



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

Coram:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD)No.722 of 2016 & C.M.P(MD)No.11419 of 2016

1.V.Vijayaraman
2.S.Sivakami
3.K.Logammal
4.V.Rakkee

... Appellants/Appellants/
Defendants 1 to 4

vs.

1.C.Karuppan

...1st Respondent/1st Respondent/
Plaintiff

2.Tmt.K.Arumugam

...2nd Respondent/2nd Respondent/
5th Defendant

3.R.Raman

...2nd Respondent/2nd Respondent/
6th Defendant

4.S.Murugan

...2nd Respondent/2nd Respondent/
7th Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree in A.S.No.20 of 2011 passed by the Additional District Court, Ramanathapuram, dated 06.04.2016 reversing the Judgment and Decree in O.S.No23 of 2008 passed by the Subordinating Judge, Paramakudi dated 07.07.2011.

For Appellants : Mr.V.Srinivasan

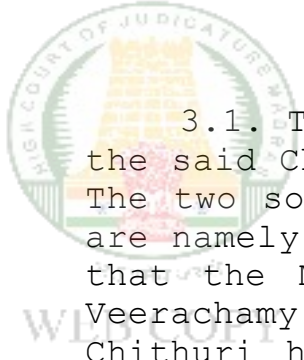
JUDGMENT

The defendants 1 to 4 in the suit are the appellants in this Second Appeal.

2. The plaintiff, namely, the first respondent herein filed a suit in O.S.No.23 of 2008 on the file of the Sub-Court, Paramakudi, for partition of the plaintiff's share in the suit property. The suit property consists of several items and even along with the plaintiff, the plaintiff has produced the genealogy.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The case of the plaintiff in the plaint are as follows:-



3.1. The suit property originally belonged to one Chithuri and the said Chithuri died leaving behind two sons and two daughters. The two sons are namely Veerachamy and Sokkaraman. The daughters are namely Mookkayi and Parvathy. It is also specifically pleaded that the Mookkayi died 60 years back and her first son namely Veerachamy also died 15 years back. Since the legal heirs of Chithuri have not divided the suit schedule properties by metes and bounds, it was stated that plaintiff and defendants parties are enjoyment of the properties jointly and that even the patta for the suit properties stand in the name of the plaintiff and defendants who are the legal heirs of Chithuri.

3.2. The suit was contested by the defendants 1 to 4. the appellants herein claiming exclusive title in respect of certain items of the suit properties by stating that those properties belonged to the father of the first defendant and other defendants by virtue of sale deeds obtained by him in his individual capacity and that they cannot be subject matter of partition among all the heirs of Chithuri. The defendants 1 to 4 also disputed the genealogy tree that was annexed to the plaint. It is the specific case of defendants that the said Chithuri had no son by name Sokkaraman. Hence, the plaintiff's right as the legal heirs of the original owners of Chithuri is specifically raised as an issue by the defendants.

3.3. The trial Court decreed the suit except the suit items 7, 9 and 12 .

3.4. One of the issues regarding the genealogy pleaded by the plaintiff in the plaint was found in favour of the plaintiff on the basis of evidence of PW2 and other evidence both oral and documentary. The trial Court relied upon the evidence of DW1 and the admission of DW1 to hold that the genealogy, particularly the fact that plaintiff's father Sokkaraman is one of the sons of Chithuri is proved.

3.5. Aggrieved by the findings of the trial Court, the appellants preferred the appeal in A.S.No.20 of 2011 before the Additional District Court, Ramanathapuram. The appellate Court though modified the decree of the trial Court with reference to some of the items, confirmed the findings of the trial Court in respect of items 1 to 4, 6, 8 and 10. Thus, except item Nos.5, 7, 9, 11, 12 and 13 the suit was decreed.

3.6. Aggrieved by the judgment and decree of the lower appellate Court, the present Second Appeal has been filed. The following substantial questions of law has been raised in the Memorandum of grounds:-

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"1. Is the Courts below are correct in placing the records cogent and convincing



reasons for decreeing the partition suit relating to Item Nos.1 to 4, 6, 8 and 10 without considering the documentary and oral evidence in this case?

