

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2019

PRONOUNCED ON : 13.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.Nos.1136, 1460 of 2005 & 650 of 2006

S.A.No.1136 of 2005

1. Papathy (deceased)
2. Kamatchi
3. Kannan ...Appellants/Plaintiff

Appellants 2 & 3 brought on record as LRS of the deceased sole appellant vide order of court dated 02.08.2018 made in CMP Nos.543 to 545 of 2018 in S.A.No.1136 of 2005.

Vs.

1. Kaliaperumal
- 2.Velsamy ...Respondents/Defendants

S.A.No.1460 of 2005

1. Papathy
2. Kamatchi
3. Kannan ...Appellants/Plaintiff

2nd & 3rd Appellant declared as majors by their mother and guardian pappathy discharged from the guardianship vide order of court dated 12/02/2019 made in CMP No.562/2015 in Sa.No.1460/2005

4. Dhavamani

Vs.

Velsamy ...Respondent/Plaintiff

S.A.No.650 of 2006

1. Papathy (deceased)
2. Kamatchi
3. Kannan ...Appellants/Plaintiff

Appellants 2 & 3 brought on record as LRS of the deceased sole appellant vide order of court dated 17.07.2017 made in CMP Nos.1153 to 1155 of 2016 in S.A.No.650 of 2006.

Vs.

Velsamy ...Respondents

Prayer

Second Appeals filed under Section 100 of Civil Procedure Code, against the judgment and decree dated made in A.S.Nos.7 of 2004, 209 of 2003 and 5 of 2004 dated 31.08.2004 on the file of the Principal Subordinate Judge, Mayiladuthurai in confirming the judgment and decree made in O.S.Nos.199 of 1994, 45 of 1997 and 202 of 1994 dated 21.10.2003 on the file of the court of District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar in all appelas

For Respondents : Mr.C.B.Muralikrishnan in all appelas

COMMON JUDGMENT

Second Appeal Nos.1136, 1460 of 2005 and 650 of 2006 are directed against the common judgment and decree dated 31.08.2004 passed in A.S.Nos.7 of 2004, 209 of 2003 and 5 of 2004 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 21.10.2003 passed in O.S.Nos.199 of 1994, 45 of 1997 and 202 of 1994 on the file of the court of District Munsif Court, Sirkali.

2. The second appeal No. 1136 of 2005 has been admitted on the following substantial questions of law.

"a) When the plaintiff's predecessor in interest got the suit properties under Ex.B7 and Ex.B1 and they have been in possession and enjoyment of the suit properties, whether the lower appellate court erred in law in dismissing the suit with regard to the first two items of the suit properties?

b) When the first two items of the suit properties are not at all covered by Ex.A1 as exhibited by Ex.A3, whether the lower appellate court erred in law in holding that the defendant is entitled to a share in the said items?"

3. The second appeal No. 1460 of 2005 has been admitted on the following substantial questions of law.

"a) When admittedly the other sharer, the plaintiff's sister's daughter is not impleaded in the suit, whether the suit for partition is bad for non joinder of necessary party as held by our High court and reported in 1999(1) LW

171?

b) When the suit properties do not tally with the 'A' schedule properties in Ex.A1 as exhibited by Ex.A3, whether the lower appellate court erred in law in decreeing the suit?"

4. The second appeal No.650 of 2006 has been admitted on the following substantial questions of law.

a) When admittedly the plaintiff's predecessor in interest had purchased 7 cents under Ex.B7 and constructed a house thereon, whether the lower appellate court erred in law in dismissing the suit for recovery of possession on the ground that the defendant is a co-owner?

b) When the suit property does not tally with that of the properties covered under Ex.A1 as exhibited by Ex.A3 whether the lower appellate court erred in law in dismissing the suit holding that the suit property is covered by Ex.A1?"

5. 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.

6. Briefly stated O.S.No.199 of 1994 has been laid by the deceased appellant against the respondent and one Kaliaperumal for the relief of permanent injunction. O.S.No.45 of 1997 has been laid by the respondent against the appellants for partition. O.S.No.202 of 1994 has been laid by the appellant against the respondent for recovery of possession.

