

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1673 of 2001
and CMP.No.17735 of 2001

Andal @ Dhanamal ... Appellant / Appellant / Plaintiff

Vs

1. Arumugan
2. Tandavarayan
3. Murugan
4. Palani
5. Subramanian
6. Arumugan
7. Dandapani

... Defendants / Respondents / Respondents

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.116 of 1999, dated 31.10.2000 on the file of the Second Additional Sub Court, Villupuram, in confirming the judgment and decree in O.S.No.275 of 1993, dated 16.07.1998, on the file of the Principal District Munsif, Thirukoilur.

For Appellant : Mr.V.Raghavachari

For Respondents: Mr.D.Deepak Rajan
for Mr.D.Ashok Kumar [R4]
1 to 3, 5 to 7 [Not ready in notice]

JUDGMENT

The plaintiff is the appellant herein. She laid a suit for declaration and for permanent injunction, and lost it successively both before the trial Court as well as before the first Appellate Court in A.S.No.116/1999. Parties would be referred to by their rank before the trial Court.

2. There are four items of suit properties, of which, three items are agricultural properties and the fourth item is a residential house. In this suit, the defendants 4 to 7 were the contesting defendants, of who, the fourth defendant was examined as D.W.1 before the trial Court.

3. The appeal was admitted on 30.01.2002. However, no notice is seen to have been taken on the respondents and hence, this Court directed that a notice be taken on them. It is almost 18 years since the appeal was admitted and therefore, this Court chose to hear the learned counsel for the appellant in detail in ascertaining if the appellant/plaintiff, at all, has a claim to be considered by this Court in this second appeal. Accordingly, this appeal is heard today.

4. The case of the plaintiff may be summarised as below :

- The suit property originally belonged to one Manicka Asari. Manicka Asari had two sons and two daughters. They are Thangavel Asari, Thoppula Asari, Dharini alias Myili and Annasahayam. The last two are his daughters. Manicka Asari's brother-in-law is one Annamalai Asari. He is Manicka Asari's wife's brother. Annamalai Asari had four sons. They are : (a) Gundu Asari (b) Muruvu Asari (c) Vaiyapuri Asari and (d) Sadaya Asari. Of the four, Gundu Asari had married Manicka Asari's daughter Annasahayam, while Muruvu Asari had married Dharini alias Myili. Gundu Asari and Annasahayam had a son named Samikannu alias Pavadai. Pavadai's wife is Andal, and she is the plaintiff. Muruvu Asari had two sons, of who, one is the first defendant. His other son, Kannan had died before the institution of suit and his children are defendants 2 and 3. Manicka Asari's grand children through his son Thangavel Asari are defendants 4 to 7.
- The plaintiff contends that long before Annamalai Asari had moved with his family including his children to reside with Manicka Asari, that all his sons grew up along with the children of Manicka Asari as one family, so much so, they constituted a joint family. On the strength of this assertion, she claims partition, contending that she is in occupation of the residential house in Item No.4 (Patta No.57) and seeks a declaration of title, based on the title of her husband Samikannu @ Pavadai. In other words, she literally asserts possessory right and seeks declaration for the same.
- The plaintiff also alleges that there was an oral family arrangement organised by Thoppula Asari himself whereby properties are divided between the plaintiff and defendants 1 to 3.

5. The defendants 1 to 3 remained exparte and the suit was contested by defendants 4 to 7. As already indicated, they claim right to the suit properties through their father Thangavel Asari. They contended that at no point of time, the

children of Annamalai Asari and Manicka Asari constituted a joint family, that the children of Annamalai Asari have not been their coparceners at no point of time, and that Annamalai Asari's sons lived separately, which included the plaintiff's father-in-law Gundu Asari, and that the suit property was enjoyed as of right only by these defendants' father Thangavel Asari and Thangavel Asari's brother Thoppula Asari, that the plaintiff never had right in the suit property and refuted the plaintiff's claim for declaration of title.

6. The trial Court framed as many as eight issues, of which, the issue relating to joint enjoyment became critical. After appreciating the evidence before it, the trial Court dismissed the suit which came to be confirmed by the first Appellate Court. The first Appellate Court has taken a view that the plaintiff herself has conceded in the plaint that the suit property originally belonged to Thangavel Asari and his brother Thoppula Asari, and in these circumstances, the children of Annamalai Asari cannot become coparceners along with them, and hence, no right subsists for the plaintiff to seek partition, and accordingly, there could not have been a partition. It also proceeded to hold, notwithstanding the fact that DW1 has admitted that the plaintiff is in possession of a portion of the house in Item No.4 of the suit property, yet it cannot be founded on any vested right.

7. The second appeal is admitted on the following substantial questions of law :

'1. Whether the order of the Courts below as regards character and nature of the property is not against the admission of D.W.1?

