

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
A.S.Nos.587 of 2013 & 157 of 2014
M.P.Nos.1 & 1 of 2014

V.Anandapadmanaban ..Appellant/Plaintiff
in A.S.No.587 of 2013
C.V.Jayagopal ...Appellant/1st Defendant
in A.S.No.157 of 2014

Vs.

1.C.V.Jayagopal ...R1/1st Defendant
in A.S.No.587 of 2013
2.Indirani R2/2nd defendant
in A.S.No.587 of 2013
& A.S.No.157 of 2014
3.V.Anandapadmanaban ...R1/Plaintiff
in A.S.No.157 of 2014

Common Prayer : First Appeal filed against the Judgment &
Decree dated 11.07.2013 passed in O.S.No.8692 of 2011 on the
file of the XVII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.V.Jayaraman, Senior Counsel
in A.S.No.587 of 2013 for Mr.Agilesh

For Respondent : Mr.C.Umashankar for R1
in A.S.No.587 of 2013 Mr.C.Vijayalakshmi for R2

For Petitioner : Mr.C.Umashankar
in A.S.No.157 of 2014

For Respondents : Mr.S.V.Jayaraman, Senior Counsel
in A.S.No.157 of 2014 for Mr.R.Agilesh for R1
Mr.C.Vijayalakshmi for R2

C O M M O N J U D G M E N T

The appeal suits are filed against the judgment and
decree dated 11.07.2013 passed in O.S.No.8692 of 2011 on the
file of the XVII Additional Judge, City Civil Court, Chennai.

2. Both the plaintiff and the first defendant filed the appeal suits and A.S.No.587 of 2013 is filed by the plaintiff in the suit and A.S.No.157 of 2014 is filed by the first defendant in the suit.

3. The difference arose between the plaintiff and the first defendant in respect of denial of mesne profit to the plaintiff and allotment of share in favour of the plaintiff. In view of the fact that claim of mesne profit was denied to the plaintiff, he filed an appeal suit in A.S.No.587 of 2013 and in view of allotment of share to the plaintiff, the first defendant filed an appeal suit in A.S.No.157 of 2014. However, the fact remains that during the pendency of the appeal suits, the second defendant died and consequent to the death, the plaintiff as well as the first defendant are entitled for more share and accordingly, the shares allotted by the Trial Court is to be modified and re-allotted.

4. The facts in nutshell required for the purpose of considering the re-allotment of share, consequent to the death of the second defendant during the pendency of the first appeal are as follows:

(i) Mr.C.Srinivasa Pillai, the grand-father of plaintiff and defendants, divided the share by metes and bounds under Deed of Partition dated 24.10.1956 and registered it as Document No.2634 of 1956, at the Sub-Registrar Office, Periamet. The "C" schedule property mentioned in the above Partition deed dated 24.10.1956 was allotted to the first defendant, the plaintiff and their mother V.Sundarammal i.e., each entitled to 1/3rd share in the said property and the said "C" Schedule mentioned in the Deed of Partition is the present suit properties.

(ii) The appellant in A.S.No.587 of 2013 and the respondents are the legal representatives of one Late Mr.Venkatanarayana Pillai, pre-deceased son of Mr.C.Srinivasa Pillai. Based on the above facts, the appellant in A.S.No.587 of 2013 instituted a suit in C.S.No.868 of 2007, against the respondents seeking the relief that the plaintiff is entitled to 4/9th share in the suit properties and for partition and separate possession by metes and bounds and for permanent injunction restraining the first defendant from alienating the suit properties and for mesne profits, in respect of income being derived from the suit property. The respondent/Mr.C.V.Jayagopal, who is the appellant in A.S.No.157 of 2014, defended the suit by filing a written statement. Mrs.Indirani, the sister of the plaintiff remained ex-parte in the suit. The evidence was taken on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A8 were marked. On behalf of first defendant, D.W.1 & D.W.2 were examined and no documents were filed. Preliminary decree was passed in favour of the plaintiff and 4/9th share was allotted to the plaintiff

in the suit properties. However, the claim regarding mesne profit was dismissed on the ground that there was no document or sufficient proof submitted by the plaintiff for the purpose of grant of relief of mesne profit. Thus, the Trial Court, while declining the mesne profit, allotted partition and 4/9th share in favour of the appellant, who is the plaintiff in O.S.No.8692 of 2011.