7. Inasmuch as common issues were involved between the parties in respect of the same subject matter in the abovesaid suits, one way or the other, the abovesaid three suits were jointly tried by the trial court and common evidence was recorded and based on the evidence projected by the respective parties, both oral and documentary, the courts below were pleased to grant the relief of permanent injunction in favour of the deceased appellant in O.S.No.199 of 1994 only as regards the third item of the suit properties and dismissed the said suit with respect to items 1 and 2 of the suit properties covered thereunder. The courts below had also granted a preliminary decree for partition in favour of the respondent in respect of the items 1 to 3 of the plaint 'A' schedule properties and plaint 'B' schedule property covered in the abovesaid suit and dismissed the said suit in respect of the fourth item of the plaint 'A' schedule properties. The courts below had dismissed the suit laid by the deceased appellant in O.S No.202 of 1994. Aggrieved over the same, the present three second appeals have

been laid.

8. Materials placed on record go to show that the respondent's grand father Pavadai Padayachi had two brothers namely, Katha Padayachi and Periyasamy Padayachi and it is seen that Pavadai Padayachi had four sons namely, Vaithiyalingam, Krishnasamy, Ramasamy and Arunachalam. It is found that of the abovesaid four sons of Pavadai Padayachi and his wife Valliammal, Krishnasamy and Ramasamy died issueless. The Respondent Velsamy is the son of Arunachalam. Vaithialingam had two sons, namely, Sivalingam and Muthaiyan and it is found that the deceased appellant is the wife of Sivalingam and her daughter Kamachi and son Kannan are the defendants 2 and 3 in O.S.No.45 of 1997 and the daughter of Muthaiyan, Thavamani is the fourth defendant in O.S.No.45 of 1997. The deceased appellant Papathy is the first defendant in O.S.No.45 of 1997. As abovestated, O.S.No.45 of 1997 is the suit for partition laid by the respondent Velsamy, son of Arunachalam against the abovesaid defendants. Materials placed on record go to show that Pavadai Padayachi and his two brothers had orally partitioned the family properties and thereafter, it is found that by way of Ex.A1 partition deed dated 06.12.1915, Pavadai Padayachi and his sons namely, Krishnasamy, Ramasamy, Arunachalam and his minor grandsons, namely, Sivalingam and Muthaiyan, sons of the deceased Vaithialingam represented by their mother had effected partition abovestated and it is found that in the partition, the 'A' schedule properties described therein had been allotted to Pavadai Padayachi and his wife, the 'B' schedule properties had been allotted to Krishnasamy, 'C' schedule properties had been allotted to the minor sons of Vaithiyalingam, namely, Sivalingam and Muthaiyan, the 'D' schedule properties had been allotted to Ramasamy and the 'E' schedule properties had been allotted to Arunachalam. As per the recitals contained in the abovesaid partition deed Ex.A1, it is found that after the demise of Pavadai Padayachi and his wife, the properties allotted to them should be divided amongst the families equally and thereby, it is found that, as above noted Krishnasamy and Ramasamy having died issueless and after the demise of Pavadai Padayachi and his wife Valliammal, the properties allotted to them respectively by way of Ex.A1 partition deed would devolve upon the remaining families equally and the remaining families are found to be only the families of the other two sons of Pavadai Padayachi, namely, Vaithialingam and Arunachalam. The respondent Velusamy represents the family of Arunachalam and the deceased Papathy, the defendants 2 to 4 in O.S.No.45 of 1997 represent the family of Vaithialingam. Accordingly claiming half share in the properties abovestated, it is found that the respondent has laid the suit for partition.

9. The respondent has also, apart from filing the certified copy of the partition deed dated 06.12.1915, with a view to correlate the properties comprised therein with the new survey numbers, produced the village resettlement register extract marked as Ex.A3 and accordingly, on a comparison of the description of the properties given in the plaint 'A' schedule vis-a-vis the properties comprised in the partition deed dated 06.12.1915 and correlating the same with the entries available in Ex.A3 resettlement register extract, as rightly found and determined by the courts below, the items 1 to 3 of the plaint 'A' schedule properties comprised in the old survey No.362/AB, 377/C/7, 395/C corresponds to the new survey Nos.204/1, 218/3 and 173/3B, and as regards the same, it is seen that there is no serious dispute. Furthermore, the abovesaid properties are also found to be reflected in the partition deed marked as Ex.A1 as held by the courts below. However, the fourth item of the plaint 'A' schedule properties in O.S. No.45 of 1997 has not been established to be belonging to the respondent's family and also involving as the subject matter of Ex.A1 partition deed. Furthermore, there is no material placed on the part of the respondent to evidence that the fourth item described in the plaint 'A' schedule belonged to the family of the parties. Therefore, the courts below are found to be justified in holding that inasmuch as the respondent had failed to establish that the fourth item of the plaint 'A' schedule belonged to the family and also covered in Ex.A1 partition deed, the courts below had rightly negatived the plea of partition sought for by the respondent in the abovesaid item of 'A' schedule properties and no interference is called for with reference to the same.

