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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :14.09.2018

PRONOUNCED ON:22.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.529 of 2015

1.Sivaraj

2.Manickam ... Appellants/Respondent/Plaintiffs

Vs.

1.Velayudham

2.Chittibabu

3.Ramesh ... Respondents/ Appellants/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 27.02.2015 made in A.S.No.40 of 2014 on the file of the Subordinate Judge, Vellore, reversing the judgment and decree dated 25.03.2014 made in O.S.No.787 of 2009 on the file of the District Munsif Court, Katpadi.

For Appellants : Mr.C.Prabhakaran

For Respondents : Mr.D.Rajagopal

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 27.02.2015 passed in A.S.No.40 of 2014 on the file of the Subordinate Court, Vellore, reversing the judgment and decree dated 25.03.2014 passed in O.S.No.787 of 2009 on the file of the District Munsif Court, Katpaadi.

2. The Second Appeal has been admitted on the following substantial questions of law.

(a) Whether the lower appellate courts right in dismissing the suit for non-joinder of necessary parties specifically when



the suit is filed against the person who denies common rights and enjoyment in the suit property of the plaintiffs and others are not denied?

(b) Whether the lower appellate Court right in dismissing the suit by way of allowing appeal on the ground of under valuation and deficit court fee though the suit was valued under section 25(b) of the Tamil Nadu Court Fees and Valuation Act 1955?

(c) Whether the lower appellate Court justified in dismissing the suit without even granting time for payment of deficit court fee if it found that there was a deficit court fee by under valuing the suit?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The plaintiffs/Appellants had laid the suit against the defendants/respondents for declaring the common rights, title and interest of the plaintiffs in the plaint schedule property and for the consequential relief of permanent injunction. The suit property has been described as measuring 8 cents in survey No.332 consisting of well and trees and it is the case of the appellants that, originally 21 cents out of 27 cents in suit survey No.332 and 38 cents in survey No.331 were purchased by six persons under the sale deed dated 28.06.1916 and thereafter, the purchasers and their legal heirs had divided the abovesaid extents to their convenience and enjoying separate shares as allotted to each sharer and it is stated that they had left the suit property undivided, so as to be enjoyed in common and accordingly, all the sharers/parties to the abovesaid sale deed or their legal representatives would be entitled to the suit property and it is stated that accordingly, the first plaintiff being the grandson of Periyappa Naicker, who is one of the purchasers and the second plaintiff being the grandson of Balammal, who is also one of the purchasers and accordingly, it is stated that they are also entitled to claim title in the suit property left to be enjoyed in common by all the purchasers and their legal representatives and inasmuch as the defendants deriving title through one Ellammal, one of the original purchasers are not entitled to disturb their possession and enjoyment of the plaint schedule property and on the other hand, inasmuch as the defendants without any authority had attempted to interfere with their possession and enjoyment, it is stated that they had been necessitated to lay the suit for appropriate reliefs.



5. The defendants inter alia have taken the defence that they have exclusive right to the plaint schedule property as set out in the written statement and also put forth the defence that the suit property had not been properly valued by the plaintiffs and on that score alone, the suit is liable to be dismissed and furthermore, the defendants have also taken the plea that the suit is bad for non-joinder of proper and necessary parties as the other stake holders of the suit property had not been impleaded and accordingly prayed for the dismissal of the plaintiffs' suit.

6. Based on the materials placed on record, the trial court had accepted the plaintiffs' case and granted the reliefs as prayed for. Per contra, the first appellate court, on two counts rejected the plaintiffs' case. Firstly, the first appellate court noting that, the plaintiffs had laid the suit seeking the declaration in respect of their common rights in the suit property and accordingly held that the plaintiffs should have impleaded all the owners of the suit property as parties to the suit and therefore the suit laid by the plaintiffs is bad for non-joinder of proper and necessary parties. Furthermore, the first appellate court has also noted that the plaintiffs had not properly valued the subject matter as admitted by them, accordingly, on that footing also held that the plaintiffs' suit is bad in law.

