated 07.05.2008 under which he had bequeathed his $\frac{1}{2}$ share to his younger son, the plaintiff, while retaining a life interest for himself. On the death of Thangavel Padayachi on 09.10.2012, the Will dated 07.05.2008 had come into effect. The said Palaniappan had also died in the year 2014 and the defendants who are his wife and daughter respectively became entitled to $\frac{1}{2}$ share which had been settled on Palaniappan by his mother Seethalakshmi. The plaintiff would submit that therefore, the plaintiff and the defendants became entitled to an equal share in the suit schedule property.



A.S.No.633 of 2019

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6. The plaintiff would submit that in the month of July 2016, he had orally called upon the defendants to partition the property and allot his $\frac{1}{2}$ share. However, they had not come forward to partition the same and therefore, left with no other option, the plaintiff has come forward with the suit in question for the reliefs stated supra.

**WRITTEN STATEMENT OF THE FIRST DEFENDANT
ADOPTED BY THE SECOND DEFENDANT:**

7. The defendants had admitted the relationship that had been set out by the plaintiff and the fact that the properties in question belonged to one Alamelu Ammal. They would also admit the fact that Alamelu Ammal had executed a registered Settlement Deed dated 01.06.1955 in favour of Thangavel Padayachi and Seethalakshmi, thereby making the said Thangavel Padayachi and Seethalakshmi equal owners of the suit property. The defendants would also admit the settlement deed that has been executed by Seethalakshmi in favour of Palaniappan.



A.S.No.633 of 2019

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However, the execution of the Will by Thangavel Padayachi in favour of the plaintiff was denied. They had also denied the plaintiff's claim that he had sought for partition of his undivided share in the property.

8. It is the contention of the defendants that the said Thangavel Padayachi was working as a cinema projector operator in a cinema theater and earned money. Thangavel Padayachi had got a small property at Vengugopal Pillai Street, Chidambaram under a Partition Deed dated 07.10.1959 entered into between himself, his brothers and father as his ancestral property. The first defendant's husband Palaniappan studied upto the 10th standard and had also undergone private training in Electrical work and re-winding of electric motors. Therefore, Palaniappan had set up a small re-winding shop for himself within the property allotted to his father under the Partition Deed. He picked up the rewinding work and earned more than sufficient income through which he had maintained his entire family consisting of his



A.S.No.633 of 2019

parents, brothers and sister, even before his marriage. From out of his personal earnings, his father had purchased the lands at C.Kothangudi Village. Thangavel Padayachi along with Palaniappan enjoyed not only the lands purchased by him but also the lands that had been given to him under the settlement deed by Seethalakshmi. Thereafter, from out of the income from the lands and the joint exertions of the said Palaniappan and his father, he had also celebrated the marriage of his three sisters. The plaintiff had studied the engineering course only with the help of earnings from Palaniyappan's electrical business.

9. It is the contention of the defendants that Palaniappan was in the habit of handing over his income to his father and his father, Thangavel Padayachi hardly received any salary from the cinema theater.



A.S.No.633 of 2019

WEB COPY

10. During the year 2000, the plaintiff with an intent to grab the properties had staked a claim on the basis of an alleged Will by creating a rift between his father and Palaniappan. It is the contention of the defendants that Thangavel Padayachi had never executed the Will and they would put the plaintiff to strict proof of the same. They had also raised the question of non-joinder of necessary parties in as much as the plaintiff has not chosen to implead the two daughters and grand daughters through the eldest deceased daughter of Thangavelu Padayachi. They are necessary parties to the proceedings. In the absence of the Will, they would also inherit a right in the property of Thangavel Padayachi. Therefore, the defendants would submit that the suit is bad for non-joinder of necessary parties, and therefore, considering the fact that the suit lacked a cause of action and as all the legal heirs have not been brought on record, the defendants sought to have the suit dismissed.



A.S.No.633 of 2019

TRIAL COURT

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11. The trial Court had framed the following issues:

1. தங்கவேலு மகன்கள் மற்றும் பேத்தியை
தரப்பினராக சேர்க்காமல் தாக்கல் செய்யப்பட்டுள்ள
வழக்கு பாதிக்கப்பட்டுள்ளதா?