(iii) As far as A.S.No.157 of 2014 is concerned, the appeal was filed challenging the share allotted in favour of the plaintiff. The learned counsel for the appellant in A.S.No.157 of 2014 reiterated that no document was produced by the plaintiff, with reference to mesne profit and therefore, the Trial Court rightly rejected the claim. Applying the principle of ouster, the right of the plaintiff is to be rejected by the Trial Court as he was not in joint possession of the suit property and at no point of time, he was granted with the benefit of mesne profit or otherwise. The share allotted in favour of the plaintiff is improper and therefore, the Trial Court committed an infirmity.

5. The Trial Court framed the issues as to whether the plaintiff is entitled for 4/9th share in the suit properties? whether the plaintiff is entitled for permanent injunction as prayed for in the suit? whether the plaintiff is entitled for share in the income from immovable property as prayed for? whether the properties was already partitioned on 24.10.1956? to what other reliefs?

6. With reference to Ex.A1 document, which is a partition deed dated 24.10.1956, the Trial Court found that there is no dispute between the parties regarding the execution of Ex.A1, partition deed dated 24.10.1956 by the grand father, Srinivasapillai and thereby, the 'C' Schedule properties of the partition deed was allotted to the plaintiff, first defendant and their mother Sundarammal. Thus, the partition is to be effected, based on the partition deed, Ex.A1 document. Thereafter, the Trial Court has rightly proceeded that the plaintiff is entitled for 4/9 share in the suit property. Accordingly, issue No.1 was considered by the Trial Court. The admitted facts are that the suit properties and some other properties were originally enjoyed by the grand father of the plaintiff and defendants namely one Srinivasapillai in the capacity of Kartha of the Hindu joint family and he had executed Ex.A1 partition deed dated 24.10.1956. The said partition is not in dispute. The plaintiff and the first defendant are claiming the right over the properties through the said partition deed. Particularly, the first defendant claims the right over 'A' and 'B' schedule properties of the partition deed and the plaintiff is seeking a share over the 'C' schedule property of the said deed. The Trial Court found that in Ex.A1, the properties of the Hindu Joint Family is divided into three schedules namely 'A', 'B' and 'C'. The 'A' schedule property was retained by the executants of the

partition deed himself and 'B' schedule property was allotted to one of the sons of the executants namely Munibather and 'C' schedule is allotted to the plaintiff, the first defendant and their mother Sundarammal.

7. Further, it is an admitted fact that the 'C' schedule property was allotted to the plaintiff, the first defendant and their mother Sundarammal vide Ex.A1 partition deed. It is further admitted that the second defendant, who remained ex-parte, is also the sister of plaintiff and the second defendant and the mother Sundarammal, died. Thus, the second defendant is entitled for 1/3rd share out of her mother's share. Thus, the proportionate share of the plaintiff, the first defendant and the second defendant is 4/9:4/9:1/9. Even the first defendant who denied the rights of the plaintiff, has admitted in his cross-examination that the suit schedule property was not allotted to him separately. His son who was examined as D.W.2 has deposed that " தாவா சொத்தில் முவருக்கும் பங்கு உள்ளது என்று எனக்கு தெரியும் ".
சுதரமம்மல்

8. Thus, as per Ex.A1, the plaintiff, the first defendant and the second defendant are having share over the suit properties. The Trial Court, based on the documents as well as the deposition of D.W.2, arrived at a conclusion that the plaintiff is entitled for 4/9th share in the suit schedule property, which was allotted to this branch of the family through the partition deed.

9. With reference to issue No.3, the claim of the mesne profits, the trial Court found that the plaintiff had not produced any document and the claim of share of future profit is vague, based on the presumption that the plaintiff is not in a joint possession of the suit schedule property and at no point of time, he collected any income derived from the suit schedule property. Under these circumstances, the claim of mesne profit was denied.

10. The learned counsel appearing on behalf of the appellant in A.S.No.157 of 2014 made a submission that the second defendant also died and therefore, the parties are entitled for 1/2 share each and the said submission is not disputed by the learned Senior Counsel appearing on behalf of the appellant in A.S.No.587 of 2013. Therefore, shares allotted to be re-allotted, if at all the claim of the plaintiff is accepted by the Trial Court.

