



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 10.02.2017
Delivered on: 20.02.2017

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CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Appeal Suit (MD) No.193 of 2015
and
M.P.(MD) No.2 of 2015

K.Alagar : Appellant /3rd Respondent /3rd Defendant

-Vs-.

1.K.Chithiraiselvam
2.K.Adaikkan
3.K.Veeramahali @ Veeramani
4.Veerabathiran @ A.K.Gopalan
: 1 to 4 Respondents / Petitioners / Plaintiffs
5.K.Chidambaram
6.K.Vellaiyammal
7.M.Rajasekar
8.Minor M.Saroja
9.Minor M.Raja
(Respondents 8 and 9 are represented
by their brother and guardian M.Rajasekar)
10.C.Veerabathiran (Died)
11.V.Adaikkan : 5 to 11 Respondents / 1 and 2
Respondents & 4 to 8 Respondents / 1 & 2
Defendants & 4 to 8 Defendants
12.D.Rukumani
13.K.Jothi : Respondents

[Respondents 12 & 13 are added as the Legal Representatives of the deceased 10th respondent vide order dated 22.12.2016 made in C.M.P. (MD) No.12109 of 2016 in A.S.No.193 of 2015 by SSSRJ]

Prayer: Appeal Suit filed under Section 96 and Order 41, Rule 1 of Civil Procedure Code, against the fair and decretal order passed in I.A.No.354 of 2010 in O.S.No.74 of 2008 on the file of the I Additional District Court, Madurai, dated 30.10.2014.

For Appellant : Mr.C.Vakeeswaran
For Respondents : Mr.D.Senthil Kumar
1 to 3
For Respondents : Mr.A.Rajaram
7 to 9



For Respondent 4 : Appeared as party in person
Other respondent : No appearance

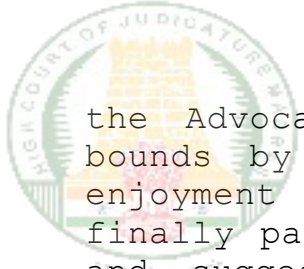
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JUDGMENT

The above appeal has been preferred by the third defendant in the suit as against the final decree in I.A.No.354 of 2010 passed in O.S.No.74 of 2008 on the file of the First Additional District Court, Madurai. The respondents 1 to 4 herein filed a suit in O.S.No.74 of 2008 on the file of the First Additional District Court, Madurai, for partition of their 1/4th share in the undivided ½ share of Late Karuppannan @ Pambaiyan in the suit 'A' schedule property and for partition of ½ share in the properties described in 'B' schedule in the plaint and for permanent injunction restraining the defendants from cutting the standing trees in the suit properties.

2.The appellant herein who is the third defendant in the suit contested the suit mainly on the ground that the second suit for partition is not maintainable in view of the earlier suit in O.S.No.104 of 2005 wherein a preliminary decree was passed. He also claimed exclusive right in respect of few items. Since the earlier suit was in respect of the joint family properties of plaintiffs' father, all the contentions of appellant were rejected and a preliminary decree was passed on 29.03.2010. The appellant filed an appeal in A.S.(MD) No.204 of 2011 before this Court and by judgment and decree dated 22.11.2011, this Court with certain directions disposed of the appeal confirming the preliminary decree that was passed in the suit. Thus, the preliminary decree in O.S.No.74 of 2008 has become final.

3.After the disposal of the suit, the respondents 1 to 4 herein filed an application in I.A.No.354 of 2010 in O.S.No.74 of 2008 to appoint an Advocate Commissioner and to pass a final decree on the basis of the preliminary decree in O.S.No.74 of 2008. It is also pertinent to mention that earlier, a suit for partition was filed by the 10th respondent herein as against the father of third defendant and the same was also decreed. There was also preliminary decree for partition in the said suit, however, it was in relation to the properties of the joint family of father of plaintiff one Karuppannan @ Pambaiyan and his brothers. Another application for passing of final decree was also filed by the plaintiff in the suit in O.S.No.492 of 1976 (which was transferred from the District Munsif Court, Madurai to the First Additional District Judge and re-numbered as O.S.No.104 of 2005). I.A.No.57 of 2012 is the application filed by the plaintiffs in the suit in O.S.No.104 of 2005 for passing a final decree. After appointment of an Advocate Commissioner, a detailed report by the Advocate Commissioner, was filed. After preparing the valuation of each property and separate plan for each item,



