



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.02.2021

CORAM:

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

C.M.A.No.2689 of 2013
and
M.P.No.1 of 2013

1.Mohammed Nazar
2.Mohammed Akbar
3.Mohammed Ansari
4.Syed Labai
5.Mohammed Sadique
6.Syed Hameed Natchiya

.. Appellants

Vs.

1.Kalyanam
2.Selvaraj
3.Marimuthu
4.Ravichandran
5.Vasantha
6.Raja

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(r) of Civil Procedure Code, against the judgment and decree in A.S.29 of 2012 on the file of the Principal Subordinate Court, Mayiladuthurai, dated 03.04.2013, in reversing the judgment and decree in I.A.No.43 of 2003 in O.S.No.8 of 1986, on the file of the District Munsif Court, Sirkali, dated 23.02.2011.

For Appellants : Mr.Mitranestora
For Mr.V.Raghavachari

For Respondents : No appearance

J U D G M E N T

The appellants herein are the plaintiffs in O.S.No.8 of 1986, on the file of the District Munsif Court, Sirkali, claiming the relief of partition against the respondents.

2. The defendants 2 to 4 contested the case, the 1st defendant was reported death and the other defendants 6 to 8 remained ex-parte.



3. On hearing both sides, the suit was decreed in favour of the plaintiffs by allotting 3/4th share and other consequential reliefs. Thereafter, I.A.No.43 of 2003 was filed before the District Munsif Court, Sirkali by the plaintiffs 2 to 4 under Order 20 Rule 18 of CPC to pass final decree. In that final hearing application, the Commissioner was appointed and based on the Commissioner's report, the Trial Court concluded that some of the properties were occupied by the defendants including pond and the plaintiffs were given 3/4th share in the properties. Aggrieved by the order, the defendants 3,4,5 & 7 preferred the Appeal before the Principal Subordinate Judge, Sub-Court, Mayiladuthurai in A.S.No.29 of 2012, contending that while allotting the property of the shares of the appellants, the pond was also allotted to the side of the defendants but to clean the pond, the defendants have to spend morethan Rs.1,50,000/- but the trial Court has not awarded any such amount in their favour. Further contended that an extent of the said pond was not clearly stated in the Commissioner's report. Therefore, they are not accepting the allotment of the property as per the final decree and prayed to set aside the final decree.

4. At the time of argument, the 1st Appellate Judge observed that the pond situated in the suit property as per the 'A' Register extract marked along with the Commissioner report 1 to 9 reveal that it is a 'Sarkar Puramboke". So the parties are not having any right to enjoy the Government's property. Accordingly, the suit was remanded to the trial Court to measure the current extent of suit property with the help of the Commissioner and Surveyor. Aggrieved by the order, the defendants / respondents preferred this appeal.

5. The question of law that arise for consideration is as to

(i) whether the First Appellate Court has erroneously remanding the matter to the Trial Court for appointment of Commissioner and to identify the property belongs to the Government ?

6. Order 20 Rule 18 CPC deals as follows:

"ORDER XX :

18. Decree in suit for partition of property of separate possession of a share therein.- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of



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the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required."

7. On perusal of the records it reveals that there is a pond (Kuttai) in S.R.No.745 of 2003 and the same is situated in Sarkar puramboke as per the AR extract on the side of the Commissioner as Ex.C.2 and Ex.C.3. Ex.C.2 is the plan of the the Surveyor relating to the suit survey No.745/3. In that plan Ex.C.2, the pond is mentioned, and the same is situated in S.No.745/3 'Sarkar Puramboke' as rightly observed by the First Appellate Judge, that the water bodies which are situated in Government puramboke belong to the Government.

8. As such individual person has no right to encroach and claim right over the water bodies. Therefore, by including the Government puramboke land, the plaintiffs approached the Court for suit for partition. The Revenue records clearly proved that it is the Sarkar puramboke and the water bodies are belong to the Government as per the Revenue Records. There is no necessity to identify the water bodies with the help of the Commissioner because already the Commissioner visited the property and measured the same along with the Surveyor. The Revenue extract which clearly proves that a pond / water bodies situated in the Sarkar puramboke in S.F.No.745/3. Therefore, the suit itself as not maintainable in law for the reason that by including the Government Porambokku land, the plaintiffs approached the Court for partition. Therefore, the suit itself is liable to be dismissed for the reason that he claimed partition including Government puramboke land.

9. Accordingly, such Civil Miscellaneous Appeal is not maintainable in law, by excluding the said pond in S.F.No.745/3 the appellants are entitled to claim for partition by filing separate suit.



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10. Accordingly, the Civil Miscellaneous Appeal is ordered.
No Costs. Consequently, connected Miscellaneous Petition is
closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To,

1.The Principal Subordinate Court, Mayiladuthurai

2.The District Munsif Court,Sirkali.

Copy to:

The Section Officer,
VR Section, High Court,Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No. 10346

C.M.A.No.2689 of 2013
and

M.P.No.1 of 2013

VSN II(CO)

A.SK(19.08.2021)