11. The learned Senior Counsel appearing on behalf of the appellant in A.S.No.587 of 2013, contended that the rights of the parties had been established before the Trial Court. The partition deed was admitted by the parties. The evidence of D.W.2 itself is categorical that the plaintiff is having right over the suit schedule property. When the rights are admitted through deposition and the partition deed and the plaintiff as well as the defendants 1 and 2 are entitled for share in the

suit schedule property, there is no reason to accept the contention raised on behalf of the appellant in A.S.No.157 of 2014.

12. This Court is of the considered opinion that Ex.A1 is the vital document, through which, the rights of the parties are crystallized. The existence of Ex.A1 had not been denied by either of the parties. That being so, the share allotted by the Trial Court in favour of the plaintiff cannot be said to be irregular or perverse. The Trial Court has rightly considered the document filed by the parties and further relying on the deposition of D.W.2, wherein it is unambiguously stated that " jhth brhj;jpy; K:tUf;Fk; g';F cs;sJ vd;W vdf;F bjhpa[k;". The said deposition is also unambiguous that the plaintiff is also entitled for share in the suit schedule property. This being the categorical findings of the Trial Court, this Court is not inclined to interfere with the findings of the Trial Court, with reference to the rights, which are all crystallized, in favour of the plaintiff. However, the shares are to be re-allotted, consequent to the death of the second defendant. Accordingly, both the appellants in A.S.No.587 of 2013 and A.S.No.157 of 2014 are entitled for each 1/2 share in respect of the suit schedule property. As far as the mesne profits are concerned, this Court is of the opinion that the Trial Court has considered the claim set out in the plaint and arrived at a conclusion that there is no document to establish the claim and accordingly, denied the relief of mesne profits. This Court, at this juncture, is not inclined to interfere with such findings as now the parties are getting 1/2 share and admittedly, the plaintiff is not in possession till now. Therefore, the mesne profits cannot be ascertained, at this juncture, more specifically, at the time of deciding the present appeal suits.

13. The learned counsels appearing for both the appellant as well as the respondents agreed that time limit may be fixed for passing of final decree by the trial Court so as to conclude the issues at the earliest possible time. In view of the submissions made, this Court is of the opinion that the trial Court is to be directed for the purpose of passing the final decree proceedings enabling the parties to get possession in respect of their respective shares and accordingly, enjoy the same.

14. In view of the factum, the following orders are passed:

(i) the Judgment and decree dated 11.07.2013 passed in O.S.No.8692 of 2011 stands confirmed, with reference to allotment of share, in favour of the plaintiff and rejection of mesne profit.

(ii) the plaintiff's entitlement of 4/9 share in the suit property is modified as 1/2 share and equally, other 1/2 share shall be allotted in favour of the appellant in A.S.No.157 of 2014. Thus, both the appellants in A.S.No.587 of 2013 and 157 of 2014 are

entitled for each 1/2 share in the suit schedule property.

(iii) The Trial Court/XVII Additional City Civil Court, Chennai, is directed to take up the final decree proceedings and conclude the same and pass judgment and decree within a period of six months from the date of receipt of a copy of this judgment.

(iv) It is made clear that both the parties to the suit are directed not to pray for unnecessary adjournments and even such a request for adjournment is made, it is to be considered by recording reasons. However, the learned counsels appearing on behalf of the appellant in both the appeal suits made an undertaking that they will not seek any unnecessary adjournments before the Trial Court and co-operate for early disposal of the final decree proceedings.

15. Accordingly, A.S.No.587 of 2013 stands dismissed and A.S.No.157 of 2014 stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(insp)

//True Copy//

Sub Assistant Registrar

ssb
To

The XVII Additional Judge, City Civil Court, Chennai.

+2ccs to Mr.C.Uma Sankar , Advocate SR.No. 9305,9306

+4ccsto Mr.N.Dhanasekar,Advocate SR.No. 9783,9782,10161,10160

A.S.No.587 of 2013 & 157 of 2014
M.P.Nos.1 & 1 of 2014

A.Sk(22.12.2020)