2. வழக்கு சொத்தில் உள்ள பாதி பாகத்தை
பொறுத்து 7.5.2008 அன்று தங்கவேலு ஒரு உயில் எழுதி
வைத்து உள்ளாரா?

3. வாதிக்கு வழக்குரையில் கோரியுள்ளபடி
முதல்நிலை தீர்ப்பாணை பெற தகுதி பெற்றவரா?

4. இதர பரிகாரங்கள் என்ன?

12. The plaintiff had examined himself as P.W1 and three others, Thiagarajan, Balasubramanian and Gunasekaran as P.W2 to P.W4 respectively and marked Exs.A1 to A16. The first defendant had



A.S.No.633 of 2019

examined herself as D.W1 and marked 13 documents of which Ex.B1- Settlement Deed which was executed by the Seethalakshmi in favour of the first respondent's husband. The Uthirakirayai (உத்திரகிரியை) invitation of Seethalakshmi was marked as Ex.B2. B3 to 13 are the house tax receipts issued in the name of the first defendant's husband, Palaniappan from the year 2002 till 2017.

13. The trial Court had ultimately dismissed the suit. The suit was dismissed mainly on the ground that the suit is bad for non-joinder of necessary parties in as much as all the legal heirs of the deceased Thangavel Padayachi had not been brought on record. The trial Court had not addressed the issue as to whether the Will, Ex.A2 is a valid one, though the issue No.2 is with reference to the Will. It is challenging the said judgment and decree that the plaintiff is before this Court.



A.S.No.633 of 2019

14. POINTS FOR CONSIDERATION:

The points for consideration that arise in the above first appeal are as follows:

“1. Whether the trial Court has committed an error in dismissing the suit on the ground of non-joinder of necessary parties without affording an opportunity to the plaintiff to bring on record all the parties to the proceedings, namely the other legal representatives of the deceased Thangavel Padayachi.

2. Whether the Court could have exercised its suo moto powers under Order 1 Rule 10(2) of C.P.C and added the parties to the suit.”



A.S.No.633 of 2019

WEB COPY

15. Heard the learned counsel appearing for the appellant and the learned counsel for respondents and perused the materials available on record.

16. The learned counsel appearing for the respondents would fairly concede that the trial Court could have directed the plaintiff to implead all the parties to the proceedings, particularly when the issue of non-joinder of necessary parties has been framed. The respondents have also pleaded non-joinder of necessary parties.

DISCUSSIONS:

17. Elaborate arguments have been advanced by the learned counsels on the merits of the case. The Court below has non-suited the plaintiff primarily on the ground of non joinder of necessary parties. Such a decision has been taken without a direction being issued to the plaintiff to implead proper and necessary parties. The Court could have



suo moto impleaded them.

18. Order 1 Rule 10(2) C.P.C empowers the Court to do so. A perusal of the provision of Order 1 Rule 10(2) extracted herein below would clarify the above.

Order 1 Rule 10 (2) Court may strike out or add parties.

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

19. A perusal of this provision would clearly show that it is also well within the powers of the Court to either by itself or an application



A.S.No.633 of 2019

of either party, order the name of a party improperly joined to be struck off or to add a party who is a proper and necessary party to the proceedings.

20. Therefore, in the light of the above and with the consent of both the parties, the appeal suit is allowed and the matter is remitted back to the trial court. The plaintiff shall take steps to implead all the legal representatives of Thangavel Padayachi. Once the matter is taken on file by the Court below, namely the II Additional District Court, Chidambaram, the learned II Additional District Judge, Chidambaram, shall fix a date of hearing, issue notice to the parties and thereafter, receive the application which has to be filed by the plaintiff for impleading all parties. The Court will after ordering the impleading petition, proceed to hear the suit and pass the judgment on merits. The learned II Additional District Judge shall endeavour to complete the entire process within a period of 8 months from the date



A.S.No.633 of 2019

of receipt of a copy of this order. There shall be no order as to costs.

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Consequently, connected miscellaneous petition is closed.

02.04.2024

Index: Yes/No

Speaking order/non-speaking order
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To

1. The II Additional District Judge, Chidambaram.
2. The Section Officer, V.R.Section,
High Court, Madras.



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A.S.No.633 of 2019

P.T.ASHA, J.,

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A.S.No.633 of 2019

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C.M.P.No.19086 of 2019

02.04.2024