



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.01.2020**

CORAM:

THE HONOURABLE **MR. JUSTICE R. SUBRAMANIAN**

S.A. (MD) No. 391 of 2015

and

M.P. (MD) No. 1 of 2015

PR.R.Ramanathan Chettiar (Died)

1.A.P.Seethai Achi

2.S.Azhagammai Achi

3.S.P.Kamalam Achi

4.P.R.Manickam

5.M.Mangalam

6.P.P.Kalyani

7.P.R.Rajendran

8.K.Seethai

9.P.R.Muthaiah

10.R.M.Nagammai Achi (Died)

Kamalam Achi (Died)

11.S.M.Yogammai Achi

12.K.Ramanathan

13.K.Ramanathan

14.R.Meenakshi

... Appellants / Respondents 2 to 14 /
Plaintiffs 2 to 14

Vs.

1.Manonmani



2.R.M.Karuppaiah Devar

.. Respondents 1 and 2 / Appellants /
Defendants 1 and 3

3.The Tahsildar,
Taluk Office,
Thirumayam Post and Taluk,
Pudukkottai District.

4.The District Collector,
District Collector Office,
Pudukkottai.

5.A.L.Vasanthan Achi

6.Shek Dawood

7.R.Krishnappan
(Appellants 13 and 14 and 7th respondent brought
on records as LRs of deceased 10th appellant vide
Court order dated 28.07.2016 made in CMP(MD)
No.3697 of 2016).

PRAYER: This Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 07.03.2014 passed in A.S.No.47 of 2007, by the learned Principal District Judge, Pudukkottai reversing the judgment and decree dated 16.12.1998 passed in O.S.No.228 of 1995 by the learned Subordinate Judge, Pudukkottai.

For Appellants : Mr.G.Sridharan

For R-1 and R-2 : Mr.V.Anand

For R-3 and R-4 : Mr.N.Shanmugaselvam

Additional Government Pleader

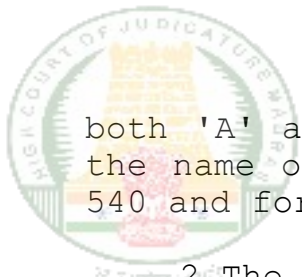
For R-7 : Mr.P.Velmurugan

For R-5 : No Appearance

For R-6 : Dispensed with

JUDGMENT

The plaintiffs 2 to 14 in O.S.No.228 of 1995 have come up with this second appeal. The suit in O.S.No.228 of 1995 was filed by 14 plaintiffs seeking for a declaration that the sale deed, dated 13.09.1994, executed by the second defendant in favour of the first defendant is void; directing the defendants 4 and 5 by way of mandatory injunction to sub divide Survey No.991 and grant patta for



both 'A' and 'B' scheduled properties to the plaintiff by deleting the name of the third and seventh defendants in patta Nos.2067 and 540 and for costs.

2.The defendants 1 to 3, 6 and 7 remained exparte. The suit was resisted by the defendants 4 and 5 raising various contentions.

3.The trial Court upon consideration of the evidence on record decreed the suit as prayed for. Aggrieved by the said Judgment and decree, the defendants 1 and 3 filed an appeal in A.S.No.47 of 2007. During the pendency of the said appeal, the first and the 15th respondents died. While the first respondent was first plaintiff, the 15th respondent was the second defendant. Applications were filed seeking to set aside the abatement caused by their death; seeking to condone the delay in setting aside the abatement caused by their death; to set aside the abatement and to bring on record their legal representatives. I.A.Nos.21 and 22 of 2009 are the two applications filed seeking condonation of delay in seeking to set aside the abatement caused by the death of the first and the 15th respondents in the appeal. In the said applications, the proposed parties, viz., the legal representatives of the deceased first and the 15th respondents were not made as parties. No notice was also issued to them. However, the delay was condoned on payment of costs on 19.08.2011. Thereafter, the applications to set aside the abatement viz., I.A.Nos.32 and 33 of 2011 were taken up. Here again, the proposed parties viz., the legal representatives of the deceased respondents 1 and 15 were not impleaded. The applications to set aside the abatement in I.A.No.32 and 33 of 2011 came to be allowed on 10.01.2013. This led to the applications to bring on record their legal representatives being numbered. As was the case in the other petitions, the legal representatives were not made parties to these petitions also. Though the notes paper shows that notice was ordered to them, there is nothing to show that notices were served on them. However, those two applications viz., I.A.Nos.2 and 3 of 2013 were dismissed as withdrawn on 10.04.2013. Therefore, the legal representatives of one of the plaintiffs and one of the defendants were not impleaded in the appeal. The appeal stood abated as against those two respondents viz., the first and 15th respondents. Yet another application was filed in I.A.No.10 of 2013 to amend the grounds of appeal showing the first and the 15th respondents as dead. The said application was allowed. The amendment was also carried out. The lower appellate Court by its Judgment dated 07.03.2014 allowed the appeal in its entirety and the suit in O.S.No.228 of 1995 was dismissed. It is also seen from the written arguments filed before the lower appellate Court that the fact, that appeal has abated as against the first respondent, was brought to the notice of the lower appellate Court. Despite the same, the lower appellate Court chose to allow the appeal reversing the decree as against the dead person after the appeal had abated. Aggrieved, the plaintiffs 2 to 14 are on appeal.