the Advocate Commissioner has suggested division by metes and bounds by taking into consideration the physical features and enjoyment of the parties and other aspects. The lower Court has finally passed a final decree accepting the Commissioner's report and suggestions after giving opportunity to all the parties concerned including the appellant before this Court. The appellant herein raised some objections with regard to the valuation. Apart from commenting the manner of division suggested by the Advocate Commissioner, the appellant contested the application by claiming exclusive right with regard to certain items despite the fact that his contentions were considered at the time when the suit for partition was disposed of by passing a preliminary decree for partition. The same contentions were once again raised by the appellant on the basis of few registered sale deeds in his favour. Since the contentions of the appellant had already been rejected by the Court in the earlier round of litigation, the lower Court after satisfying with the Commissioner's report as to the valuation and mode of allotment passed a final decree by a judgment and decree dated 30.10.2014. It is against the final decree, the present appeal has been preferred by the third defendant.

4.The main grounds on which the above appeal is argued by the learned counsel for the appellant relates to the validity of the preliminary decree in respect of certain items of suit properties. Apart from the submissions of the learned counsel attacking the preliminary decree, the learned counsel submitted that the lower Court has accepted the valuation of the properties without considering the objections of the appellant and that the suit properties were allotted by arithmetical calculation without actually showing the boundaries with reference to measurements.

5.Since the learned counsel for the appellant made few submissions on hypothetical basis, this Court, wanted the appellant to value of the property, according to his wisdom so that the other sharers may be directed to exercise their option by selecting the properties to their share on the basis of the valuation done by the appellant. Surprisingly, the learned counsel for the appellant reported that his client is not in a position to value the properties for various reasons. Then the learned counsel for the appellant was requested to demonstrate any inequality in the partition. However, the learned counsel for the appellant was not in a position to place before this Court any peculiar fact or circumstance which would lead to inequality or inconvenience to the sharers in the final decree. The contesting respondents namely the plaintiff in the suit disputed the contentions of the learned counsel for the appellant and submitted that the appellant has derived more benefits by the manner of division suggested by the lower Court and adopted in the final decree. In view of the rival submissions and the fact that the learned counsel for the appellant is unable to substantiate his



contentions, this Court find that this appeal is only aimed at protracting the matter so that the properties which are in the enjoyment of the appellant cannot be reached by other sharers. It is also contended by the other sharers that almost all the properties which are the subject matter of the suit are only in the enjoyment of the appellant for a long period. In such circumstances, I find no merit in the above appeal.

6.The suit for partition was filed in the year 2008. As a matter of fact, the suit for partition in O.S.No.74 of 2008 is not only in respect of the properties of the father of the plaintiff but also in respect of the joint family properties consisting of members belonging to the other descendants of plaintiffs' grand father. From the records, it can be seen that the earlier suit filed in O.S.No.482 of 1976 was decreed way back in 1982 and the partition by metes and bounds could not be proceeded because of the pendency of appeal in A.S.Nos.356 of 1983 and 696 of 1999 before this Court and further appeal in L.P.A. Nos.61 and 62 of 2000. It is also alleged by the contesting respondents that the appellant committed the murder of his own father only for the sake of grabbing properties and that though he was acquitted, it is not a Honourable acquittal. There are other circumstances, in this case, to indicate that the appellant is protracting the proceedings only on the grounds which were negatived by the Court in the previous round of litigation. This Court find no merits in this appeal. Hence, this appeal is dismissed with costs of the respondents 1 to 4 herein. Consequently, the connected miscellaneous petition is closed.

MEMORANDUM OF CASES

Respondent (	) Costs	Rs.	P.
Stamp for Vakalatnama	...	...	10. 00
Advocate's Fee	...	...	
Translation <u>Printing</u> charges			
Typing	...	...	Nil
To be paid by the Appellant		-----	
to the respondents(1 to 3)		10. 00	

Sd/-
Assistant Registrar(Co)

/True copy/



To

1.The First Additional District Judge,
Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.Vakeeswaran, Advocate SR.No.9599/17

+3cc to Mr.Veerabathiran @ A.K.Gopalan, Party in person Sr.No.9247

+2cc to Mr.R.Karunanidhi, Advocate Sr.No.9279/17

srm

sm:skn:17/03/2017:5P/9C

Judgment made in
Appeal Suit (MD) No.193 of 2015
20.02.2017