

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19 - 08 - 2015

Coram

The Hon'ble TMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 265 of 2015

and

M.P. No. 1 of 2015

1. Mrs. Antonyammal
2. L.M. Lawrence .. Appellants/Appellants/
Respondents 2 & 7

vs.

1. Regina Duraisamy
2. Annecatherin Sheela Vincent .. Respondents/Respondents/
Petitioners 1 & 2

3. L. Xavier
4. Kolandai Theresa
5. A. Pawlin
6. A. Lawrance
7. A. Chelin
8. A. Francis
9. A. Antony Joseph
10. A. Mary Peter
11. S. Manoharan
12. S. Maria Joseph
13. S. Margaret
14. S. Victor
15. S. Amalraj
16. A. Marshal

Rep. by Power Agent .. Respondents/Respondents/
L.Gerald Pubalan Respondents
(RR3 to 15 given up)

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 05.02.2015 in A.S. No. 39 of 2014 on the file of the III Additional Subordinate Judge, Coimbatore, confirming the order dated 24.09.2013 made in I.A. No. 1565 of 2005 in O.S. No. 936 of 1977 on the file of the I Additional District Munsif, Coimbatore.

For Appellants : Mr. S.V. Jayaraman, SC
for Mr. T. Dhanasekaran

For RR 1 & 2 : Mr. Mukunth

for Mr. R. Ganesh Babu

RR 3 to 15

: Given up

JUDGMENT

The instant Second Appeal is directed against the final decree proceedings in a suit for partition in O.S. No. 936 of 1977 on the file of the I Additional District Munsif, Coimbatore, as confirmed by the III Additional Subordinate Judge, Coimbatore, by judgment and decree dated 05.02.2015 in A.S. No. 39 of 2014.

2. Heard Mr. S.V. Jayaraman, learned Senior Counsel appearing for the appellants and Mr. Mukunth, learned counsel for the respondents 1 and 2 and perused the records.

3. The respondents 2 and 7 in the final decree proceedings are the appellants. The legal heirs of the third defendant in the suit are the petitioners in the final decree proceedings in I.A. No. 1565 of 2005.

4. The original plaintiff one Madalai Mary filed O.S. No. 936 of 1977 for partition of 11/15 share which was decreed. On appeal by the first defendant in A.S. No. 347 of 1991, the same was modified to 1/15th share to the plaintiff on 01.3.1994. Aggrieved by the same, a Special Leave Petition in Civil Appeal No. 15400 of 1996 was preferred before the Supreme Court in which the decree was modified allotting 1/5th share to the plaintiff and 4/5th share to the defendants.

5. Pursuant to the preliminary decree, the third defendant in the suit filed final decree application in I.A. No. 543 of 2001 before the Sub-Court, Coimbatore, which was subsequently transferred to the I Additional District Munsif, Coimbatore, and re-numbered as I.A. No. 1565 of 2005. In the meanwhile, C.R.P. (NPD) No. 549 of 2006 was filed before this Court challenging the question of Court fee payable and praying for rejection of Court fees and the same was disposed on 22.12.2010.

6. Thereafter, in the above Interlocutory Application, a Commissioner was appointed to decide the suit properties with the help of a Surveyor and divide the same into 5 equal shares. The Commissioner also, after giving due notice to the parties, divided the properties and filed his report and plan.

7. The appellants herein had not given any instructions to the Commissioner either before or at the time of inspection or filed any objections to the report of the Commissioner dated 22.7.2013. However, I.A. Nos. 2612 of 2013 and 2613 of 2013 were filed by the appellants herein to re-open the case and to reject the Advocate Commissioner's Report respectively and the same were dismissed on

23.9.2013. Accordingly, a final decree was passed on 24.9.2013 in I.A. No. 1565 of 2005. Thereafter, the respondents herein had furnished the stamp papers for engrossing the final decree in E.P. No. 18 of 2014.

8. Challenging the said final decree passed in I.A. No. 1565 of 2005, the appellants herein had filed A.S. No. 39 of 2014 before the III Additional Subordinate Judge, Coimbatore. It is pertinent to point out that the orders passed in I.A. Nos. 2612 and 2613 of 2013 were not challenged.

