

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEERVED ON:14.11.2016

DATE OF DECISION: 29.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.812 of 2003

- 1.Yesodai Ammal (Deceased)
- 2.Sowri Rajulu
- 3.Varadharajulu
- 4.S.Kannapura Nayagi
- 5.V.Bhama

... Appellants 4&5 brought on record as
LRs of Deceased first appellant vide order
of Court dt.21.10.09 made in CMP.Nos.237 to
240/08

Vs

- 1.Athmarajulu
- 2.Jayalakshmi (Deceased)
- 3.J.Raghuraman
- 4.J.Lakshmanasamy
- 5.M.Rajalakshmi
- 6.S.Mythili

- 7.Mrs.Ranjani Radjou ...RR3 to 7 brought on record as LR of
the deceased R2 vide order of Court
dt.30.6.10 made in CMP.398 to 400/10

This appeal is filed under Section 96 of Civil Procedure Code
against the Decree and Judgement dated 15.2.2001 made in
O.S.No.113 of 1992 passed by the learned Principal Subordinate
Judge, Nagapattinam.

For Appellant : Mr.S.Thanjan
For Respondents : Mr.T.R.Rajaraman for R1
Mr.D.Jaganathan for RR 3 to 6

J U D G E M E N T

The petitioners in I.A.No.192 of 1997 in O.S.No.113 of 1992
are the appellants in this appeal.

2. It appears that the first appellant Yasodai Ammal died
pending appeal and the appellants 4 and 5 were brought on record
as LR of the 1st appellant. The appellants, as plaintiffs had
filed the suit in O.S.No.113/1992 seeking partition and separate

possession of 3/5 share in the suit properties. The said suit was filed on the premise that the suit properties belonged to Adikesavalu Pillai, the father of the plaintiffs and the defendants therein. The said suit was contested by the first defendant alone. The second defendant one of the daughters of said Adikesavalu Pillai remained exparte. It was claimed by the first defendant that he was allotted a portion of the property, in which he is making arrangement for construction of a house. The said suit was decreed after contest granting 3/5 share to the plaintiffs as prayed for.

3. The claim of the 1st defendant that the portion in which he had constructed the house, be allotted to him, was rejected by the Trial Court and the Trial Court held that the allotments should be decided during the final decree proceedings. The said decree was not challenged by any of the parties and the plaintiffs namely, the appellants 1 to 3 herein filed I.A.No.192 of 1997 seeking final decree. Even in the final decree application, the second defendant namely, Jayalakshmi daughter of Adikesavalu did not choose to enter appearance and contest. She had died pending appeal and her legal representatives have been impleaded as respondents 3 to 7.

4. An Advocate Commissioner was appointed by the Trial Court and he filed a report taking note of the absence of second respondent Jayalakshmi. The learned Advocate Commissioner had filed a report recommending the allotment of the western portion of the 1st item of the suit properties measuring 14 ½ East West and 108 s.ft. North South to the first defendant and the remaining extent of 29 ½ sq.ft. East West and 108 s.ft of North South to the petitioners 2 and 3. This allotment is confined to item No.1 alone.

5. I am not referring to the allotment made in respect of other items inasmuch as there is no controversy between the parties in respect of allotment of other items. The Advocate Commissioner had further observed that both the petitioners/appellants as well as the first respondent should compensate the second respondent towards her 1/5 share in item No.1. The value of 916 s.ft which falls to the share of the second respondent was determined Rs.57,708/- by the Commissioner and the petitioners were directed to pay Rs.17,829/- to the 2nd respondent and the 1st defendant was directed to pay Rs.40,068/- to the second respondent towards her share.

