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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1532 of 2005

S.Periyasamy ... Appellant/1st Defendant n Trial Court

Vs.

1.S.Palanisamy
2.S.Chinnasamy
3.Lakshmi (died)
4.M.Venkatachalam ... Respondents/Plaintiffs 1,2 Defendant
2, 3 in Trial Court

(R3 died. R1 & R2 are recorded as
LRs of the deceased R3 vide order
of Court dated 09.04.2019 in
S.A.No.1532 of 2005 as per memo
dated 09.04.2019)

Prayer :- Second Appeal has been filed under Section 100 of
the Civil Procedure Code against the Judgement and Decree
dated 29.12.2004 passed in A.S.No.84 of 2004 on the file of
the Principal District Court, Erode, confirming the judgement
and decree dated 17.06.2003 passed in O.S.No.515 of 1995 on
the file of the Second Additional Subordinate Court, Erode.

For Appellant : Mr.R.Agilesh

For Respondent : No appearance
Nos.1&2 set exparte vide order
dated 30.04.2019

For Respondent : Mr.R.Sundaravadhanan
No.4 for Ms.P.T.Ramadevi

JUDGMENT

In this second appeal, challenge is made to the Judgement
and Decree dated 29.12.2004 passed in A.S.No.84 of 2004 on the
file of the Principal District Court, Erode, confirming the
judgement and decree dated 17.06.2003 passed in O.S.No.515 of
1995 on the file of the Second Additional Subordinate Court,
Erode.



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2.The second appeal has been admitted on the following substantial question of law:

"Whether the lower Courts below were correct and justified in decreeing the suit even without considering the questions as to the nature and character of suit properties?"

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.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the plaintiffs have laid the suit against the defendants for partition.

6.The relationship between the parties is not in dispute. That the parties are entitled to the shares in the suit properties as pleaded is not in serious dispute.

7.The counsel for the appellant has projected only the point of non-joinder of necessary party, viz., Chinnamalai Gounder in the suit as the party, hence according to him, the suit laid by the plaintiffs seeking for partition is bad and on that sole ground alone, the plaintiffs' suit should have been rejected. However, the abovesaid point of non impleadment of Chinnamalai Gounder as the party to the proceedings had been considered by the Courts below. Considering the fact that inasmuch as the property, which had been jointly purchased by Suriappa Gounder and others, had been already sold to one Amutha by the plaintiffs and the second defendant on 18.04.1995 itself through Ex.A10 sale transaction, which sale transaction has not been impugned, and as, thereafter, in respect of the alienated property neither the plaintiffs nor the second defendant has any right with reference to the same, accordingly, it is pleaded by the plaintiffs themselves that Chinnamalai Gounder is not added as the party. Furthermore, the plaintiffs themselves have pleaded that the property inherited by Suriappa Gounder from his mother had been the subject matter in the earlier partition suit in O.S.No.78 of 1990 and accordingly, it is put forth that the co-sharers of the abovesaid property had not been shown as the parties to the present proceedings.

8.As regards the plea of non-joinder of Chinnamalai Gounder being mainly centering on factual matrix and considering the plea put forth by the plaintiffs in the plaint and as to the reason for not impleading Chinnamalai Gounder as



a party, when it is seen that the property in respect of which Chinnamalai Gounder is said to have right, had been already sold much prior to the institution of the suit and thereafter, the plaintiffs are not entitled to claim any share in the property, in such view of the matter, as rightly determined by the Courts below concurrently, as far as the said property is concerned, when Chinnamalai gounder, who is said to have some right in the property already sold, has not claimed any interest whatsoever, resultantly, determined that the non-impleadment of Chinnamalai Gounder is not fatal to the plaintiffs' case and in my considered opinion, the abovesaid determination of the Courts below for holding that Chinnamalai Gounder is not a proper and necessary party to the present proceedings do not warrant any interference.

9.As regards the plea of the defendants that the suit is bad for partial partition, however, as rightly determined by the Courts below, when there is no material placed on the part of the defendants as to which property has been omitted to be included in the present suit and when there is no material that the omitted properties are also liable for partition and when it is seen further that the property inherited by Suriappa Gounder through his mother had been the subject matter of the earlier partition suit in O.S.No.78 of 1990, in such view of the matter, as determined by the Courts below, the plea of the defendants that the suit is bad for partial partition, as such, had been rightly turned down by the Courts below and in my considered opinion, no interference is called for with reference to the same.

10.The plea has also been taken by the defendants that Suriappa Gounder, the father had relinquished his right in favour of the plaintiffs and the defendants and therefore, the partition suit laid by the plaintiffs is not maintainable. However, with regard to the abovesaid plea of relinquishment, there is no material placed on the part of the defendants, accordingly, the Courts below have rightly determined the nature and the character of the suit property and the shares to which the parties are entitled thereto and determined the shares, accordingly, in favour of the parties concerned.

11.In such view of the matter, when the available properties are liable to be partitioned as put forth by the plaintiffs, accordingly, it is seen that the Courts below, analysing the materials available on record, rightly determined the shares to which the parties are entitled to and accordingly, decreed the suit in favour of the plaintiffs.

12.The determination of the plaintiffs' shares by the Courts below in the suit properties is based on the proper appreciation of the available materials on record both factual wise as well as legal wise, in such view of the matter, no interference is called for with reference to the same, accordingly, in my considered opinion, there is no substantial



question of law involved in this second appeal. Be that as it may, the substantial question of law formulated in this second appeal is accordingly answered against the first defendant.

13.The Counsel for the first defendant, in support of his contention, relied upon the decision reported in 100 L.W.486 (A.Ramachandra Pillai Vs. Valliammal (died). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sms

To

1.The Principal District Court, Erode.

2.The Second Additional Subordinate Court, Erode.

Copy To : The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.T.Dhanasekaran, Advocate SR.No.45411

+1cc to Ms.P.T.Ramadevi, Advocate SR.No.44793

S.A.No.1532 of 2005

SJ(CO)
GMY(25/11/2019)