10. As regards the plaint 'B' schedule property the courts below holding the same corresponding to item 1 of the 'A' schedule properties given in Ex.A1 and found that the same had come to be allotted to Pavadai Padayachi after division with his brothers measuring an extent of 18 ½ cents and furthermore, considering the evidence adduced in the matter, it is found that the abovesaid 'B' schedule property comprised in R.S.No.264/10 measures an extent of 18.5 cents and accordingly, it is found that the courts below had rightly held that the same also belong to the family. But while describing plaint 'B' schedule property, it is shown to be measuring only 10 cents as available on ground. Be that as it may, the respondent has come forward with the case as if he had been allotted an extent of 4 cents of land by Poongavanathammal, wife of Periasamy, who is one of the brother of Pavadai Padayachi by way of the settlement deed dated 06.02.1957 marked as Ex.A2. As per the recitals contained in the said document, it is found that by way of the same document, an extent of 4 cents of land in R.S.No.264/10 had come to be settled in favour of the respondent. In addition to that D.W.1 examined on behalf of the appellants, namely, the deceased

Papathi, would claim that out of the total extent of 18 cents of land, Akshiyalinga Padayachi, son of Katha Padayachi had sold an extent of 7 cents of land by way of Ex.B7 to her mother-in-law Sivapakkiyathammal. The argument, thus, put forth by the appellant is that when the materials placed on record would go to show that the total extent covered in the survey number described in the plaint 'B' schedule in O.S.No.45 of 1997 covered an extent of 18.5 cents of land and Pavadai Padayachi and his two brothers would be entitled to equal share in the same i.e 6 cents and above in the abovesaid survey number by way of Ex.A1 partition deed, therefore, it is his contention that the plaint 'B' schedule property has not been correctly furnished and on that score alone, the relief granted in favour of the respondent in respect of plaint 'B' schedule property should be interfered with. However, on a perusal of the recitals contained in Ex.A1, as determined by the courts below, when it is found that the first item in plaint 'A' schedule describes that the 1/3 share allotted to Pavadai Padayachi measures an extent of 18.5 cents, in such view of the matter, the settlement deed Ex.A2 and the sale deed Ex.B7 would not in any manner, militate or run contrary to the recitals found in Ex.A1 partition deed as regards the abovesaid item and in any event, as could be seen from the materials available on record, in the house put up in the abovesaid 'B' schedule property, the respondent is found to be also occupying the same, which could be evidenced from the voters card marked as Ex.A6 and furthermore, when the plaint 'B' schedule property is found, on ground, only measuring 10 cents of land and accordingly, the same also being the subject matter of Ex.A1 partition deed allotted to Pavadai Padayachi, and thereafter, to be devolved upon the remaining families equally, in such view of the matter, in my considered opinion, no interference is called for in the determination of the courts below in granting 1/2 share in the said property also to the respondent.

11. The only primary plea taken by the appellants to resist the respondent's partition suit is they had been enjoying the properties excluding the respondent for a considerable period of time and thereby by way of ouster and adverse title they have prescribed title to the properties in dispute and on that basis sought for the dismissal of the respondent's suit and sought for the reliefs claimed in their suits. However, as rightly determined by the courts below, the appellants have miserably failed to establish the plea of ouster and adverse possession and the courts below on a consideration of the materials placed on record and analysing the same in the right perspective, both factualwise and legalwise, rightly determined that the appellants had failed to establish the plea of ouster and adverse possession to the properties in dispute and in my considered opinion, no interference is called for with reference to the same.

12. The only point that has been urged by the appellants' counsel in the second appeals is that in the suit for partition laid by the respondent, he has failed to implead the daughter of his deceased sister and according to him, as all the sharers are necessary parties in the partition suit, the failure of the respondent in impleading the daughter of the deceased sister would be fatal to his case and also he having failed to disclose the existence of the sisters (since deceased) as well as the daughter of one of the deceased sisters in the genealogical table furnished by him, accordingly, it is putforth that on that score alone, the suit laid by the respondent for partition is liable to be dismissed and in this connection strong reliance is placed upon the following decisions reported in

1. 1998 (II) CTC 403 (Sabasthi Nadar vs. Savurimuthu and another)
2. (2010) 6 MLJ 351 (Venkataramana and othres vs. N.Munuswamy Naidu and others).
3. 1973 (85) LW 941 (T.Panchapakesan (died) and others vs. Peria Thambi Naicker (died) and others)

