

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1254 of 2019
and CMP.No.27233 of 2019

T.P.Vadivelu .. Appellant/Appellant/3rd Defendant

Versus

1. S.Padmavathy ..1st Respondent/1st Respondent/Plaintiff
 2. T.P.Saravanan
 3. T.P.Jaganathan
 4. T.P.Natarajan
- .. Respondents 2, 3, 4/Respondents 2, 3, 4/Defendants 1, 2, 4

Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and judgment passed in A.S.No.102 of 2016 dated 18.07.2019 on the file of I Additional Judge, City Civil Court, Chennai confirming the decreetal oder and fair order passed in I.A.No.16375 of 2005 in O.S.No.6174 of 1995 dated 21.04.2015 on the file of the VI Assistant Judge, City Civil Court, Chennai and prays that the same made be set aside and this second appeal be allowed with costs.

For Appellant : Mr.K.Hariharan

JUDGMENT

The third defendant in O.S.No.6174 of 1995 is the appellant herein. The first respondent herein filed the suit for partition claiming 1/5th share in A schedule property.

2. It is not in dispute that the plaintiff and the defendants are the daughter and sons of T.K.Pachaiyappa Mudaliar and he was a lessee to the A schedule property. The plaintiff contended that the superstructure in B schedule property was put up by her and hence, she prayed for allotment of B schedule property to her share. After contest, the suit was decreed. The matter was taken up on appeal in A.S.No.307 of 2004 and the same was dismissed on 07.04.2005. The second appeal preferred against the decision of the first Appellate Court in S.A.No.1403 of 2005 was dismissed on 12.10.2012.

3. It is not in dispute that in the interregnum, the application in I.A.No.16375 of 2005 was filed for passing of final decree. While confirming the decree of the Courts below, this Court has observed that the B schedule property is a common property and permitted the appellant herein to adduce additional evidence in the final decree proceedings with regard to his claim of jointness of the debt and discharge of the liability.

4. It is seen that after disposal of the Second Appeal on 12.10.2012, in the final decree proceedings, the appellant filed two applications I.A.No.16286 of 2014 under Section 3 of Partition Act seeking permission to purchase the remaining 4/5th share and I.A.No.41285 for re-issuance of warrant to the Advocate Commissioner to measure the existing superstructures and to prepare a plan. Admittedly both the applications came to be dismissed and there was no appeal against that order. On the basis of the report of the learned Advocate Commissioner, shares were allotted by the Trial Court and the same was confirmed by the Appellate Court in A.S.No.102 of 2016. Assailing the judgment and order, the present appeal has been filed.

5. Mr.K.Hariharan, learned counsel for the appellant would urge that even though this Court in S.A.No.1403 of 2005 directed the Trial Court to decide the family debts and discharge made by the appellant, but no opportunity was given to the appellant. It is further contended that the application filed in that regard was not taken up for hearing and hence the judgments have to be set aside. The learned counsel for the appellant in support of his contention relied upon the following decisions:

- i) Laxmi and others A.Sankappa alwa and others reported in AIR 1989 Kerala 289
- ii) Rajendrakumar Bhandari vs. Poosammal and others reported in 1975 2 MLJ 59
- iii) Prafulla Kumar Sahoo vs. Charulata Sahoo and another reported in 1987 ORISSA 43
- iv) Babburu Basavayya and others vs. Babburu Guravayya and another reported in AIR 1951 MADRAS 938

6. This Court is unable to agree with the submission of the learned counsel for the appellant for the reason that in S.A.No.1403 of 2005, no direction was given to the Trial Court to decide the alleged joint debt and discharge made by the appellant, but only liberty was granted to the appellant to lead evidence to substantiate his case. It is pertinent to note that after disposal of the Second Appeal on 12.10.2012, the matter was kept pending before the Trial Court, till the final decree was passed on 24.01.2015. It is seen that the application said to have been filed by the appellant for receipt of additional document was in S.R. stage. Had the appellant been vigilant, he would have taken necessary actions / steps to achieve his purpose, but the fact remains no step was taken to give additional evidence.

7. In a suit filed for partition, the Court has to not only divide the common properties, but also adjudicate the equities arising between the parties. There is no quarrel over the preposition laid down in the decisions. But in the case on hand, though liberty was given by this Court in the first round of litigation in S.A.No.1403 of 2005, as rightly observed by the Courts below, the appellant failed to avail the opportunity. Hence, the said decisions have no application to the case on hand.

8. For the foregoing reasons, I find no illegality or irregularity in the judgment of the Courts below. In fine, the second appeal is dismissed as devoid of merits. No costs. Consequently, connected application is dismissed.

Sd/-
Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

pvs

To

1. The I Additional Judge, City Civil Court, Chennai
 2. The VI Assistant Judge, City Civil Court, Chennai
- +lcc to Mr.K.Hariharan, Advocate SR.No.37

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PM(CO)
GMY(25/08/2020)

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