



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NOS.1994 & 1995 OF 2010

AND

M.P.NOS.1 OF 2010 & 1 OF 2011

1.Rajabathar
2.Subramani
3.Malarvizhi
4.Vijayalakshmi
5.Sundari

.. Appellants in both appeals

..Vs..

1.Soundari Ammal
2.Krishnaveni Ammal
3.R.Ranganathan
4.Janakiraman
5.Kamala
6.Saraswathi
7.Lakshmi
8.Minor Murali
9.Nataraja Pillai
10.Ramakrishnan

.. Respondents in CMA.No.1994/2010

1.Krishnaveni Ammal
2.R.Ranganathan
3.Janakiraman
4.Kamala
5.Saraswathi
6.Lakshmi
7.Minor Murali
8.Soundari Ammal
9.Nataraja Pillai
10.Ramakrishnan

.. Respondents in CMA.No.1995/2010

COMMON PRAYER :

Civil Miscellaneous Appeals are filed under Order 43 Rule 1 (u) of Civil Procedure Code, against the judgment and decree dated 22.12.2009 made in A.S.89 of 2006 and Cross Appeal in A.S.No.76 of 2008 respectively, on the file of the Subordinate Judge at Kancheepuram, remanding the Judgement and Decree dated



WEB COPY

30.08.2006 made in O.S.No.491 of 1999 on the file of the Principal District Munsiff Court, Kancheepuram.

For Appellants : Mr.K.Padmanabhan
For M/s.S.N.Mala

For Respondents : Mr.Prasanna Venkatesh

COMMON JUDGMENT

The appellants herein are the plaintiffs 1 to 5, who filed a suit in O.S.No.491 of 1999 on the file of the Principal District Munsiff Court, Kancheepuram. They have preferred this appeal challenging the judgment passed in A.S.89 of 2006 and Cross Appeal in A.S.No.76 of 2008 respectively, on the file of the learned Subordinate Judge at Kancheepuram, remanding the case in O.S.No.491 of 1999 to the file of the Principal District Munsiff Court, Kancheepuram for fresh disposal.

2. The questions of law that arises for consideration are as follows:

"(i).Whether the Lower Appellate Court committed error in excising power of remand for the purpose of impleading the legal heirs of the deceased Govindaraja Naicker, without considering the fact that the earlier petition in I.A.No.650 of 2003 was dismissed by the trial Court ?

(ii).Whether the lower appellate Court erroneously remanded the case to the trial Court without considering the fact that it is the second round of litigation? and

(iii).Whether the Lower Appellate Court failed to appreciate the purchase made by the defendant are pendent-in- lite?"

The suit was filed for declaration to declare that the plaintiffs are the owners of the plaint mentioned property, and for recovery of possession from the defendants 2 to 10, and for mense profits.

3. The learned counsel for the appellants/plaintiffs submitted that one Murugappa Naicker had 2 sons and 1 daughter, in which the elder son Govindaraja Naicker died and daughter Krishnaveni ammal is the 1st defendant herein. The said Murugappa Naicker died in the year 1975. Before his death Murugappa Naicker executed a Will through which life interest was given to



the 1st plaintiff/son, thereafter, the property would devolve on the plaintiffs 2 to 5. Aggrieved by the Will, 2nd son of Govindaraja Naicker has filed a suit in O.S.No.491 of 1999 on the file of the Principal District Munsiff Court, Kancheepuram, in which the Will was declared as genuine one and suit was decreed in favour of the plaintiffs. But during the pendency of the Suit proceedings, another son of Govindaraja Naicker and his sister Krishnaveni Ammal sold some of the item to the defendants 2 to 9. So the plaintiffs claimed recovery of possession from the said purchaser. But the 2nd defendant contended that Govindaraja Naicker had two wives and the 2nd son and daughter of the 2nd wife was not properly impleaded, because as per the Will she is also entitled for a right over the properties. The 3rd defendant contended that he purchased property from the sister Krishnaveni Ammal. He also raised objection that the legal heirs of the Govindaraja Naicker is not properly impleaded.

