

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
JUDGMENT RESERVED ON: 20.01.2021  
JUDGMENT DELIVERED ON: 22.01.2021  
CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1239 of 2013  
and  
M.P.No.1 of 2013

1.S.P.Thirunarayanan  
2.S.P.Selvaganapathy  
3.S.P.Balasubramanian

.. Appellants

Vs.

1.Sumathi  
2.Pranambal @ Sakunthala  
3.Neelorpambal @ Navaneetham  
4.Rajaguru  
5.Ravikumar  
6.Selvarasu  
7.S.P.Kandapalanivelu  
8.S.P.Selvashanmugam  
9.Dharbaranyam

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 104 Read with Order XLIII Rule 1(d) of the Civil Procedure Code, to set aside the fair and decreetal order dated 20.02.2013 in I.A.No.457 of 2012 in O.S.No.90 of 2000 on the file of the District Court, Karaikal and consequently allow the I.A.No.457 of 2012 in O.S.No.90 of 2000.

For Appellants : Mr.A.Prasanna  
for M/s.Sai Bharath  
For Respondents  
For R1 : M/s.T.S.Baskaran  
For R2 to R9 : No appearance

J U D G M E N T

The appellants herein are the defendants 4 to 6 in a partition suit filed by the first respondents 1 to 5 / plaintiffs therein, in O.S.No.90 of 2000 on the file of the learned Additional District Judge, Puducherry at Karaikal.

2. As per the contention of the learned counsel for the appellants, that no notice was served on them, so, they remained ex-parte. Based upon the Additional District Judge, Puducherry, granted a relief of partition by way of preliminary

decree in favour of the appellants / plaintiffs therein, dated 04.04.2001. Thereafter, the first respondent / 5<sup>th</sup> plaintiff therein filed a final decree Application in I.A.No.322 of 2012 in O.S.No.90 of 2000, for the division of the properties with the help of the Advocate Commissioner. In that Final Decree petition in I.A.No.322 of 2012, these appellants were served with notice. Thereafter they came to know about the original partition suit, which was filed by the 1<sup>st</sup> respondent / 5<sup>th</sup> plaintiff. Immediately, within a period of 30 days, the appellants filed a petition in I.A.No.457 of 2012, to set aside the ex-parte decree passed by the learned Additional District Judge at Karaikal. The 1<sup>st</sup> respondent / 5<sup>th</sup> plaintiff also contested the said petition filed in I.A.No.457 of 2012, after a full enquiry trial, the said petition was dismissed on merits.

3. Aggrieved by the dismissal order, the appellants / defendants 4 to 6 preferred this appeal on the following grounds; (i) the trial Court without properly appreciating the facts and circumstances, erroneously dismissed the petition. (ii) the trial Court failed to appreciate the fact that suit summons issued to defendants was received by one of the defendants, who in turn colluded with the respondents / plaintiffs. Therefore, without giving reasonable opportunity to all the defendants, the petition was dismissed by the learned District Judge at Karaikal dated 20.02.2013. Hence, they prayed to set aside the order passed in I.A.No.457 of 2012 in O.S.No.90 of 2000.

4. The counsel for the 1<sup>st</sup> respondent / 5<sup>th</sup> plaintiff contended that at the time of issuing of suit summons to the defendants, the 9<sup>th</sup> respondent herein received the suit summons on behalf of all the defendants, besides all the defendants were residing in the same house. So, they ought to have known about the pending of the partition suit filed by their sisters' and other legal heirs of the deceased Panchanatham Pillai. In order to grab the entire suit properties without giving any share to the respondents / plaintiffs, the appellants, purposely evaded to attend the Court, and also pointed out that one of the defendants is an Advocate by profession.

5. On a perusal of the record, it clearly reveals that all the appellants were residing in the same address and the 1<sup>st</sup> respondent also residing near to the appellants house. So the submission of the defendants that they were not aware of the suit proceedings is unbelievable one. Due to their absent, ex-parte preliminary decree was granted in favour of the respondents / plaintiffs in O.S.No.90 of 2000 dated 04.04.200. After long time one of the plaintiffs alone preferred the final decree application by giving a Power of Attorney to her husband. Immediately after serving of notice in the final decree

proceedings, the appellants had filed a petition in I.A.No.457 of 2012, under Order IX Rule 13, R/W. Sec.151 of C.P.C. to set aside the ex-parte judgment and decree dated 04.04.2001. Though, this Court found latches on the part of the respondents/defendants, considering the facts that it is a suit for partition between the brothers and sisters and other legal heirs in respect of the huge immovable properties, it is a settled preposition of Law that, in partition suit rights of each parties is to be adjudicated. Considering that, the litigation is pending for the past 20 years, and in order to avoid multiplicity litigations and the facts and circumstances, this Court is of the opinion that it is just and fair opportunity should be given to both the parties, since the suit is for partition. Hence the order passed by the District Court, Karaikal in I.A.No.457 of 2012 in O.S.No.90 of 2000 is set aside.

6. Accordingly, this appeal is allowed. The suit is remitted back to the trial Court for a fresh trial. The learned District Judge, Karaikal is hereby directed to give opportunity to both the appellants and the contesting respondents to adduce both oral and documentary evidence and dispose of the case on merits within a period of three months from the date of receipt of copy of the judgment. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,  
Karaikkal.

Copy to : The Section Officer, V.R.Section,  
High Court of Madras, Chennai -104.

+1cc to Mr.T.S.Baskaran, Advocate SR.No.3542  
+1cc to Mr.T.Saikrishnan, Advocate SR.No.3793

AKM/4.3.21/3P-5C/

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