

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.Nos.1290 and 1291 of 2009
and
M.P.Nos.1 + 1 of 2009

S.A.No.1290 of 2009:

M.Saroja (Deceased)
2. M.Krishnamoorthy
3. M.Vijayakumar
4.M.Sudhakar

...Appellants/ Appellant /1st Defendant

(Appellants 2 to 4 brought on record
as legal representatives of the
deceased sole appellant vide Order
of Court dated 3.10.2017 made in
C.M.P.No.10650 to 10652 of 2017.)

Vs.

1.R.Komala
2.R.Ramesh
3.R.Indra Kumar
4.R.Ravikumar
5.R.Hemachander
6.R.Jayachander

... Respondents/ Respondents/Plaintiff 1 to 6

7.J.Rani
8.R.Suresh Chander

...Respondents/ Respondents7&8
Defendants2&3

S.A.No.1291 of 2009:

M.Saroja (Deceased)
2.M.Krishnamoorthy

.. Appellant /7th Respondent /
1st Defendant

3. M.Vijayakumar
4. M.Sudhakar

...Appellants

(Appellants 2 to 4 brought on record
as legal representatives of the
deceased sole appellant vide Order
of Court dated 3.10.2017 made in
C.M.P.No.10653 to 10655 of 2017.)

Vs.

1.J.Rani
2.R.Komala
3.R.Ramesh
4.R.Indra Kumar

5.R.Ravikumar
6.R.Hemachander .. Respondents/ Respondents/Plaintiff1-6
7.R.Jayachander
8.R.Suresh Chander .. Respondents/ Respondents/3rd Defendants
9.R.Maheshwari
10.Navinkumar (Minor)
11.R.Deeps (Minor)

..Respondents/ Respondents 9 to 11
(Minors Respondents 10 and 11
are represented by mother and
natural guardian 9th respondent).

(Respondents 9 to 11 are
legal representatives. 4th respondent
impleaded as per C.M.P.Nos.34,35 and 36
of 2006 dated 02.11.2006).

Common Prayer:- Second Appeals filed under Section 100 of
C.P.C., against the Common Judgment and Decree dated
31.01.2007 passed in Cross Appeal No.198 of 2005 in A.S.No.403
of 2004 and A.S.No.403 of 2004 on the file of the Additional
Judge, Fast Track Court No.V, Chennai, confirming the Judgment
and Decree dated 08.10.2003 passed in O.S.No.7468 of 1997 on
the file of VI Assistant City Civil Court, Chennai.

For Appellants : Mr.Adeesh Anto
in both Appeals for M/s.Sivam Sivanandraj

For Respondents : Mr.A.K.Mylsamy & Mr.A.Arafat
Mohammed
for M/s.A.K.Mylsamy Association [R7 in
S.A.No.1290 of 2009] & [R1 & R9 in
S.A.No.1291 of 2009]

COMMON JUDGMENT

A suit in O.S.7468/1997 was laid for partition of joint 1/3
shares of the plaintiff and the defendant was laid and that
came to be decreed. Where as the first defendant in the suit
preferred A.S.403/2004, the 2nd defendant had preferred a
cross objection in A.S.198/2005. By a common judgement dated
31.01.2007, the first appellate court has dismissed the appeal
and allowed the cross objection. Aggrieved by the same, the
first defendant has come forward with these appeals.

2. The appeals have not been admitted yet. Heard the
respective counsel of the parties herein. The learned counsel
for the appellant contended:

a) It is an admitted fact that the appellant / 1st
defendant is in possession of the suit property and
therefore, the Court Fee ought to have been paid under
Section 37(2) of the Tamil Nadu Court Fee and Suit

b) That the plaintiffs have earlier filed a suit for injunction which they subsequently withdrew, and have laid the present suit and therefore the present suit for partition is hit by Order II Rule 2 CPC

c) The suit is barred by limitation.

