

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.09.2019

Judgment Delivered on : 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

A.S.No.113 of 2019
and
C.M.P.No.4529 of 2019

1. S.Suseela
2. S.Ravi
3. S.Sekar
4. S.Devaraj
5. Poongavanam
6. Poongodi
7. Jayalakshmi ... Appellants/Defendants 1 to 7

Vs.

1. C.Sasi Kumar ... 1st Respondent/Plaintiff
2. Umapathy
3. A.Gopal
4. Madhan Raj
5. Banumathi
6. Mouriya
7. Sowmya
8. Badhri ... Respondents 2 to 8/
Defendants 8 to 10, 12 to 15.

Appeal Suit (First Appeal) filed under Section 96 read with Order 41 Rule 1 of CPC against the judgment and decree dated 14.09.2018 in O.S.No.124 of 2017 on the file of II Additional District Court, Thiruvallur at Poonamallee.

For appellants : Mr.M.V.Seshachari
For respondents : Mr.K.P.Gopalakrishnan
for Mr.R.Lokeshwaran for R-1

JUDGMENT

R.SUBBIAH, J

This Appeal Suit (First Appeal) has been filed against the judgment and decree dated 14.09.2018 in O.S.No.124 of 2017 on the file of II Additional District Court, Thiruvallur at Poonamallee.

2. The appellants are the defendants 1 to 7 in the said suit in O.S.No.124 of 2017. The first respondent herein is the sole plaintiff in the said suit. The respondents 2 to 8 herein are the defendants 8 to 10 and 12 to 15 in the said suit.

3. The case of the plaintiff is as follows:

The suit property originally belonged to one Arumugam, Shanmugam and Sasikumar (plaintiff) as per Joint Patta No.190 issued by the Revenue Department. The said Shanmugam, son of Vellai, died, leaving behind the appellants 1 to 7/defendants 1 to 7 as Class-I Legal Heirs. The said Arumugam, son of Vellai, also died, leaving behind the respondents 2 to 4/defendants 8 to 10 and eleventh defendant (since deceased). The deceased Kumar (D.11), son of deceased Arumugam left behind the respondents 5 to 8/defendants 12 to 15 as his legal heirs. The plaintiff and the father of the defendants were enjoying and residing in the suit property as joint owners till the death of Shanmugam and Arumugam. The uncle of the plaintiff, namely Arumugam and Shanmugam died and even during the lifetime, they were postponing the partition of the suit property. The legal heirs of the deceased Arumugam and the deceased Shanmugam, as noted above as parties being impleaded, are also not co-operating for amicable partition of the suit property. Hence, the plaintiff sent legal notice on 27.06.2017 to the defendants requesting for partition of the suit property. Since the defendants have not come forward for partition of the suit property, the plaintiff has filed the present suit for passing preliminary decree of partition of the suit property into three equal shares and allot one such share to him.

4. The second defendant has filed written statement, which is adopted by the defendants 1 and 3 to 7/appellants 1 and 3 to 7, stating that it is admitted that the suit property was obtained by the said Arumugam, Shanmugam and plaintiff in Patta No.190 and they were enjoying the suit property jointly. On 09.02.2000, Arumugam, Arumugam's sons, namely Umapathy, Gopal, Madanraj, Kumar and the plaintiff, based on the unregistered undertaking deed, had stated that they need no share and the entire owner of the property is Shanmugam and the possession of the property was handed over by them. The said Shanmugam, independently enjoyed the property till his death on 12.04.2007. Electricity connection, water connection, etc., were obtained by him. The tax evaluation of the property is in the name of Shanmugam. After the death of the said Shanmugam, the property was enjoyed by his legal heirs and based on an oral partition, the share was allotted to the fourth appellant/fourth defendant. After such allotment, the fourth defendant had constructed a house and was paying tax. Aadhar Card, Family Card, Voter ID Card., etc., are in the address where the fourth defendant

resided as stated above. The fourth defendant is paying tax in his father's name. It is denied that the property was enjoyed as joint property. After the plaintiff gave the undertaking deed in the year 2000, he quit the property in respect of possession. The plaintiff has filed the suit suppressing the real facts. By cheating that the property is in joint possession, less Court fee was paid by the plaintiff. The suit in O.S.No.309 of 2006 on the file of District Munsif Court, Poonamallee filed by the plaintiff herein along with his brother seeking partition and the suit filed by the defendants 1 to 7 and Shanugam in O.S.No.181 of 2006 on the file of the District Munsif Court, Poonamallee, have been compromised on 15.09.2011, based on which, some of the properties were sold by the plaintiff herein and the plaintiff had quit the present suit property 17 years back. The case of the plaintiff in the present suit that the property is not partitioned from joint property status, is not correct. Hence, for these reasons, these defendants prayed for dismissal of the suit.

5. The trial Court, based upon oral and documentary evidence, granted preliminary decree in favour of the plaintiff, as against which, the present appeal is filed by the defendants 1 to 7.

