

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.299 of 2016
and
C.M.P.No.101 of 2019

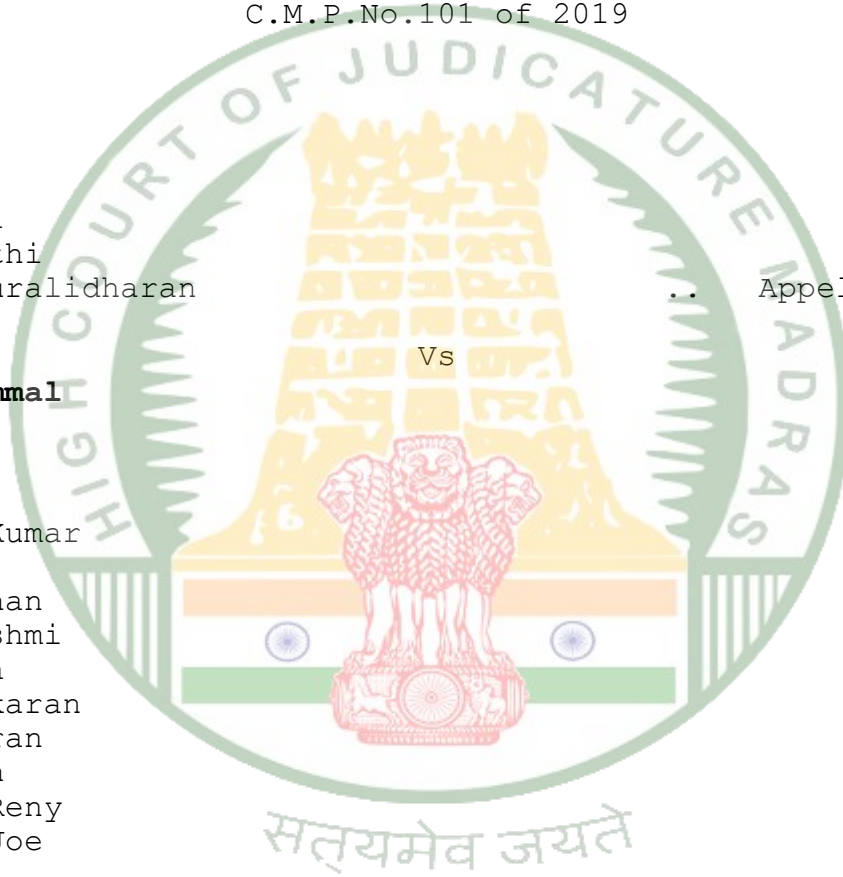
1.Kantha
2.Kumudha
3.Perumal
4.Elumalai
5.Saraswathi
6.Ebher Muralidharan

Appellants

Vs

***1.Annalammal**

2.Kiresha
3.Ruban
4.Ranjit Kumar
5.Jebakar
6.Loganathan
7.Jayalakshmi
8.Vasantha
9.Dhanasekaran
10.Manoharan
11.Viviyan
12.Minor Reny
13.Minor Joe
14.Ananthi
15.Ramachandran
16.Kanakaraj
17.Chitra
18.Subhatra
19.Lakshmi
20.Munusamy
21.Santhalingam
22.Indira
23.Arumugam
24.Srinivasan
25.Lalitha
P.Dhanapushanam (died)



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Appeal preferred under Section 96 C.P.C. against the judgment and decree dated 03.09.2015 made in O.S.No.82 of 2014 on the file of the District Court No.II, Kancheepuram.

For Appellants .. Mr.K.Prem Kumar

For Respondents.. No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the judgment and decree dated 03.09.2015 made in O.S.No.82 of 2014 on the file of the District Court No.II, Kancheepuram.

2.Heard the learned counsel appearing for the appellants. Despite service of notice and the names of the respondents having been printed in the cause list, none appeared for the respondents. In order to give further opportunity, the matter stands posted today. Even today, none appears for the respondents. Though vakalat has already been filed on behalf of the 9th respondent, who infact filed an application under Order 7 Rule 11 C.P.C., which was allowed, there is no representation for the 9th respondent also. Therefore, we are proceeding with the matter, after hearing the learned counsel appearing for the appellants.