7. Materials placed on record go to show that the suit property is part and parcel of the property comprised in the sale deed dated 28.06.1916 marked as Ex.A1. Even as per the case of the plaintiffs, the suit property has been left in common to be enjoyed by all the purchasers and their legal heirs associated with Ex.A1 sale transaction. In such view of the matter, when the plaintiffs have chosen to lay the suit seeking declaration of their common rights, title and interest in respect of the plaint schedule property, as rightly determined by the first appellate court, the plaintiffs should have endeavoured to implead all the stakeholders/ owners of the suit property namely the other purchasers of Ex.A1 sale transaction or their legal representatives and in such view of the matter, without impleading all the stakeholders/owners of the suit property, it is seen that the first appellate court is justified in rejecting the plaintiffs' suit as bad for non-joinder of proper and necessary parties. The trial court has brushed aside the abovesaid defence projected by the defendants on the footing that the plaintiffs are not necessitated to include the other owners of the suit property and it is the prerogative of the plaintiffs to sue against the persons, who are denying their rights and in such view of the matter, all the joint owners of the suit property are not required to be added by the plaintiffs as parties to the suit. However, when it is noted, as above



seen, the plaintiffs have sought for the relief of declaration in respect of their common rights, title and interest in respect of the suit property and when admittedly there are other joint owners of the suit property and when it is not known as to what is their defence to the alleged claim of the plaintiffs' common rights, title and interest in the suit property, in such view of the matter, when admittedly, even as per the version of the plaintiffs, there are the other joint owners of the suit property, for seeking the declaration of common rights, title and interest in respect of the suit property, as determined by the first appellate court, the plaintiff should have impleaded them as parties to the suit and on the other hand, the plaintiffs having failed to implead them and when it is noted that the other joint owners of the suit property are proper and necessary parties, the alleged plaintiffs' common rights, title and interest in respect of the suit property cannot be declared without inviting their objections to the same and in such view of the matter, no interference is called for in the rejection of the plaintiffs' suit by the first appellate court on that score. Though, it is contended by the plaintiffs' counsel that the other joint owners of the suit property had not denied their common rights and enjoyment of the suit property and it is only the defendants, who had resisted their right and enjoyment in respect of the suit property, however, with reference to the same, the abovesaid claim of the plaintiffs, when there is no material placed and the other joint owners had not been examined in support of the abovesaid claim of the plaintiffs and as abovenoted, when the abovesaid joint owners had not been impleaded as parties to the suit, either as the plaintiffs or the defendants, in my considered opinion, the declaration sought for by the plaintiffs as regards the common rights, title and interest in respect of the suit property cannot be granted in favour of the plaintiffs and therefore the suit laid by the plaintiffs is found to be bad for non-joinder of the other joint owners of the suit property. The first substantial question of law formulated in the Second Appeal is accordingly answered against the plaintiffs.

8.The first appellate court has also held that the plaintiffs have not properly valued the suit property. However, as rightly put forth, the abovesaid plea should have been determined by the trial court at or before the settlement of the issues involved in the matter or atleast before the trial had commenced. On the other hand, it is seen that the trial court had not endeavored to determine the said issue. It is only the first appellate court who had taken up the said issue for consideration. However, considering the fact that the plaintiffs' suit is found to be bad for non-joinder of other joint owners of the suit properties, in such view of the matter, considering the principles of law outlined in the decision



reported in 2012 (5) CTC 705 [S.N.S.Sukumaran Vs. C.Thangamuthu] as regards the determination of the payment of correct court fees, the same having not been followed as per the principles outlined therein and accordingly, even assuming for the sake of arguments, the plaintiffs had not properly valued the court fees, the court should have endeavored to provide an opportunity to the plaintiffs to pay the necessary court fees and on the other hand, it is seen that the first appellate court is found to have determined that the plaintiffs had not valued the subject matter properly. However, as rightly put forth, the first appellate court had not rejected the plaintiffs' suit on that score alone. The first appellate court is found to have dismissed the suit merely on the determination that the plaintiffs' suit is bad for non-joinder of proper and necessary parties. Such being the position, it is seen that, in my considered opinion, at this juncture, the second substantial question of law formulated in the second appeal on the abovesaid point is not required to be answered. Therefore, the question of granting further time to the plaintiffs to pay the deficit court fees does not arise for consideration in the Second Appeal. On the other hand, as abovenoted, the plaintiffs are found to have not impleaded all the joint owners of the suit property, despite the defence put forth by the defendants with reference to the same. In such view of the matter, the first appellate court is justified in dismissing the plaintiffs' suit for non-joinder of proper and necessary parties. The principles of law outlined in the decisions relied upon by the plaintiffs' counsel reported in CDJ 2018 MHC 1733 [C.E.Sulochana (Deceased) and others Vs. C.E.Sathyanarayan] and 2018 (6) MLJ 23 LNIND 2018 MAD 2782 [Periannan Vs. Kumaran and others], are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

9. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge, Vellore.



2.The District Munsif, Katpadi .

+2cc to Mr.C.Prabakaran, Advocate SR.No.71831

+1cc to Mr.D.Rajagopal, Advocate SR.No.71778

S.A.No.529 of 2015

GJ II (CO)

GMV (22/11/2018)