



WEB COPY

Cross Objection (MD) No.14 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Cross Objection (MD) No.14 of 2017

in

S.A. (MD).No.282 of 2014

1.Maria Josphine

2.John Mary(Died)

...Appellants in Cross Appeal
/ Respondents 1 & 2

(Memo in USR No.14667 dated 09.11.2020 is recorded as cross objection insofar as the second appellant is concerned is not pressed vide Court order dated 09.11.2020 made in Cros.Obj.(MD). No.14 of 2017 in S.A.(MD).No.282 of 2014

Vs.

1.Maria John Patros

2.Maria Alexander

... Respondents 1 & 2 in Cross Appeal
/ Appellants

3.Kurusu Antony (Died)

...3rd Respondent in Cross Appeal /
3rd Respondent

4.Mary Vasantha

5.Jessy Flora

... Respondents 4 and 5 in Cross Appeal /
Respondents 4 & 5

6.George Edwin

...Respondent

(Respondent No.6 is brought on record as legal representatives of the deceased third respondent vide order of this Court dated 03.10.2019 made in C.M.P.(MD).Nos.2058 to 2060 of 2018 in Cros.Obj.(MD).No.14 of 2017)

PRAYER: Cross Objection filed under Section 100 r/w order 41 Rule 225 order 42 of CPC against the judgment and decree, dated 31.01.2011 passed by the learned Principal Subordinate Judge, Nagercoil in A.S.No.14 of 2010 partly reversing the judgment and decree of I Additional District Munsif, Nagercoil, dated 17.12.2009 in O.S.No.232 of 2005.

For Appellant No.1 ... Mr.V.Meenakshi Sundaram
for Mr.R.Murugan

Appellant No.2 ... Died

For R-1, R-2, R-4

R-5 ... No Appearance

For R-3 ... Died

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



JUDGMENT

This Cross Objection Appeal has been filed as against the judgment and decree, dated 31.01.2011 passed by the learned Principal Subordinate Judge, Nagercoil made in A.S.No.14 of 2010, partly reversing the judgment and decree of the learned I Additional District Munsif, Nagercoil, dated 17.12.2009 made in O.S.No.232 of 2005.

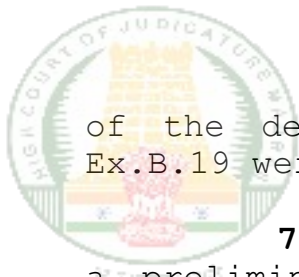
2. Originally, the suit has been filed by the plaintiffs claiming 2/5th share in the suit schedule property. The first schedule property comprised about 39.5 cents and the second schedule property comprised about 1 acre 3 cents. The plaintiffs and the defendants are the children of one Vargheeseammal. The suit property originally owned by the said Vargheeseammal. The father of the plaintiffs died on 07.03.1978 and their mother, namely, Vargheeseammal died on 04.03.1981. After the death of their mother, the plaintiffs and the defendants are entitled to the suit properties. Despite the request made by the plaintiffs for the partition, the first defendant was not amenable there. Therefore, the defendant Nos.2 and 3 had filed a suit in O.S.No.29 of 1998. Later, the suit was settled out of the Court between the defendant Nos.2 and 3 without knowledge of the plaintiffs. Hence, the suit for partition.

3. The defendants took a stand that there was an oral family arrangement carried out between the plaintiffs and the defendants in sharing the properties. The defendants were allotted to the immovable properties and the plaintiffs were allotted to the movable properties. A memo of settlement in O.S.No.337 of 2004 was also accepted by the plaintiffs' counsel.

4. The first defendant also denied the plaintiffs' claim and the first defendant took a stand that the suit is barred by principles *res judicata*. The fourth defendant has filed a written statement to the effect that the first defendant has executed a gift deed on 21.08.1986 in favour of the fourth and fifth defendants to an extent of 34 cents in the second schedule property. All the revenue records stood in the name of the fourth and fifth defendants and the plaintiffs and the defendant Nos.2 and 3 are also having knowledge about the execution of gift deed in favour of fourth and fifth defendants. The fourth and fifth defendants are in possession of the property. The plaintiffs are also aware of the above documents. Hence there is estoppel in questioning the same.

5. Based on the above materials, the trial Court has framed as many as two issues.

6. During trial, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.3 were marked. On the side



of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.19 were marked. Ex.C.1 was marked as Court document.

