

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.10.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.853 of 2011

Sriramulu Mandadi ... Appellant/Respondent/Defendant

Vs.

1. Major Kannan

(R1 declared as major as per Order of
this Court dated 24.11.2017 made in
C.M.P.Nos.20423 and 20424 of 2017)

2. Suguna ... Respondents/Appellants/Plaintiffs

3. Anga Mandadi (died) ... Respondent/Respondent/Defendant

4. Rathinamma ... Respondent

(R4 brought on record as legal heir of the
deceased R3 as per order of this Court
made in M.P.No.3/2012 dated 06.03.2018)

Civil Miscellaneous Appeal is filed under Order 43 Rule 1(V)
of the Civil Procedure Code, to set aside the Judgment and
Decree dated 25.11.2010 made in A.S.No.9/06 on the file of the
Additional District Court/Fast Track Court - II, Ranipet,
Vellore District in reversing the judgment and decree dated
25/02/2004 made in O.S.106/1998 on the file of the District
Munsif Court, Sholinghur.

For Appellant : Mr.A.Gouthaman

For R2 : Mr.G.Jeremiah

R3 - Died

R4 - Served

No Appearance

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Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 25.11.2010 made in A.S.No.9/06 on the file of the Additional District Court/Fast Track Court - II, Ranipet, in revising the Judgment and Decree dated 25.02.2004 made in O.S.No.106 of 1998 on the file of the District Munsif Court, Sholinghur.

2. The brief facts of the case is that the respondents 1 and 2, namely, Kannan and Suguna, who are the son and daughter of the 3rd respondent and were living together under one roof. The 3rd respondent (deceased), along with his brother and sister, namely, Sriramulu Mandadi and Indirani ammal, had partitioned their family properties into three shares, by which, the 'B' schedule properties in the partition deed dated 13.03.1980 fell to the share of the 3rd respondent (deceased). However, the 3rd respondent and his brother, without dividing the properties, had been enjoying their respective shares without any hindrance.

3. After a lapse of seven years, the brother of the 3rd respondent had raised a foundation in the said property remaining undivided since 1980. When the respondents 1 and 2 had questioned him for the same, who were informed that he got a deed of relinquishment from their father, the 3rd respondent herein, in 1989 itself, and therefore, he is at liberty to raise the foundation in the property. Thereafter, on verification, the respondents 1 and 2 came to know that their father had given the property in question to his brother under a deed of relinquishment on the alleged date. However, as the respondents 1 and 2 are entitled for a share of the property, they filed a suit in O.S.No.106 of 1998 on the file of District Munsif Court, Sholinghur, seeking for the directions to the appellant (i) to divide the landed properties into three equal shares and allot one such share to them; (ii) to divide the 2nd item of the properties into six equal shares and allot one such share to them; (iii) to put them in possession of the properties allotted to them; (iv) In default permit them to get the properties divided by metes and bounds by getting an Advocate Commissioner appointed for the said purpose and take delivery of the properties through the process of this Court; (v) to restrain the appellant, his men, agents, representatives and the persons acting for him and on his behalf from in any way interfering with or proceeding further with the construction work in the suit schedule site by way of a permanent injunction and (vi) to pay the costs of the suit to them.

4. The Lower Court, after perusing the materials available on record, by its Judgment dated 25.02.2004, dismissed the suit filed by the respondents 1 and 2, as the construction has already been over in the said property and the respondents 1 and 2 failed to implead the name of Minor Venkatesan who was born to the second wife of their father/3rd respondent after filing the suit.

5. Challenging the order dated 25.02.2004, the respondents 1 and 2 filed an appeal suit in A.S.No.9/06 on the file of the Additional District Court/Fast Track Court II, Ranipet. Since the Appellate Court has found errors in the order passed by the Trial Court, by its Judgment dated 25.11.2010, has set aside the appeal suit and remanded the matter back to the Trial Court, directing the Trial Court to allow the parties to implead Minor Venkatesan as Plaintiff No.3 and to frame specific issues on Exhibit B2's validity/enforceability as well as about Plaintiff No.1's and Plaintiff No.3's legitimacy and their right to claim a share in D1's ancestral property.

6. The learned counsel for the appellant would submit the Appellate Court has wrongly given a finding regarding the validity of the document, even though, it has found that the document is not valid.

7. On perusing the materials available on record, this Court is of the opinion that even the Appellate Court has come to the conclusion that it is the matter has to be decided in this case, the person, namely, Minor Venkatesan, son of the second wife of the 3rd respondent, has to be impleaded as a party to the suit, and therefore, the Appellate Court has rightly remanded the matter back to the Lower Court, for impleading the said person and deciding the issues afresh.

8. Hence, under these circumstances, the matter is remanded to the District Munsif Court, Sholinghur, for deciding the matter afresh based on the evidence given as well as new pleadings and amendment petition to be filed by the parties. Accordingly, the parties are directed to file their pleadings and the amendment petition within a period of one month from the date of receipt of a copy of this order. The District Munsif is directed to decide the framing issues and complete the trial within a period of 4 months thereafter. The parties are also directed to cooperate with the Court in the day to day proceedings, without drag on the matter at any point of time.

9. In view of the above, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the interim stay already granted by this Court in M.P.No.1 of 2011 is vacated.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District Judge,
Additional District Court/Fast Track Court - II,
Ranipet, Vellore.
2. The District Munsif,
District Munsif Court,
Sholinghur.

Copy to:

The Section Officer,
V.R Section,
High Court, Madras

+lcc to Mr.A.Gouthaman, Advocate sr.no.68081
+lcc to Mr.G.Jeremiah, Advocate sr.no.68333

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