13. However, I am unable to accept the abovesaid plea putforth by the appellant's counsel. At the foremost, the appellants in their written statement filed in O.S.No.45 of 1997 has not taken any plea that the respondent had sisters at the time of the institution of the suit or taken the plea that the daughter of one of the deceased sisters was alive on the date of the institution of the suit and that they are the necessary parties to the lis and the failure of the respondent in impleading them as parties to the suit is fatal to his case. On the other hand, no such plea has been taken by the appellants in the written statement that the suit laid by the respondent in O.S.No.45 of 1997 is bad for non joinder of necessary parties. Accordingly, the abovesaid plea has not been considered by the trial court. As abovenoted, the appellants aggrieved over the judgment and decree of the trial court, preferred the first appeals and the appellants in the grounds of appeal set forth in the first appeal preferred by them had also not taken any specific plea that the suit laid by the respondent in O.S.No.45 of 1997 is bad for non joinder of necessary parties i.e. bad for his failure to implead the deceased sisters or the daughter of one of the deceased sisters.

14. However, the respondent is found to have been to some extent, cross examined by the appellants with reference to the abovesaid point and in this connection, during the course of cross examination the respondent examined as P.W.1 would state that his mother is Pattammal and he is the only son and he had two sisters and the two sisters had died 30 years ago and one

sister died without marriage and one sister got married and the said sister had a daughter and the said daughter is stated to be residing at Thalachangadu and he does not know her name. This is what that has been extracted from the respondent by the appellants during the course of cross examination with reference to their plea now put forth by them as regards the suit laid by him being bad for non joinder of the daughter of his deceased sister.

15. As above noted, the appellants had not taken the plea with reference to the same in the written statement or also in the memorandum of grounds putforth by them in the first appeals preferred by them. Furthermore, as could be seen from the abovesaid evidence of P.W.1, the respondent's two sisters had died 30 years ago and therefore, it is evident that the two sisters are not at all in the picture at the time of institution of the suit and furthermore as it could be seen from the evidence of the respondent as P.W.1, one sister had died without marriage and therefore the said sister had died issueless and the other sister appears to have got married, as per the evidence of P.W.1 and she had one daughter and according to the respondent she is stated to be residing at Thalachangadu. From the abovesaid stray statement of the respondent, it is now contended that the respondent, having failed to implead the said daughter of his deceased sister, his suit for partition is bad in law, but, in my considered opinion, the abovesaid contention does not merit acceptance.

16. No doubt, in a suit for partition all the sharers should be impleaded as parties as they are all necessary parties to the lis. However, it should not be ignored or forgotten that any party to the lis would be entitled to project his or her case only on the basis of the pleas putforth by him in the lis. In the light of the above position, any amount of evidence adduced by the party without a plea cannot, at all, be relied upon, is the acceptable proposition of law. The basic principle is that the parties to a lis cannot go beyond the pleadings. In such view of the matter, when the appellants have not setforth any plea in the written statement or in the memorandum of grounds before the first appellate court that the suit for partition laid by the respondent is bad for non joinder of a party, in my considered opinion, they should not have been allowed to cross examine the respondent with reference to the same in the matter and even assuming that they had been allowed to cross examine him to the limited extent on the abovesaid aspect, the courts should not have placed any reliance upon the same. As such, the new case projected by the appellants without any pleas cannot be allowed to be raised, particularly, without the backing or foundation of necessary pleas and that apart, the appellants cannot also be allowed to raise such a defence on vague,

incomplete and inconsistent pleas and on the abovesaid angle also, in my considered opinion, the argument putforth by the appellants' counsel that the courts below should have held that the suit for partition laid by the respondent is bad in law, as such, cannot be countenanced.

17. The plea of non joinder of necessary parties cannot be simply termed as a pure legal point and on the other hand, in my considered opinion, the said plea also involves appreciation of factual matrix i.e. as to whether who are all the legal heirs, who are all entitled to succeed to the property in dispute, how and what is their entitlement to the same and what is the quantum of share to which they are entitled to and whether they are legally entitled to claim such share and when these facts are to be determined based on the pleas and evidence projected by the parties and when with reference to the same, the case of the appellants is found to be completely devoid of any pleas and also evidence on their part and by way of cross examination of the respondent one way or the other, in an incomplete manner and furthermore, they having not established that the daughter of the deceased sister of the respondent is available for partition and in addition to that also putforth inconsistent pleas that the deceased first appellant is the daughter of the sister of the respondent, in all, it is seen that the present and new case projected by the appellants that the partition suit laid by the respondent is bad for non joinder of necessary parties is found to be unacceptable.