4.The following questions of law were framed by this Court at the time of admission:-

1. Whether the lower Appellate Court is justified in law and reversing the well considered judgment by the trial Court, without giving any reason that how the findings of the Trial Court are wrong?

2. Is the Principle "Possession follows title" not attracted in the instant case? and whether the Lower Appellate Court is right in law in not applying the said principle to decide the appeal?

3. Whether the Lower Appellate Court is right in law in entertaining the petitioner filed in I.A.No.23 of 2013 to receive the additional evidence and whether the Lower Appellate Court has followed the procedure laid down under Order 41 Rule 28 of the Civil Procedure Code?

4. Whether the classification of the portion of the suit property as Anatheenam by the Government will clothe any right to them and whether the Lower Appellate Court is justified in law in non-suiting the plaintiff?"

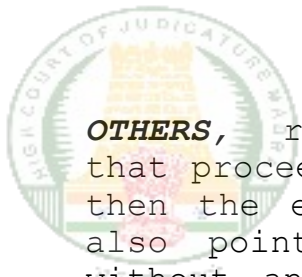
5. After hearing the counsel at length, the following additional question of law is framed for consideration in the appeal:-

Whether the lower appellate Court was right in reversing a decree for declaration of title and injunction, which proceeds on a common ground of all the parties in the absence of the legal representatives of one of the plaintiffs, more so, when the appeal has abated as against the deceased first plaintiff?

6. If the additional question of law is answered in favour of the appellants, the other questions of law need not be gone into. Hence, I take up the additional question of law first for determination.

7. The facts narrated above would show that there is no dispute about the death of the first and the 15th respondents in the appeal, pending the appeal and the fact that the application to bring on record their legal representatives were withdrawn and hence, their legal representatives were not brought on record. The decree is one for declaration and injunction, which proceeds on a common ground to all the plaintiffs. It is settled law that a decree, which proceeds on a common ground to all the plaintiffs and the defendants cannot be reversed in the absence of the legal representatives of any of

<https://hservices.ecourts.gov.in/hservices/> then, The Hon'ble Supreme Court in **BUDH RAM AND OTHERS v. BANSI AND**



OTHERS, reported in **2010 (11) SCC 476**, had held that if a decree that proceeds on a common ground to all of them and is indivisible, then the entire appeal will abate. The Hon'ble Supreme Court had also pointed out that abatement takes place automatically and without an order of court setting aside the abatement and their legal representatives being brought on record, the appeal cannot be proceeded with on merits against the other parties. It will be useful to extract the relevant portion of the Judgment of the Hon'ble Supreme Court, which reads as follows:-

"17. Therefore, the law on the issue stands crystallised to the effect that as to whether non-substitution of LRs of the defendants/respondents would abate the appeal in toto or only qua the deceased defendants/respondents, depend upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not inter-dependent upon one or the other, nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the Court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject matter in the same suit. Thus, whether the judgment/decreed passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test.

18. The instant case requires to be examined in view of the aforesaid settled legal propositions. Every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. Therefore, in theory, every co-owner has an interest in every infinitesimal portion of the subject matter, each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place.

19. In the instant case a declaratory decree was passed in favour of respondents/ plaintiffs and Smt. Parwatu to the effect that they were co-owners, though, they had specific shares but were held entitled to be in "joint possession". The appellants/applicants had sought relief against Smt. Parwatu before the 1st Appellate court as



there was a decree in her favour, passed by the Trial Court where Smt. Parwatu had been impleaded by the appellants/applicants as proforma respondent. In such a fact-situation, she had a right to contest the appeal. Once a decree had been passed in her favour, a right had vested in her favour. On her death on 19.11.2000, the said vested right devolved upon her heirs. Thus, appeal against Smt. Parwatu stood abated. In the instant case, the 1st Appellate Court rejected the application for condonation of delay as well as the substitution of LRs of Smt. Parwatu, respondent No. 4 therein."

8. In the case on hand also, the decree is one for declaration and it proceeds on the common ground to all the respondents. If the decree is reversed as against the respondents, who are alive, there will be two conflicting decrees, one declaring the title of the deceased first defendant and the other dismissing the suit in respect of the other defendants. It is this eventuality, which impels me to interfere with the Judgment of the lower appellate Court. It must also be stated that there cannot be a decree against a dead person. Hence, the additional question of law raised is answered in favour of the appellants. The appellate court has no right to proceed with the appeal on merits after having dismissed the applications to bring the legal representatives of the deceased first respondent, who was a joint plaintiff along with the appellants herein on record.

9. In view of the above, the Second Appeal is allowed. The Judgment of the lower appellate Court is set aside and that of the trial Court will stand restored. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal District Judge,
Pudukkottai.

2. The Subordinate Judge,
Pudukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Tahsildar,
Taluk Office,
Thirumayam Post and Taluk,
Pudukkottai District.

4.The District Collector,
District Collector Office,
Pudukkottai.

Copy to:

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

+2 CC to M/s.G.SRIDHARAN, Advocate (SR-2258[F] dated 21/01/2020)

+1 CC to M/s.SPL.GP (SR-2590[F] dated 23/01/2020)

+1 CC to M/s.V.ANAND, Advocate (SR-2659[F] dated 23/01/2020)

S.A. (MD) No. 391 of 2015

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M.P. (MD) No. 1 of 2015

21.01.2020

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SDS (26.02.2020) 7P-11C