3.The suit has been laid in O.S.No.82 of 2014 on the file of the District Court No.II, Kancheepuram for declaration and for partition and separate possession. Declaration has been sought for challenging the family arrangement executed by the owner of the property by name Munusamy dated 22.06.1959. It is an admitted case that all the parties are claiming through the common ancestor Munusamy.

4.The appellants are the children born out of wedlock of one of the sons of Munusamy by name Arumugham (since died) with Annalammal, who is also no more. The Trial Judge allowed the application filed by the 9th respondent/9th defendant on the premise that the suit for declaration to declare the family arrangement dated 22.06.1959 ought to have been filed within three years from the date of attaining majority or 12 years from

the date of its existence. Challenging the same, the present appeal has been filed.

5. Learned counsel appearing for the appellants would submit that while disposing the application filed under Order 7 Rule 11 C.P.C., the averments in the plaint alone will have to be taken into consideration. Apart from the admitted documents, there are sufficient averments to show that the suit has been filed after coming to know about the existence of the family arrangement dated 22.06.1959. The exact date of the document will have to be seen at the time of trial. In any case, the suit for partition has already been rejected. Inasmuch as the father of the appellants was not a party to the family arrangement of the properties which are stated to be ancestral and from which, other properties have been purchased, the order requires interference. To buttress his submission, learned counsel made reliance upon the following decisions:

- (i) Popat and Kotecha Property Vs. State Bank of India Staff Association ((2005) 7 SCC 510)
- (ii) C. Natarajan Vs. Ashim Bai and Another ((2008) 1 MLJ 1278 (SC))
- (iii) Chhotanben and Another Vs. Kiritbhai Jalkrushnabhai Thakkar (2018 (4) CTC 206)

6. A perusal of the family arrangement dated 22.06.1959 on a prima facie consideration would show that the suit property also would include the ancestral property. Out of the amount earned from it, the remaining property was purchased in the name of other son Gopal by the common ancestor Munusamy. Admittedly, in the said family arrangement, the father of the appellant was not made as a party. Therefore, prima facie, there is no need even to challenge the aforesaid document. It is also not in dispute that Munusamy was the kartha of the family. Further question as to whether the entire properties are joint family properties or otherwise is a matter for evidence. The question of limitation is the mixed question of fact and law. Though Section 3 of Limitation Act puts the onus on the Court, the issue being mixed question of fact and law, the Court below ought not to have allowed the application on the sole premise that no clear averments were available on the date of knowledge, which as discussed above, may not even require on the facts and circumstances of the case.

7. In such view of the matter, we are inclined to interfere with the order of the Trial Court. Accordingly, the judgment and decree rendered by the Trial Court stand set aside. Consequently, the application filed in I.A.No.13 of 2015 dated 03.09.2015 under Order 7 Rule 11 C.P.C. also stands dismissed. The appeal stands allowed. No costs. Consequently, connected

miscellaneous petition is closed.

8.Taking into consideration the facts, we direct the trial Court to dispose of the case in O.S.No.82 of 2014 within a period of nine months from the date of receipt of a copy of this order. We make it clear that the above observations are only prima facie in nature and therefore, the parties are at liberty to raise all the contentions at the time of trial.

Sd/-
Assistant Registrar(CO)
Dated: 28/03/2019

***Corrected as per order
dated 24/04/2019 made
in A.S.No. 299/2016**

**Sd/-Assistant Registrar(CO)
Dated: 30/03/2019**

//True Copy//

Sub Assistant Registrar

To

The District Judge,
District Court No.II, Kancheepuram.

**To be Substituted to the
Order already despatched
on 30/03/2019**

+1cc to Mr.K.Prem Kumar, Advocate sr.no.11145

A.S.No.299 of 2016

nr 28/03/2019

GN(30/04/2019)

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