18. Insofar as this case is concerned, as abovestated , the partition suit has been laid by the respondent only claiming his half share in the properties allotted to Pavadai Padayachi, Krishnasamy and Ramasamy. As per the recitals contained in Ex.A1 partition deed, it is seen that, on the demise of Pavadai Padayachi and his two sons Krishnasamy and Ramasamy, the properties allotted to them should be taken by the remaining families equally. Pavadai Padayachi had four sons namely, Vaithialingam, Krishnasamy, Ramasamy and Arunachalam. Materials placed on record go to show that the respondent Velsamy represents Arunachlam's family and the appellants represent Vaithialingam's family. Accordingly, when the properties allotted to Pavadai Padayachi, Krishnasamy and Ramasamy should devolve upon the remaining families equally as per the terms contained in Ex.A1 partition deed, in such view of the matter, it is found that the respondent representing Arunachalam family had claimed half share in the said properties and as such, the appellants had not questioned the quantum of share claimed by the respondent in the properties concerned. Accordingly it is seen that even the appellants are very well aware that in the properties left behind by Pavadai Padayachi, Krishnasamy and Ramasamy, as the remaining families are two in number, the said

two families would be entitled to get equal share with reference to the same and accordingly, it is found that the respondent representing Arunachalam family has sought for half share and it is evident that the remaining half share would devolve upon the appellants who represent the family of Vaithialingam and in such view of the matter, when the appellants are found to be the legal representatives of Vaithialingam, therefore, his two sons namely, Sivalingam and Muthaiyan i.e. appellants 1 to 3 being the legal heirs of Sivalingam and the fourth appellant being the legal heir of Muthaiyan, they in toto, would get the remaining share, and in such view of the matter, the argument now put forth by the appellants' counsel that the respondent having failed to implead the daughter of the deceased sister in his partition suit, his suit should fail, as such, cannot be countenanced when the respondent has claimed the share as the representative of Arunachalam family and in such view of the matter, it is found that the abovesaid contention raised by the appellants' counsel as regards the plea of non joinder of the daughter of the deceased sister by the respondent in his partition suit cannot be countenanced.

19. Furthermore, the appellants have not adduced any evidence that the sisters of the respondent are available at the time of the institution of the partition suit and the daughter of one deceased sister is available at the time of the institution of the said suit. If that be so, they would have adduced evidence with reference to the same in an acceptable manner. Even the appellants are not sure about their case and accordingly they had cross examined the respondent on the lines as if the deceased appellant Papathy is the daughter of the respondent's sister. In this case, the respondent on being cross examined by the appellants, a suggestion was put to him that the deceased Papathy is the daughter of his sister Andal and the said suggestion has been denied by the respondent and therefore, it is seen that even the appellants are not sure as to who is the daughter of the deceased sister of the respondent. When according to the appellants, the deceased Papathy is the daughter of the respondent, which fact being controverted by the respondent, their argument now put forth that the respondent's suit should fail on account of his failure in impleading the daughter of his sister Andal falls to the ground and therefore, it is seen that inasmuch as the abovesaid plea put forth by the appellants has no locus standi and based on vague pleas, when they are not able to project a clear and correct case with reference to the same and also not come forward with the specific case as to who is the daughter of the deceased sister of the respondent, what is her name and whether she is available and when they have come forward with the case that the deceased Papathy is the daughter of the deceased respondent, in such view of the matter, the deceased Papathy being already on record, on

that reasoning, it is found that the suit laid by the respondent, cannot be held to be bad for non joinder of necessary parties as sought to be projected by the appellants.

20. Though no ground has been projected by the appellants in the first appeal as regards the plea of non joinder of necessary parties, the abovesaid contention has been gone into by the first appellate court and the first appellate court has held that when the two sisters of the respondent had died 30 years ago and they are in particular having not been disclosed by the appellants and not established whether they are alive on the date of the institution of the suit, the existence of the daughter of one of the deceased sisters having also not been established by the appellants by giving correct and concrete particulars, in such view of the matter, held that the abovesaid plea put forth by the appellants cannot be countenanced. I am unable to interfere with the abovesaid determination of the first appellate court.