2. When the plaintiff is a legal heir of one of the sharer and claiming through Manicka Padayachi and also as a wife of the joint family holder, whether the Courts Below are right in coming to conclusion on the basis of Ext.B-1?

3. Whether the Courts below ought not have decreed the suit on the basis of admission of D.W.1 as regards the grant of patta in the name of the appellant under Ext.A1?

4. Whether the Courts below are right in not adverting to the fact that the joint family can be created among close relatives by pooling heir labour and resources?"

8. The learned counsel for the appellant strained himself to convince this Court, because the fourth defendant as D.W1 has admitted in his cross-examination that the plaintiff was residing

in a portion of the house in Item No.4, bearing an independent door number and hence, her right need to be recognised and this could not have happened unless there was an oral partition between the family of Gundu Asari, Thangavelu Asari and Thoppula Asari.

9. The learned counsel appearing for the fourth defendant strongly opposed the appeal.

10. Without any need to hear the respondents herein, if the case of the plaintiff is assessed, plaintiff's case can be oscillating and it is founded on an uncertain plane. She (plaintiff) started with an initial statement in the pleading that the suit property belonged to Thangavelu Asari and Thoppula Asari, that they are the rightful descendants of Manicka Asari. Therefore, there cannot be any difficulty for them to succeed to the estate of Manicka Asari. So far as the plaintiff is concerned, she claims right through the son of Annamalai Asari, who as already indicated, he can never become a coparcener with the son of Manicka Asari. At the best, the plaintiff might have been a licensee to occupy a portion of Item No.4 in the suit property, but that can never be traceable to any vested or subsisting right in her. Therefore, notwithstanding that this appeal was admitted on the re-appraisal of the case of the plaintiff/appellant after 18 years, this Court concludes that there is no merit in the appeal and all substantial questions of law fails and consequently, there is no need to issue notice to the respondents.

11. In the result, this appeal is dismissed and the judgment and decree dated 31.10.2000 in A.S.No.116 of 1999, on the file of the II Additional Sub Court, Villupuram, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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Thirukovilur.

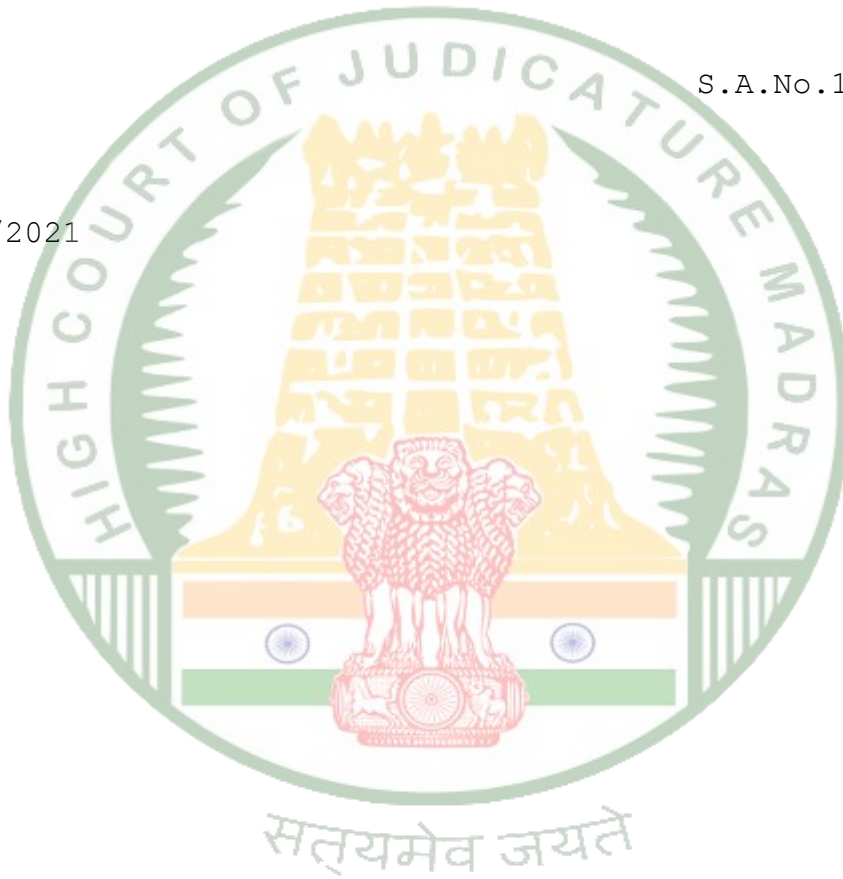
2.The II Additional Sub Judge
Villupuram.

3. The Section Officer
VR Section
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate Sr.18896
+lcc to Mr.D.Ashok Kumar, Advcoate Sr.19644

S.A.No.1673 of 2001

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