6. After adjustment of the amount payable in respect of other properties, the total amount to be paid to the 2nd respondent was fixed at Rs.62,708/-. The Trial Court accepted the report of the Commissioner and passed the final decree, allotting an extent of 1552 sq.ft in item No.1 to the 1st

respondent and an extent of 3031 to the petitioners/appellants. The final decree also directed the appellants to pay a sum of Rs.25,325/- to the 2nd respondent and the 1st respondent was directed to pay a sum of Rs.31,468/- to the 2nd respondent. In respect of item No.1, the allotment of which is under dispute in this appeal, the appellants were directed to pay Rs.17,829/- to the 2nd respondent and the 1st respondent was directed to pay Rs.40,068/- to the 2nd respondent towards her share in the said Item No.1.

7. Aggrieved by the said allotment, the plaintiffs/petitioners in I.A.No.192/1997 has come forward with the present appeal. I have heard Mr.R.Thanjan, learned counsel appearing for the appellants, Mr.T.R.Rajaraman learned counsel appearing for the 1st respondent and Mr.D.Jaganathan, learned counsel appearing for the respondents 3 to 6 namely LR's of the deceased 2nd respondent. The following points arise for determination.

1)Whether the allotment made by the Trial Court with reference to item No.1 of the suit properties, is inequitable?

2)Whether the appellants would be termed as persons aggrieved by the said allotment?

Point Nos.1 and 2

Since both the points arises are interlinked, I proceed to consider them together.

8. The parties are in agreement with reference to the allotment made in respect of other items of the properties except Item No.1. The total extent of Item No.1 comes to 4583 sq.ft. The Advocate commissioner has found that Item No.1 measures 44 feet. East West and 108 feet North South. Out of which the 1st respondent had constructed a house in an extent of 14 ½ feet East West and 108 feet North South on the Western side of the total extent. The first respondent had admittedly put up a new house. It is true that the 1st respondent had put up construction in an area over and above his actual entitlement. This action of the 1st respondent, has made the petitioners/appellants to object to the allotment made by the Trial Court.

9. The learned counsel appearing for the appellants would vehemently contend that the 1st respondent should not have been allotted more than the actual entitlement i.e. about 906 s.ft. He would also submit that the Trial Court erred in allotting more extent to the appellants than their actual entitlement and directing them to pay the value of such excess extent to the 2nd respondent. It should be pointed out that the 2nd respondent has not chosen to file any appeal against the final decree. She had accepted the same.

10. Mr.D.Jaganathan, learned counsel appearing for the legal representatives of the deceased second respondent has also not questioned the allotment. As a result of the allotment made by the Trial Court, the second respondent is deprived her share in item No.1. The Trial Court had however directed the other parties to pay her the value of her share. In fact the appellants have been allotted about 283 sq.ft. in excess of their entitlement and they have also been directed to compensate the second respondent.

11. In the light of the above, I do not find that the allotment made by the Trial Court is either inequitable or unjust. The Trial Court had taken note of the fact that the female heirs are married and residing out side the suit village and the allotments made would be just and equitable, taking note of the prevailing circumstances in the family.

12. I do not find that the appellants can be termed as aggrieved persons, inasmuch as their shares have not been refused or taken away in any manner by the allotment made by the Trial Court. If at all it could be the second respondent who could be termed as an aggrieved person and she has not chosen to file any appeal questioning the allotment made by the Trial Court.

13. In view of the above, I am of the considered opinion that the allotment made by the Trial Court is just and equitable and the appellants are not persons aggrieved and they cannot maintain the appeal against the decree passed by the Trial Court. Therefore, both points are answered against the appellants.

14. In fine, the appeal is dismissed confirming the judgement and decree of the Trial Court. However, considering the relationship of the parties, I do not propose to award costs in this appeal. The parties shall bear their own costs in this appeal. Consequently the connected CMP.No.397 of 2010 and CMP.No.12704 of 2003 are closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Principal Subordinate Judge, Nagapattinam.

+1 cc to Mr.R.Tanjan, advocate,sr.70750

+1 cc to M/s.T.R.Rajaraman,advocate,sr.70154

ug(co)

krd 4/1

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