2. Whether the Courts below are correct in decreeing the suit in favour of the first respondent/plaintiff in the absence of all the sharers of Chithoori and more particularly the legal heirs of Sooran @ Karuppan and ignored the principles of non joinder of any one of the parties as adumbrated in 2010-4 CTC-640.?

3. Whether the Courts below in decreeing the suit in relating to the Item Nos.1 to 4, 6, 8 and 10 if there was no appreciation of evidence on record, which resulted in perverse finding and adumbrated in 2010(3) MLJ 949?

4. Whether the courts below in decreeing the suit is correct relating to Item Nos.1 to 4, 6, 8 and 10 on the basis of the evidence of DW1 and ignored the principles that the plaintiff has to strengthen his case by placing oral and document evidence but not on the weakness, lacuna and loopholes done in this case?

5. Whether the Courts below in decreeing the suit is correct on the basis of the evidence of the DW1 and PW2 when there was no burden of proof on the side of the plaintiff to prove the genealogy set out in the plaint as laid down in 2009 3 CTC 493 and 1983 3 SCC 118?"

4. The questions of law 1, 3 and 4 are factual. The learned Counsel for the appellant raised two legal issues. The first point is that the suit for partition is bad for non-joinder of necessary parties. From the written statement filed by the appellant, it can be seen that this issue was raised in paragraph '14' of the written statement, wherein the defendants have pleaded that the suit is bad for non-joinder of the wife of the first defendant, who is also a co-owner. But before this Court he has not advanced his argument as to how wife of D1 is a co-owner. Now, before this Court, the learned Counsel for the appellants submits that the suit is for bad for non-joinder of some other persons namely the son of Karuppan through his second wife. The seventh defendant is the son of Karuppan as seen from the genealogy.

5. According to the learned Counsel for the appellants, the said Karuppan had two wives and the son of second wife is not made a party in the suit. Hence, the suit for bad for non-joinder of necessary parties. He himself admit that the appellants have not revised their plea but submit that this new plea is on the admission of one of the witness on the side of plaintiff. The status of the second wife and the legitimacy of children of the second wife have



to be seen. In such circumstances, the issue that is raised in this Court cannot be taken as a pure legal question and hence, this Court is not in a position to appreciate this point.

6. The second submission relates to genealogy, that was pleaded and accepted by the Courts below. The learned Counsel vehemently argued that the genealogy relied upon by the plaintiff is not proved in accordance with law. The defendants questioned the genealogy by stating that plaintiff's father Sokkaraman is not a son of Chithoori. This issue was elaborately discussed by Courts below and it is found that plaintiff's father Sokkaraman @ Raman is the son of Chithoori based on the evidence of PW.2.

7. It is a well settled proposition that mere production of genealogy tree is not sufficient and the plaintiff has to prove the genealogy by acceptable evidence. It is well settled that the plaintiff in the case of partition, has to prove his right by proving his relationship. Unless the relationship either admitted or proved, the Court may not be justified in presuming the case in favour of the plaintiff.

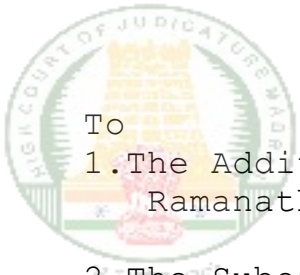
8. In this case, the trial Court has elaborately discussed the evidence and accepted the genealogy and the relationship between the parties as found in the plaint. In such circumstances, the findings of fact based on appreciation of evidence cannot be interfered with, unless it has been demonstrated that the findings of the Courts below are perverse and not supported by any evidence.

9. Though the learned Counsel for the appellants vehemently argued that the plaintiff's father - one Sokkaraman is not the son of Chithuri, the trial Court has accepted the case of the plaintiff after analysing the evidence on record particularly the admission of defendant that joint patta has been issued including the name of plaintiff. The trial Court has categorically given the findings that the evidence of DW.1 is not trustworthy and that he has not come forward to speak the truth. In these circumstances, this Court is not in a position to re-appreciate the evidence and come to a different conclusion.

10. For all the above reasons, this Second Appeal is dismissed as no other substantial questions of law are addressed. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

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To

1.The Additional District Judge,
Ramanathapuram.

2.The Subordinate Judge,
Paramakudi.

+1cc to M/s.V.Srinivasan, Advocate SR.No.73899

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