

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.3079 of 2013

and MP.No.1 2013

1.Selvam
2.Shanmugasundaram
3.Somasundaram
4.Kannan

... Appellants/Defendants 2 to 5

Vs.

1.Pappathi
2.Madheswaran
3.Shanmugavalli
4.Rameshwari

.. Respondents/Defendants 1&6, Plaintiffs

Prayer : Civil Miscellaneous Appeal preferred under Order 43 Rule 1(u) of CPC, praying to set aside the judgment and decree dated 11.03.2013 made in A.S.No.21 of 2011 on the file of the II Additional District Judge, Salem, remanding the judgment and decree dated 16.11.2010 made in O.S.No.159/2008 on the file of the Principal Subordinate Court, Salem.

For Appellants : M/s.Sarvabhauman Associates

For Respondents : Mr.V.P.K.Gowtham [for R1]
Ms.Zeenath Begum [for R3 & R4]

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the order of remand dated 11.03.2013 passed in A.S.No.21 of 2011 on the file of II Additional District Court, Salem.

2. The short facts involved in this case is that the respondents 3 and 4 as plaintiffs filed the suit in O.S.No.159 of 2008, before the Principal Subordinate Court, Salem, for partitioning two items of properties viz., Item No.I into twelve equal shares; and Item No.II into six equal shares and to allot 2/12 share in Item No.I and 2/6 shares in Item No.II to the respondents 3 and 4. The trial Court has partly decreed the suit, in that, as against plaintiff's claim of 2/12 share in the suit properties, it declared 2 upon 24 share in Item No.2 of the property in the Schedule-I comprised in Survey No.466, and 2/12 share in the Schedule-II, comprised in Survey No.528. Challenging the same, the appellants /defendants 2 to 5 have preferred an appeal and the

appellate court found one Palanisamy, who appeared to have some interest in the suit property have not been impleaded for effective adjudication of the dispute. Therefore, the first appellate court remanded the matter back to the trial court, with a direction to implead the said Palanisamy. This is challenged in this appeal.

3. The learned counsel for the first respondent made an initial submission that he has not been served with typed set of papers. However, when this Court perused the papers and on hearing the learned counsel appearing for appellants found that the appeal itself can be disposed of, as it does not require any elaborate arguments.

4. It is settled law that in a partition suit all those who have any interest in the subject matter of the suit, must be made as parties and shall be granted an opportunity to participate lest it would provoke situations for multiplicity of proceedings. It is not adequately explained that Palanisamy is not interested in the suit property. I therefore find that the approach and the finding of the first appellate court is in order.

5. I do not find any merit in this appeal and the same is dismissed with a direction to respondents 3 and 4/plaintiffs to file necessary application for impleading Palanisamy, and the trial Court shall dispose of the matter in terms of the order of remand within four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The II Additional District Judge
Salem.

2.The Principal Subordinate Judge
Salem.

+1cc to Mr.V.P.Karthikeyan, Advocate, S.R.No.50252

+1cc to Ms.Zeenath Begum, Advocate, S.R.No.49648

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.49593

CMA.No.3079 of 2013

KK(CO)

GN(05/09/2017)

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