3. Vehement though the arguments of the learned counsel for the appellants have been, yet this Court considered that it still fell short of the requirement for convincing this Court. So far as the first of the submission is concerned, a possession by a co-sharer is presumed to be the possession for all, and unless the plaintiffs are shown to have been ousted to their knowledge, the plaintiffs cannot be required to pay Court Fee under 37(2) of the said Act. Secondly, the present suit is for partition where the cause of action is recurring. Therefore, mere institution of a suit for injunction and its withdrawal is not going to affect the cause of action for partition. On the other hand, the filing of the earlier suit for injunction only implies that the plaintiffs have asserted title to their share of the property and has shown no mood to hand over her share to the 1st defendant/appellant. Thirdly, inasmuch as in a suit for partition, the cause of action is recurring, there is no limitation barring the suit.

4. In conclusion, this Court does not find that there exists any substantial questions of law to investigate. The findings of the Court below did not warrant any interference in these second appeals.

5. Accordingly, both the Second Appeals are dismissed and the common Judgment and Decree dated 31.01.2007 made in Cross Appeal No.198 of 2005 in A.S.No.403 of 2004 on the file of Additional Judge, Fast Track Court, Chennai is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Additional Judge,
Fast Track Court V,
Chennai.
2. VI Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer
V.R.Section
High Court of Madras
Chennai 600 104.

+2ccs to M/s.Sivam Sivanandraj , Advocate SR.No. 69195 70103

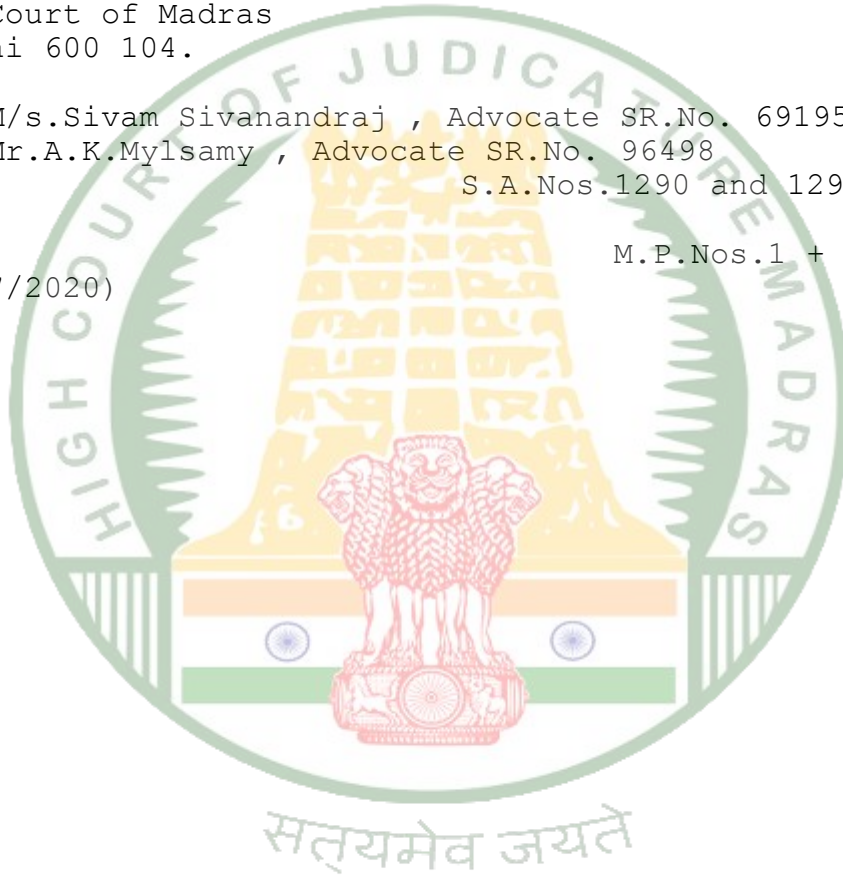
+2ccs to Mr.A.K.Mylsamy , Advocate SR.No. 96498

S.A.Nos.1290 and 1291 of 2009

and

M.P.Nos.1 + 1 of 2009

A.SK(20/07/2020)



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