



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

SA(MD).No.790 of 2010

Chinnapandi

: Appellant / respondent / plaintiff

Vs.

1.Subramanian

2.Muthuramalingam : Respondents / appellants / defendants

Prayer: This Second Appeal filed under Section 100 CPC to set aside the Judgment and Decree dated 01.07.2010 passed in A.S.No.9 of 2008 on the file of the Sub Court, Sankarankoil reversing the Judgment and Decree dated 18.12.2007 passed in O.S.No. 208 of 2006 on the file of the Principal District Munsif Court, Sankarankoil.

For appellant : Mr. V. Meenakshisundaram
for Mr.D.Nallathambi

For respondents : Mr.F.X. Eugene

JUDGMENT

Against the reversal finding of the first appellate Court, the second appeal is filed.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The brief facts leading to the filing of the suit are as follows:

(i) The suit property originally belonged to one Muthuvellaiyappa Thevar and others, out of which, the father of the plaintiff viz., Sankarapandiathevar purchased an un-divided extent of 74 cents by virtue of a registered sale deed dated 18.05.1972. From the date of purchase, he was in possession of the property. In the year 1978, in an oral partition, the suit property allotted to Sankarapandiathevar and patta was also issued for the same. He died intestate leaving behind the plaintiff as his sole legal heir to succeed to the suit properties and thereafter, the plaintiff is in possession of the suit property as its absolute owner and they are also enjoying the property for more than 30 years continuously. The plaintiff also sold to an extent of 0.05 cents to one Palpandi situated on the North West portion. The remaining portion of the properties is in the possession and enjoyment of the plaintiff. The defendants were attempting to encroach the suit property. Hence, this suit is



(ii) The defendants filed written statement denying the contention of the plaintiff and submitted that originally the suit property belonged to one Subbaiah Thevar. He died intestate leaving behind his son Muthuveliyappa Thevar. Muthuveliyappa Thevar @ Vellaipandi Thevar and his sons Chinnadurai and Kasipandian succeeded to the properties. After the demise of Muthuveliyappa Thevar, his sons succeeded to the properties and enjoyed the extent of 1-83 acres and sold an undivided 0.49 Cents to one Mayandithevar son of Veliyappathevar by virtue of a sale deed, dated 04.01.1980. Thereafter, Mayandithevar was in possession of the undivided 49 Cents by cultivation and on 31.10.1984 he sold the same to the father of the defendants viz., Chelliayathevar @ Muthaiyathevar. The father of the defendants died intestate on 29.12.1985 leaving behind nine legal heirs who succeeded to the properties. Regarding 74 Cents, there was an oral partition with the other co-owners in the year 1987, in which, eastern 49 Cents were allotted to the defendants and their legal heirs. Suppressing the fact that Muthuveliyappa Thevar has another name Vellaipandi Thevar, the plaintiff with an ulterior motive to defeat the sale deed in the name of the father of the defendants has filed the suit. The suit is bad for non joinder of the mother, brothers and sisters of the defendants.

(iii) The trial Court has framed four issues. On the side of the plaintiff, PW.1 to PW5 were examined and Exs.P1 to P12 were marked. On the side of the defendants DW.1 and DW.2 were examined and Exs.D1 to D5 were marked.

(iv) The trial Court on perusal of the entire documents decreed the suit.

(v) The first Appellate Court has taken the following points for consideration:

- "1. Whether the finding of the trial Court to issue No.3 correct?
2. Whether the finding of the trial Court issues 1 and 2 is correct?
3. What is the verdict of this Court in this appeal and what are the terms?"

(vi) Finally, the first appellate mainly focusing on the issue No. 3 of the trial Court held that the suit is bad for non-joinder of necessary party and accordingly allowed the appeal.

4. Aggrieved by the same, the present Second Appeal is filed by the plaintiff. According to the plaintiff, the first appellate Court, in fact, not considered the facts on entirety.



The rights or entitlement of the parties were not discussed by the first Appellate Court. The first appellate Court simply allowed the appeal on the ground that the suit is bad for non-joinder of the necessary party.

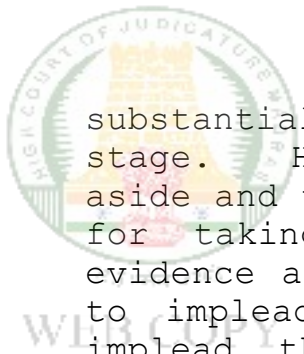
5. While admitting the Second Appeal, the following substantial question of law is framed:

"Whether the Judgment and Decree of the Lower Appellate Court dismissing the suit for non-joinder of necessary parties is correct, since the proviso to Order 1 Rule 9 and Section 99 CPC is not penal but remedial and the Court can exercise its power under Order 1 Rule 10(2) and Order 6 Rule 17 CPC for adding the necessary parties to render substantive justice and thus warrants interference under Section 100 CPC?"

6. I have heard the learned counsel appearing for the plaintiff / appellant and the defendants / respondents.

7. Both the learned counsel fairly submitted that the first appellate Court has not gone into the facts and simply allowed the appeal only on the ground that the suit is bad for non-joinder of necessary party. The plaintiff claims right over 69 Cents based on the sale deed in favour of his father. The defendants also claimed the rights of 49 Cents in the same Survey. It is the contention of the defendants that the father has two names. The trial Court in fact found that such contention of the defendants has not been established and decreed the suit. The first appellate Court being the final Court of facts ought to have considered the entire issues and re-appreciated the evidence afresh to find out whether the plaintiff is entitled to the suit property or defendants are entitled to rights as per the sale deed. Without doing so, the first appellate Court has mechanically allowed the appeal on the one and only issue that the suit is bad for non joinder of necessary party.

8. It is the specific case of the plaintiff that defendants are stranger to the property. Such being the position, without deciding the rights of the parties by appreciating the entire evidence, the first Appellate Court has disposed the appeal only on technical ground. This Court is of the view that the Judgment of the First Appellate Court is nothing but perverse. The first appellate Judge has not applied his mind and not even followed the basic procedural law, while dealing with the appeal. Therefore, the entire Judgment of the First Appellate Court has to be set aside as no finding is recorded on factual aspect and the matter has to be remanded for consideration afresh to the first appellate Court. In view of the above, answering to the



substantial question of law does not arise in this appeal at this stage. Hence, the Judgment of the First Appellate Court is set aside and the matter is remanded back to the First Appellate Court for taking decision on merits after considering the entire evidence adduced by both sides. It is also open to the parties to implead the legal heirs, after giving an opportunity to implead the parties. The first appellate Court shall re-appreciate the entire evidence, frame the points for consideration separately and decide the appeal as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order. It is made clear that the impleading application to be filed by the parties shall be allowed within a reasonable time.

9. In the result, the Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To

1. The Subordinate Judge, Sankarankoil.

2.The Principal District Munsif, Sankarankoil.

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The Section Officer,-2 copies

VR Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.F.X.EUGENE, Advocate (SR-2222[F] dated 21/01/2020)

+1 CC to MR.D.NALLATHAMBI, Advocate (SR-2456[F] dated 22/01/2020)

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