



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD).No.166 of 2019

and

C.M.P.(MD).No.8556 of 2019

I.K.Manoharan ... Appellant / 3rd Defendant
Vs.

1.K.Manonmani ... 1st Respondent / Plaintiff

2.I.K.Ammaponnu

3.I.K.Mayilvahini ... Respondents 2 & 3 / Defendants 1 & 2

Prayer: The Appeal Suit has been filed under Section 96 r/w. Order 41 Rules 1 and 2 of C.P.C., against the judgment and decree dated 17.09.2018 passed in O.S.No.243 of 2015 on the file of the VI Additional District Court, Madurai.

For Appellant: Mr.B.Prahalad Ravi
For R1 : Mr.S.Srinivasa Raghavan
For R2 & R3 : Mr.N.Tamilmani

J U D G M E N T

Aggrieved over the decree and judgment of the trial Court, decreeing the suit for partition, the present appeal has been filed.

2. The brief facts leading to the filing of the appeal is as follows:

The plaintiff is the daughter of the first defendant and the defendants 2 and 3 are the brothers. It is stated by the plaintiff that the suit property originally belonged to her father Kandan Ambalam. It is a self acquired property and the plaintiff's father Kandan Ambalam died in the year 1993, leaving behind the plaintiff, the defendants and one of the sons viz., Manivannan as his legal heirs. It is the case of the plaintiff that the said Manivannan also died in the year 1999, as a bachelor. Therefore, his share devolved upon the first defendant. The 3rd defendant has evaded to effect for partition. Hence, the suit in O.S.No.243 of 2015 has been filed for partition.

3. The first defendant has filed a written statement sailing with the plaintiff. It is the contention that the suit property is an absolute property of late Kandan. Hence, he has no objection for partition.



4. The third defendant only contested the suit, denying the allegation of the plaintiff that the suit property is a self acquired property of Kandam. It is the contention of the third defendant that the first item of the suit property is in his possession and it was allotted to him and an amount was also given to the plaintiff. In a family arrangement, similarly, the plaintiff and the second defendant were also allotted the property in Survey Nos.186/2(b), 186/5(A), 186/6(b), 186/7 and 182/2(b). As the plaintiff has received the loan in respect of the first item of the suit property, she has no right in the property. Similarly, the second item of the suit property was also partitioned during the life time of the father and allotted to the sons. Therefore, the plaintiff has no right in respect of the 2nd and 4th items of the suit property. The 3rd item of the suit property is in his possession and it is only an Inam property. In respect of the 5th item of the property, the Patta was changed in his name and the 6th item of the property stands in the name of the defendant's uncle. The 7th item of the property is a Natham poramboke. Hence, it is his contention that the entire properties are in his possession and the suit is not maintainable.

5. Based on the above pleadings, the trial Court has framed the following 5 issues:

(I) *Whether the plaintiff is entitled to 1/5 share in the suit properties?*

(ii) *Whether the 1st defendant is liable to render accounts for the Income from the year 2013 to the plaintiff?*

(iii) *Whether the plaintiff is entitled to the relief of permanent injunction?*

(iv) *Whether the plaintiff is entitled to preliminary decree for partition of 1/5 share?*

(vi) *To what other relief and cost the plaintiff is entitled to?*

6. On the side of the plaintiff, P.Ws.1 to 4 were examined and Exs.A1 to A27 were marked. On the side of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B9 were marked and Exs.C1 to C7 were marked.

7. Based on the above oral and documentary evidence, the trial Court has decreed the suit. As against which, the present appeal suit has been filed.

8. The main contention of the learned counsel for the appellant that though the defence raised as a family partition, there was no specific issue framed by the trial Court. However, the trial Court found that the family arrangement was not established. Hence, it is his contention that without any issue being framed, such a finding



is not proper. It is his further contention that the suit properties are all along in possession of the appellant and the plaintiff has no share in the suit property. Hence, he prayed for allowing the appeal.

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9. It is the contention of the learned counsel for the respondents that the trial Court actually found that the properties are self acquired properties of late father of the plaintiff. Such being the matter, the alleged family arrangement has not been established. Hence, he prayed for dismissal.

10. In the light of the above submissions, now the points for consideration in this appeal is

(i) *Whether the alleged family arrangement set up the defence is proved in the manner known to law?*

(ii) *Whether the third defendant has discharged his burden in establishing the family arrangement? and*

(iii) *Whether the finding of the trial Court without any issue is vitiated?*

11. Admittedly, the suit properties have been purchased by late father of the plaintiff and the defendants 2 and 3. This fact is not in dispute and the relationship of the parties also not disputed. Similarly, one of the sons viz., Manivannan died as a bachelor, in the year 1999, is also not disputed by the parties. The main contention of the contesting defendant is that as far as the item No.1, family arrangement was made and he was allotted entire item numbers of the suit property and the plaintiff and the other legal heirs are given cash. It is to be noted that absolutely there is no whisper whatsoever with regard to the date, when such arrangement was took place and whose presence the arrangement made. It is also noted that any relinquishment of right has to be made, only their rights in favour of the main property. Such being the position, even assuming that there is an alleged relinquishment, the same cannot be valid in the eye of law, as the same has not been made by the registered instrument. Further, it is to be noted that even to draw any inference or presumption, absolutely there is no material whatsoever on record, to prove the alleged family arrangement. Similarly, with regard to the allotment of the shares to other sharers during the life time of Kandan also there is no evidence. Therefore, merely on the basis of such plea, it cannot be said that the suit for partition is not maintainable. When the original owner died intestate leaving behind the legal heirs, all the legal heirs have entitled to the share equally. Since one of the sons also died as a bachelor, which is not disputed, his share in the property automatically devolved upon the first respondent/mother. In the absence of any evidence, on the side of the defendants, to countenance the pleadings, merely because, there was no specific issue with regard to the family arrangement framed by the trial



Court, it cannot be said that entire judgment is vitiated. In fact, the first issue as to whether the plaintiff is entitled to share in the suit property has been considered by the trial Court and negatived the contention of the defendants as to the family arrangement.

12. In such view of the matter, merely not framing of the issue will not vitiate the judgment of the trial Court. Similarly, entire burden placed on the defendants to prove the family arrangement is also not been established, except the pleadings, no evidence available on record. Therefore, merely because the person or co-owner in occupation of the property, being a male member can exercise same right and availed some loan, that cannot be a determining fact to hold that there is a partition in the family, unless the so called partition alleged is proved by competent evidence. Hence, this Court holds that burden of proving the oral partition has not been established and the family arrangement has also not been established. Accordingly, this Court holds that the judgment of the trial Court is well balanced and does not require any interference. The plaintiff is granted preliminary decree as per entitlement. Such view of the matter, there is no infirmity in the order passed by the trial Court.

13. In fine, the Appeal suit is dismissed and the judgment of the trial Court is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The VI Additional District Judge, Madurai.

Copy to:

The Section Officer, (2-copies)
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-7734[F]
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