7. The trial Court granted a decree in entirety and passed a preliminary decree. As against which, the second and third defendants have filed an appeal in A.S.No.10 of 2010 before the Principal Sub Court, Nagercoil and the first defendant has also filed an another Appeal in A.S.No.14 of 2010 before the Principal Sub-Court, Nagercoil. The appeal filed by the defendant Nos.2 and 3 was dismissed, whereas, the appeal filed by the first defendant was allowed in part in respect of Ex.B.1 and Ex.B.2/ Settlement Deed relating to the Second Schedule property. As against the above judgments, the second and third defendants have preferred an appeal in S.A.(MD).No.282 of 2014 against the dis-allowed portion. Similarly, the defendant Nos.2 and 3 preferred an another appeal in S.A.(MD).No.916 of 2011 as against the dismissal of their appeal viz., A.S.No.10 of 2010. The plaintiffs have filed a Cross Objection in S.A.(MD).No.282 of 2011 challenging the judgment of the First Appellate Court in respect of the portion of the Second Schedule Property,

8. When the matter is pending before this Court, the above said appeals filed by the defendant Nos.2 and 3 were dismissed for default on 21.11.2019 and the Cross Objection Appeal remain pending.

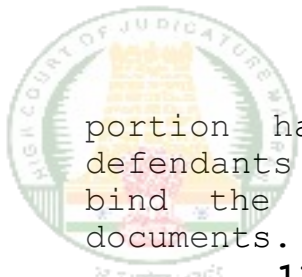
9. The following substantial question of law has been framed by this Court in the Cross Objection.

"Is it necessary to seek a declaration to cancel the document, when the parties, who have right or interest in the properties, are not party to the documents?"

10.. A memo was filed before this Court. The second appellant in the Cross Objection also died on 03.02.2020. The legal heirs of the second appellant are not proceeded with the litigation pending before this Court. Only the first plaintiff / cross objector alone is contesting the appeal and the said memo is taken on record.

11. Accordingly, the Cross Objection is dismissed as abated as against the second cross objector.

12. In respect of the merits of the other aspects, it is contended by the learned counsel appearing for the first appellant / cross objector that admittedly the properties were owned by the mother of the plaintiffs and the defendants. Though oral partition has been pleaded, it has not established. The first Appellate Court has relied upon the documents viz., Ex.B1 and Ex.B.2 and disallowed the portion in respect of the extent covered under Ex.B.1 and Ex.B.2. As contended, the properties are not partitioned. No



portion has been settled in favour of the fourth and fifth defendants by the first defendant. Hence, such settlement will not bind the cross objector, since they are not a party to the documents.

13. In the light of the above submissions, as rightly contended by the learned counsel for the cross objector that the properties originally owned by the mother of the plaintiffs. After the death of the legal heirs, though oral partition has not been established, there was a settlement deed. The defendant Nos.2 and 3 took a stand that they have settled the matter in a suit already instituted by the parties. It is to be noted that originally the suit has been filed by the defendant Nos.2 and 3 for claiming partition and they filed a memo themselves.

14. In view of the above, the matter has been settled out of the Court in which the plaintiffs are not parties and it has been considered by the trial Court. Therefore, mere some arrangements by the defendant Nos.2 and 3 will not bind the plaintiffs. The settlement of the property by one of the co-sharer with a specific portion will not bind the plaintiffs. Such settlement is also not possible in common properties. Such view of the matter, the settlement deeds viz., Ex.B.1 and Ex.B.2 are not binding on the plaintiffs. It is not the case of the defendants or settlees that the plaintiffs are aware of the settlement from the very beginning.

15. It is seen from the evidence viz., D.W.1, D.W.2 and D.W.3 that the plaintiffs are not aware of the settlement and the settlement was executed only by the first defendant claiming to be the owner of the property. Such view of the matter, the settlement deeds consequently will not bind the plaintiffs. Accordingly the First Appellate Court excluding the right of the plaintiffs to claim a share in the property which covered under the Ex.B.1 and Ex.B.2 is not proper appreciation of law and evidence.

16. Accordingly, the first plaintiff / cross objector is entitled to 1/5th share in respect of the extent covered under the documents viz., Ex.B.1 and Ex.B.2 namely 34 cents in the second schedule property. In respect of the other aspects, the judgment and decree of the Courts below is confirmed and the Cross Objection is dismissed as abated as against the second Cross Objector.

17. In the result, the Cross Objection stands disposed of.
No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Cross Objection (MD) No.14 of 2017

1.The Principal Subordinate Judge, Nagercoil.

2.The I Additional District Munsif, Nagercoil,

2. The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MURUGAN, Advocate (SR-6100[F] dated 19/02/2021)

Judgment made in

Cross Objection (MD) No.14 of 2017

in

S.A. (MD) .No.282 of 2014

19.02.2021

VB (07.04.2021) 5P 6C