

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

A.S.No.825 of 2012

and

M.P.No.1 of 2012

C.M.P.Nos.24908 & 24911 of 2019

1.Periya Poovan (Deceased)

2.Thangarasu

3.Perumayammal

4.Latha

5.Kamaraj

6.Kanagaraju

(Appellants 3 to 6 brought on record

as L.R's of the deceased 1st appellant

vide order of this Court dated 20.07.2017

in C.M.P.Nos.11711 to 11713 of 2017

in A.S.No.825 of 2012)

.. Appellants/Defendants

Versus

1.Amutha

2.Sangeetha

3.Periyathal

4.Chinnammal

5.Chandra

(Respondents 3 to 5 impleaded vide order of this Court

dated 02.02.2018 in C.M.P.No.15321 of 2017

in A.S.No.825 of 2012)

.. Respondents/Plaintiffs

Appeal Suit filed under Section 96 of C.P.C., against the judgment and decree dated 08.02.2012 made in O.S.No.6 of 2011 on the file of the Principal District Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.D.Shivakumaran -R1 & R2

M/s.K.Velangani - R3 & R4

Mr.G.Satheesh - R5

JUDGMENT

This appeal suit arises out of the judgment and decree dated 08.02.2012 passed by the learned Principal District Judge, Namakkal, in O.S.No.6 of 2011. The appellants 1 and 2 are the defendants; and the respondents 1 and 2 are the plaintiffs in the said suit.

2.The brief facts of the case are as follows:

2.1 The plaintiffs filed the aforesaid suit for partition of 1/3rd share in the suit schedule properties and to pass preliminary decree and for permanent injunction restraining the defendants from alienating the suit schedule properties till the disposal of the suit, stating that the suit schedule properties viz., items 1 to 15 originally belonged to one Chinna Kolandan /father of the plaintiffs and Chokkan @ Chinnapoovan /father of the defendants and are ancestral properties; after the death of Chokkan @ Chinnapoovan, both the plaintiffs and the defendants have been in joint possession and enjoyment of the suit schedule properties; from the income of the joint family properties, items 16 and 17 were purchased in the name of the first defendant; and after the death of the father of the plaintiffs Chinna Kolandan, the plaintiffs demanded partition of the suit schedule properties, but the defendants denied their share and entered into a partition deed among themselves on 17.01.2006, which compelled the plaintiffs to institute the suit.

2.2 The defendants filed a written statement denying the averments made in the plaint, as per which, the plaintiffs are not the legal heirs of Chinna Poovan and hence, they cannot claim any right over the suit schedule properties; the plaintiffs have failed to implead other sisters as parties to the suit and as such, the suit is liable to be dismissed for non-joinder of necessary parties; and items 16 and 17 are the personal properties of the first defendant as the same were purchased by the amount of selling the jewels belonging to his wife. Further, the defendants denied the joint possession and enjoyment of the suit schedule properties by the plaintiffs.

2.3 The Trial Court, after considering the oral and documentary evidence adduced before it, was of the view that the plaintiffs are the legal heirs of Chinna Poovan and they are entitled to their father's share of 1/3rd in the suit schedule properties. Accordingly, the trial Court has decreed the suit in favour of the plaintiffs. Feeling aggrieved, the appellants 1 and 2 / defendants have preferred the instant appeal suit.

3.During the pendency of the appeal suit, the respondents/defendants have filed CMP.No.15321 of 2017 seeking permission to implead the proposed parties, who are said to have been the step sisters of their father. By order dated 02.02.2018, the said petition was ordered and the proposed parties were impleaded as the respondents 3 to 5 in the suit.

4.Today, when the matter was taken up for hearing, the learned counsel appearing for all the parties jointly submitted

that the trial Court decreed the suit, without impleading the necessary parties and now, all the parties were brought on record and hence, the matter may be remanded back to the trial Court for fresh consideration, after hearing all the parties.

5. In view of the aforesaid submission made by the learned counsel appearing for all the parties and also having regard to the settled principle of law that "in a suit for partition, all the sharers are necessary parties and the suit is liable to be dismissed for non-joinder of any one of the parties"; and "the question of non-joinder of necessary parties can be raised in a suit for partition at any time, as it goes to the root of the matter", this Court is inclined to remand the matter to the trial Court for fresh consideration, after setting aside the judgment and decree passed by it.

6. Accordingly, the judgment and decree dated 08.02.2012 passed by the learned Principal District Judge, Namakkal in O.S.No.6 of 2011 is set aside and the matter is remanded back to the trial Court, which shall conduct a fresh trial in a time bound manner, after impleading all the necessary parties and dispose of the suit, within a period of six weeks from the date of resumption of physical hearing of Courts.

7. This Appeal Suit stands allowed to the extent as indicated above. Considering the relationship between the parties, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Namakkal.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr. T. Dhanyakumar, Advocate, S.R.No. 27654

A.S.No.825 of 2012
and

and M.P.No.1 of 2012

C.M.P.Nos.24908 & 24911 of 2019

PA (CO)
GN(10/05/2021)