21. Be that as it may, as above noted, the plea of non joinder of necessary parties has not been raised as a defence by the appellants in the written statement. They have not put forth the same in the grounds projected in the first appeal. On the other hand, very vaguely they have cross examined the respondent on that point and even by way of the same, they were unable to elicit any clear picture as to whether the daughter of the one deceased sister is available. They have also put forth the contrary plea that the deceased appellant Papathy is the only daughter of the deceased sister of the respondent, which fact has been denied by the respondent. It is thus found that the abovesaid plea put forth by the appellants is found to be based on untenable pleas and inasmuch as the appellants are not sure about the said pleas put forth by them, they appear to have taken inconsistent stand with reference to the same and in such view of the matter, as rightly put forth, the abovesaid pleas put forth by the appellants are found to be a bundle of contradictions and based on vague particulars.

22. Though the appellants' counsel would rely upon the abovesaid decisions for the proposition that in a suit for partition all the sharers are necessary parties and non impleading of the sharer would be fatal to the partition suit, however, when the appellants have not come forward in the written statement or in the grounds set forth in the first appeal that the partition suit laid by the respondent is bad for non joinder of proper and necessary parties and when they have also not come forward with the specific case that the daughter of the deceased sister of the respondent is available on the date of the partition suit and particulars with reference to the same are not forthcoming on the part of the appellants, on the other hand, they would also put the suggestion that the deceased Papathy is the daughter of the respondent's deceased sister and

when as per the terms contained in Ex.A1 partition deed, the properties left behind by Pavadai Padayachi, Krishnasamy and Ramasamy should devolve equally upon the remaining families and accordingly the respondent representing one family and the appellants representing the other family would be entitled to equal share, in such view of the matter, the appellants cannot be allowed to contend that the suit laid by the respondent for partition is bad for non joinder of the daughter of the deceased sister of the respondent without furnishing any particular as regards the said daughter and also not adducing any evidence whether the said daughter is actually available or not and on the other hand would putforth an inconsistent plea that the deceased appellant only is the said daughter, in such view of the matter, when the Apex Court in the decision reported in AIR 1993 Supreme Court 1587 (Laxmishankar Harishankar Bhatt vs. Yashram Vasta (dead) by L.Rs.) held that when there is no averment in the written statement as to who are the co owners and what right they have in the subject matter of partition suit, in that context, the Apex Court had held that the partition suit cannot be dismissed for non joinder on vague pleas, the above argument put forth by the appellants' counsel has to fail. I had an occasion to consider and follow the said decision of the Apex Court in the judgment rendered by me dated 27.08.2018 in Second Appeal No.240 and 241 of 2005 and accordingly held that the failure of the defendants in that case having failed to take any plea of non joinder of proper and necessary parties in the written statement and also considering the facts and circumstances of the said case and the principles of law outlined by the Apex court in the abovesaid decision held that on such vague pleas, the partition suit cannot be held to be fatal or bad for non joinder of proper and necessary parties.

23. The respondent counsel in support of his contention on the abovesaid point placed reliance upon the decisions reported in

1. 1954 SCR 892 : AIR 1954 SC 210 (Jagan Nath vs. Jaswant singh & others).
2. 1974 AIR 1755 (General Manager, South Central Railways, Secunderabad and another vs. A.V.R.Siddhanti and ors)
3. Order of this Hon'ble High Court dated 02.02.2016 in S.A.No.1460 of 2006 (Meenambal vs. Shantha)
4. 1953 AIR 521 (Deputy Commissioner, Hardoi Vs. Rama Krishna Narain and others)

24. Apart from the abovesaid plea, no other valid contention has been putforth by the appellants counsel to interfere with the judgment and decree of the courts below in upholding the partition suit of the respondent and partly allowing the injunction suit laid by the deceased Papathy in O.S.No.199 of

1994 and dismissing her another suit in O.S.No.202 of 1994 and the courts below are found to have analysed the materials projected in the matter, both oral and documentary, in the right perspective and by giving proper reasons and conclusions with reference to the same, both on factual aspects as well as legal aspects, rightly granted the reliefs in favour of the respondent as determined by them and rightly disposed of the suits laid by the deceased Papathy as determined by them. In such view of the matter, in my considered opinion, no interference is called for with reference to the same.

25. The substantial questions of law formulated in the Second Appeals are accordingly answered against appellants and in favour of the respondent.

26. In conclusion, all the second appeals are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge, Mayiladuthurai
2. The District Munsif, Sirkali.

Copy to

The Section Officer,
Madras.

V.R.Section, High Court,

S.A.Nos.1136, 1460 of 2005 &
650 of 2006

VGII (CO)
GMY (21/06/2019)

WEB COPY