

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM  
and  
THE HON'BLE Mr.JUSTICE G.JAYACHANDRAN

A.S.No.313 of 2017  
and C.M.P.No.11952 of 2017

1.E.Annamalai  
2.E.Raja

... Appellants/Plaintiffs

Vs

1.E.Indirani Ammal  
2.Ravichandran  
3.P.Rubi Manorani  
4.M.Augustin  
Rep. by Power Agent  
M.Sunder Singh

... Respondents/Defendants

First Appeal preferred under Section 96 of the Code of Civil Procedure read with under Order 41 Rule 1 of the Code of Civil Procedure, against to set aside the judgment and decree dated 24.04.2017 made in O.S.No.103 of 2012 by the First Additional District Judge, Cuddalore.

For Appellants : Mr.R.Gururaj  
For Respondents : No appearance

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Appeal Suit has been directed against the judgment and decree dated 24.04.2017, passed in O.S.No.103 of 2012, by the First Additional District Court, Cuddalore.

2.The appellants herein, as plaintiffs, have instituted O.S.No.103 of 2012 on the file of the trial Court, praying to pass a preliminary decree of partition in respect of their shares, wherein, the present respondents have been arrayed as defendants.

3.It is averred in the plaint that the plaintiffs and second defendant are the sons of one Ellappa Chettiar. The first defendant is his wife. The remaining defendants are subsequent purchasers. The suit properties have been jointly purchased by the said Ellappa Chettiar and second defendant by their joint exertion. The said Ellappa Chettiar has passed away in the year 2000, leaving behind him, the present plaintiffs and defendants 1 and 2 as his legal heirs. The defendants 1 and 2 have sold the suit properties in favour of defendants 3 and 4. Under such circumstances, the present suit has been instituted for the relief of partition.

4.In the written statement filed on the side of the defendants, it is averred to the effect that except relationship, the remaining averments made in the plaint are not correct. It is false to say that the plaintiffs and defendants 1 and 2 are equally entitled to get 1/4<sup>th</sup> share in the suit properties. The defendants 1 and 2 have already sold the suit properties in favour of defendants 3 and 4. The plaintiffs are not having any partible interest in the suit properties. There is no merit in the suit and the same deserves to be dismissed.

5.In the written statement filed on the side of the defendants 3 and 4, it is averred to the effect that the defendants 3 and 4 are the bonafide purchasers for value. Since the defendants 3 and 4 have purchased the suit properties for valuable consideration, the suit properties are not liable to partition and there is no merit in the suit and the same deserves to be dismissed.

6.On the basis of the divergent pleadings raised on either side, the trial Court, has framed necessary issues and after analysing both oral and documentary evidence, dismissed the suit. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the plaintiffs, as appellants.

7.The learned counsel appearing for the appellants/ plaintiffs has contended to the effect that the suit properties have been jointly purchased by Ellappa Chettiar and second defendant by using their joint exertion. Ellappa Chettiar has passed away in the year 2000, leaving behind him, the present plaintiffs and defendants 1 and 2 and also four daughters. Under the said circumstances, the present suit has been instituted for getting the relief sought therein. But, the trial Court without considering the nature of the averments made in the complaint and also evidence adduced on the side of the plaintiff, has erroneously dismissed the suit and therefore, the judgment and decree passed by the trial Court are liable to be set aside and the suit is liable to be decreed as prayed for.

8.The learned counsel appearing for the contesting respondents is not present. Under such circumstances, the present Appeal Suit is liable to be disposed of on the basis of available materials on record.

9.It is seen from the records that the suit properties have been jointly purchased by Ellappa Chettiar and the second defendant by virtue of Sale Deed dated 09.08.1991 and a registered copy of the same has been marked as Ex.A1.

10.The present suit has been instituted by the plaintiffs on the ground that they are the legal heirs of Ellappa Chettiar. It is an admitted fact that Ellappa Chettiar has passed away in the year 2000, leaving behind him, the present plaintiffs, defendants 1 and 2 and also four daughters.

11.Considering the fact that Ellappa Chettiar has passed away in the year 2000, leaving behind him, the present plaintiffs, defendants 1 and 2 and four daughters as his legal heirs and also considering that the present suit has been instituted for the relief of partition, all the sharers/legal heirs of Ellappa Chettiar must be impleaded in the present suit.

12.The trial Court has dismissed the present suit mainly on the ground of non-joinder of necessary parties. Considering the fact that apart from plaintiffs and defendants 1 and 2, the deceased Ellappa Chetty has left four daughters, they are also necessary parties for deciding the real issue involved in the present suit. Since they have not been impleaded, the trial Court has dismissed the suit.

13.Since the four daughters of the deceased Ellappa Chettiar are necessary parties to the present suit and also for giving a quietus to the charges, this Court is of the view to set aside the judgment and decree passed in O.S.No.103 of 2012 and the suit is liable to be remitted.

In fine, this Appeal Suit is allowed without costs. The judgment and decree passed in O.S.No.103 of 2012 is remitted to the file of the trial Court. The appellant/plaintiffs are directed to implead the daughters of the deceased Ellappa Chettiar. The trial Court is directed to dispose of O.S.No.103 of 2012 before the end of June 2018 and report the same to the Registry without fail. The court fee paid on the appeal

memorandum is ordered to be refunded to the appellants/plaintiffs forthwith.

Connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

To

1. The I Additional District Judge,  
Cuddalore.
2. The Section Officer,  
VR Section, High Court,  
Madras (2 Copies)
3. The Section Officer,  
Judicial Section,  
High Court, Madras

+1cc to Mr.R.Gururaj, Advocate, S.R.No.6406

A.S.No.313 of 2017  
and  
C.M.P.No.11952 of 2017

NMI (CO)  
CS/23/03/18

सत्यमेव जयते

WEB COPY