6. The learned counsel for the appellants/D1 to D7 submitted the present suit has been filed by the first respondent/plaintiff claiming 1/3 share in the suit property. The first respondent/plaintiff's father Chockalingam and the appellants' father Shanmugam and one Arumugham, are brothers. The said Arumugham's legal heirs are the respondents 2 to 4/D8 to D11 (D.11 since deceased). The first respondent/plaintiff failed to implead his sisters as parties to the suit. The first respondent/plaintiff has four sisters, i.e. late Chockalingam had four daughters, namely Mrs.Sankari, Mrs.P.Muniammal, Mrs.S.Sivagami and Mrs.S.Amsa. The said Mrs.Sankari had died leaving behind her husband Mr.Babu, son Mr.Raja, daughters Ms.Suganthi and Ms.Suganya. Therefore, they are proper and necessary parties to the suit, but they have not been added as parties. The trial Court ought to have dismissed the suit for non-joinder of necessary parties.

7. The learned counsel for the appellants invited the attention of this Court to Ex.A-6 Legal Heirship Certificate pertaining to late Chockalingam to show that the plaintiff and his four sisters are the legal heirs of Chockalingam. The learned counsel for the appellants further submitted that the case of the appellants is that earlier, there was oral partition between the three brothers, namely Chockalingam, Shanmugam and Arumugam and the said partition was reduced into writing by unregistered undertaking deed. Unfortunately, the said

unregistered undertaking deed, dated 09.02.2000, was not marked before the Court as a document in the present suit. However, to show that earlier, there was partition, Ex.B-2, a copy of the application filed in O.S.No.309 of 2006 on the file of the District Munsif Court, Poonamallee, was filed before the trial Court, and the said suit in O.S.No.309 of 2006 was filed by the first respondent/plaintiff as against the appellants. The averments in O.S.No.309 of 2006 show that there was some partition, in which one of the properties shown therein was allotted to the first respondent/plaintiff herein. In the said suit, the subject property was not mentioned therein. Thus, the learned counsel for the appellants submitted that non-mention of the present suit property as a property in the said suit filed by the plaintiff herein, shows that the present suit property was already allotted to the appellants/defendants 1 to 7.

8. It is the next submission of the learned counsel for the appellants that the suit is bad for non-joinder of necessary parties. In this regard, he invited the attention of this Court to Ex.B-5 registered sale deed, dated 15.09.2011, executed in favour of the second appellant/Ravi and in this sale deed, all the legal heirs of the deceased Chockalingam, namely the first respondent/plaintiff, his three sisters and the other legal heirs of one of the deceased sister, had been impleaded as parties. The said sale deed establishes that the sisters of the first respondent/plaintiff are also entitled for share in the property of late Chockalingam. In Ex.B-1 notice dated 23.08.2005 issued on behalf of the first respondent/plaintiff, it had been admitted in paragraph 2 that the suit property is an ancestral property.

9. The learned counsel for the appellants further submitted that in a suit for partition, each and every share-holder, even if they are having miniscule share, are to be made as parties to the suit. Otherwise, there cannot be any proper division of the property(ies). The non-impleadment of the other share-holders is fatal to the suit for partition, which had to be dismissed on that ground. The trial Court, without considering the above aspect, has granted preliminary decree for partition, which is not sustainable. In support of his submissions, the learned counsel for the appellants relied on the following judgments:

(i) 2009 (3) CTC 760 = 2010 (1) LW 601 = 2009 (4) MLJ 218 = MANU/TN/0801/2009 (Madras High Court) (Balamani and Murugesan Vs. S.Balasundaram);

(ii) AIR 1965 SC 271 = MANU/SC/0244/1963 (Kanakarathanammal Vs. V.S.Loganatha Mudaliar) and

(iii) 2011 (1) MWN (Civil) 529 = 2010 SCC Online Madras 5869 (Madras High Court) (G.Murugan Vs. G.Thangaraj).

10. Countering the above submissions, the learned counsel for the first respondent/plaintiff submitted that it is admitted that each branch of the family is entitled to 1/3 share in the suit property and the present suit has been filed by the first respondent claiming his 1/3 share from his own third share alone in the suit property as against the defendants. The only defence taken by the appellants is that the plaintiff has not impleaded his sisters. If at all the sisters of the plaintiff are entitled for any share, it is only from the 1/3 share of the plaintiff and not from the shares of the other two branches. Therefore, there is no need to implead the sisters of the first respondent/plaintiff. In support of his submissions, the learned counsel for the first respondent relied on the following judgments:

(i) 2010 (1) LW 601 (cited supra), and
(ii) 1998 (1) LW 772 (Madras High Court) (Somasundaram Chettiar and another Vs. Balasubramaniam).

11. Heard both sides and perused the materials available on record.

12. The only defence taken by the appellants/D1 to D7 is that the first respondent/plaintiff had not impleaded his sisters. It is admitted by all the parties that each one is having 1/3 share in the suit property. There is no dispute with regard to the entitlement of share to each one of the parties. As rightly contended by the learned counsel for the first respondent/plaintiff, if at all the sisters of the plaintiff are entitled to any share, they are entitled to their respective shares out of the share of the plaintiff, and not from the shares of the other two branches. Therefore, this Court does not find any infirmity in the judgment of the Court below and the non-impleadment of the parties will not in any way affect the suit.

13. In the above view taken by this Court, it is not necessary to delve into the judgments relied on by the learned counsel appearing for the parties, as they are distinguishable on facts.

14. For the foregoing reasons, the Appeal Suit is dismissed. No costs. Consequently, C.M.P. is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The II Additional District Judge,
Thiruvallur @ Poonamallee

+1 CC to Mr.R.Lokeshwaran, advocate sr 77892.

A.S.No.113 of 2019

VD(CO)
SP(23/10/2019)



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