4. After full trial, the trial Court decreed the suit as prayed for. Aggrieved by the judgment the 4th defendant has preferred an appeal in A.S.No.89 of 2006 and cross objection was filed by the respondents 6 to 12, in A.S.NO.76 of 2008. On hearing both sides, judgment was passed by the First Appellate Court, concluding that the children born to Govindaraja Naicker are necessary and proper parties to the suit but they were not brought on record. Inadvertently, an application to implead the legal heirs was dismissed by the trial Court which remains fatal to the fair disposal and final adjudication of the dispute between the parties. Therefore, son and daughter born to Govindaraja Naicker through Sagunthala are to be brought on record for final adjudication. Therefore, the Lower appellate Court on considered that this is the fit case for remand under Order 41 Rule 23(A) of CPC for fresh disposal, after impleading the sons and daughters born to Govindaraja Naicker through Sagunthala. Aggrieved by the order the appellants/plaintiffs have preferred this appeal.

5. At the time of the arguments both sides counsel admits that the earlier litigation which went up to 2nd appeal in S.A.NO.971 of 1973. As per the terms of the Will the 1st plaintiff, 1st defendant and the deceased Govindaraja Naicker had only life interest. Thereafter, properties should goes to his legal heirs. But Govindaraja Naicker and the Krishnaveni Ammal sold some of the properties in favour of the defendants 2 to 9. Admittedly, Govindaraja Naicker has two wives and the 2nd wife Sagunthala is having a son and daughter.

6. As per the contention of the defendants, only life interest was given to the son Murugappa Naicker and thereafter right was given to son and daughter born to them. So the legal heirs of the Govindaraja Naicker properly has to be impleaded,



in order to give fair and final adjudication between the parties. Though the plaintiff admits that Govindaraja Naicker has two wife but they are not admitting the right of the legal heirs. Further, they also contended that petition to implead the necessary parties was dismissed by the trial Court so there is no necessity to implead them in the original suit proceedings. But the First Appellate Court without appreciating this fact erroneously remanded the matter to the trial Court to implead the parties. Hence, he prayed to allow this appeal by setting aside the order passed by the learned First Appellate Judge.

7. The learned First Appellate Judge observed that as per the recitals of the Will it is clear that the children who will be born through his sons alone can have absolute interest over the properties of the deceased. So the Appellate Court ordered to implead the legal heirs of the 2nd wife of the Govindaraja Naicker, whose 2nd marriage was performed even during the life time of the Testator Murugappa Naicker. Assuming that as per the Will only life interest was given to Govindaraja Naicker, then his son and daughter are entitled to claim share in accordance with law.

8. Considering that the impleading petition was inadvertently dismissed by the trial Court, the First Appellate Court remanded the matter to the Trial Court in order to implead the legal heirs and for fresh disposal. Since the parties are claiming right over the property based upon the Will, the necessary parties/beneficiaries should be impleaded for better adjudication and to avoid multiplicity of proceedings. In order to decide the declaration issue all the necessary parties have to be impleaded. Therefore, the order of remand made by the learned First Appellate Judge is justifiable one.

9. Accordingly both Civil Miscellaneous Appeals are dismissed as devoid of merits and the order of the learned First Appellate Judge in A.S.89 of 2006 and Cross Appeal in A.S.No.76 of 2008 is confirmed. Accordingly, the Principal District Munsiff Court, Kancheepuram, is directed to dispose the case in O.S.No.491 of 1999 within a period of three months from the date of receipt of a copy of the order. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rri



To

1. The Subordinate Judge,
Kancheepuram.

2. The District Munsif Court,
Kancheepuram.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.S.N.Mala, Advocate, S.R.No.10087

C.M.A.Nos.1994 & 1995 of 2010
and
M.P.Nos.1 of 2010 & 1 of 2011

SR-II (CO)
CS/21/09/2021