9. Learned counsel appearing for the respondents 1 and 2 submitted that even thereafter, the appellants were not satisfied and adopted further delaying tactics by filing transfer petitions which were also dismissed. A stay application was filed by the appellants in I.A. No. 176 of 2014 in A.S. No. 39 of 2014 which was also dismissed on 11.11.2014. The said order was challenged before this Court by way of Civil Revision Petition in C.R.P. (NPD) No. 119 of 2015 which was disposed of by this Court on 13.01.2015 directing the III Additional Subordinate Judge, Coimbatore, to dispose of the appeal. Accordingly, the appeal in A.S. No. 39 of 2014 was dismissed by the Lower Appellate Court by judgment and decree dated 05.02.2015 confirming the order dated 24.09.2013 passed by the trial Court in the final decree application in I.A. No. 1565 of 2005. The instant Second Appeal is filed challenging the said judgment and decree of the Lower Appellate Court.

10. Learned Senior Counsel appearing for the appellants submitted that the Commissioner's report was wrong and the Courts below ought not to have passed the decree based on the said report. The main attack in the appeal was the reliance placed on the report of the commissioner.

11. As stated earlier, the appellants had not given any instructions or filed any objection to the report of the Commissioner. They had also not engrossed the Non-Judicial stamp papers in respect of their share as per the final decree proceedings. In this regard, it is useful to refer to paragraph 11 of the judgment passed by the Lower Appellate Court wherein the learned III Additional Subordinate Judge, Coimbatore, has elaborately dealt with the objections raised by the appellants. For better understanding, paragraph 11 of the judgment is re-produced below:-

"The other objection raised by the learned counsel for the appellants is that the commissioner failed to mention one another terrace house and well situated in the 'A' schedule of property. The commissioner had mentioned in his report what are the physical features are in existence on the date of his visit. The commissioner mentioned in his report that the 1st item ('A' schedule) is comprised with an old house property and the old house was facing towards northern side and

he divided the same into five equal shares. Of course, the commissioner has given some suggestions with regard to the enjoyment of said property. But the trial Court has not accepted the suggestions made by the commissioner and allotted some other portion only to the petitioner. The another objection raised by the appellants that in the 'C' schedule property, the other sharers as access to the common well shown in the said property. Absolutely, there is no material before this Court to conclude the prime area was allotted to the petitioner in the 'C' schedule property. The commissioner after allotting 8 cent of land for common well area, he divided the remaining property into five equal shares with an extent of each 1.69 acre. It is true that no separate passage was provided to the three portions to approach the said common well. It is no doubt that all the shares are entitled to the said common well as per their respective shares. But, the appellants side during their arguments contended that the other shares almost relinquished their shares in the said 'C' schedule property in favour of the 2nd appellant by executing registered release deeds dated 10.06.2004 and 24.11.2004 itself. The appellants produced the copies for the said documents. The commissioner had divided the said item of property and divided into five portions by forming two portions abutting to the common well. Out of the said two portion one was allotted to the petitioners and one another portion is yet to be allotted. Having obtained release deeds from the co-sharers in respect of the said property, the appellants failed to bring the same to the knowledge of the trial court. Hence, the above objection is also not acceptable. Further, the learned counsel appearing for the appellants would contend that the trees situated in the said 'C' schedule of property were not mentioned in the commissioner report. The commissioner has not mentioned in his report as a lot of valuable trees are situated in a particular portion of the said land. Hence, there is no need to say what are the trees and other physical features are available in the respective shares, the sharers are entitled for the same."

12. The trial Court as well as the Lower Appellate Court had dealt with every question raised by the parties based on the materials placed before them and also considering the report of the Advocate Commissioner and discussing them elaborately in detail. As such, it is clear that the attitude of the appellants is only to protract the proceedings and there is no bona fide in the same. There are no justifiable reasons to interfere with the finding of the

Courts below. The parties are litigating almost for four decades and hence, the same has to be given a quietus. In such circumstances, this Court is of the view that there is no question of law, much less, substantial question of law arising for consideration.

Resultantly, the Second Appeal fails and stands dismissed. Consequently, the judgment and decree dated 05.02.2015 passed by the III Additional Subordinate Judge, Coimbatore, in A.S. No. 39 of 2014 confirming the order dated 24.09.2013 passed by the I Additional District Munsif, Coimbatore, in the final decree application in I.A. No. 1565 of 2005 in O.S. No. 936 of 1977, are affirmed. Having regard to the facts and circumstances of the case, the parties are directed to suffer their respective costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gri
To

1. III Additional Subordinate Judge
Coimbatore
2. I Additional District Munsif
Coimbatore

+1 cc to M/s.T.Dhanasekaran, Advocate, sr.43942
+1 cc to M/s.R.Ganesh Babu, Advocate, sr.43749

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