



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

S.A.(MD)No.116 of 2008

WEB COPY

Karuppaiah ... Appellant /Respondent / Plaintiff
-Vs-

1.Singaram ... 1st Respondent /Appellant /1st Defendant
2.Chinnathambi ... 2nd Respondent /2nd Respondent / 2nd
Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.32 of 2007 dated 24.09.2007 on the file of the Sub Court, Ramanathapuram reversing the judgment and decree passed in O.S.No.84 of 2004, dated 23.02.2007 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai.

For Appellant : Mr.R.Sundar Srinivasan
For R1 : Mr.M.P.Senthil
For R2 : No appearance

JUDGMENT

The plaintiff in O.S.No.84 of 2004 on the file of the District Munsif Court, Thiruvadanai is the appellant. The plaintiff filed the said suit seeking the relief of partition. The trial Court granted preliminary decree in favour of the plaintiff. Challenging the same, the first defendant filed A.S.No.32 of 2007 before the Sub Court, Ramanathapuram. The appeal was allowed and the suit was dismissed. Challenging the same, the second appeal came to be filed.

2.The second appeal was admitted on the following substantial questions of law:-

"(i) Whether the judgment and decree of the first appellate Court is perverse on account of non-consideration of the material evidence adduced on the side of the appellant? and

(ii) Whether the findings of the first appellate Court with respect to the assignment made by the Government is one deemed to be the acquisition made by the joint family property is erroneous?"

3.The learned counsel appearing for the appellant submitted that the suit property was originally assigned in favour of his father Balan. The father had passed away way back in the year 1990.



The first defendant was in occupation of the suit property. There is no dispute that the appellant died intestate. Though the appellant left behind four sons and three daughters, specific reasons have been set out in the plaint as to why they have not been impleaded. The contest was only between the appellant on the one hand and the first defendant on the other. The second defendant Chinnathambi had in fact sailed along with the appellant.

4.The learned counsel appearing for the appellant submitted that the trial Court rightly decreed the suit and the first Appellate Court without any justification reversed the same. He called upon this Court to answer the substantial questions of law in favour of the appellant and restore the decision of the trial Court.

5. Per contra, the learned counsel appearing for the first respondent submitted that the impugned judgment and decree does not call for any interference.

6.I carefully considered the rival contentions and went through the evidence on record. It is true that the appellant herein had earlier filed O.S.No.45 of 2000 before the District Munsif Court, Thiruvadanai seeking the very same relief of partition. But the said suit was allowed to be dismissed for default.

7.As rightly pointed out by the learned counsel appearing for the appellant, the dismissal of the earlier suit for partition for default will not preclude the plaintiff from filing a fresh suit for partition. He placed reliance on the decision reported in **2012 (3) CTC 178 (Sulochana Vs. Thilakavathi)** in support of this proposition.

8.Though this contention urged by the learned counsel for the appellant is well founded, the Court below had not non-suited him on that ground. Primarily, the ground on which, the first Appellate Court dismissed the suit was that the plaintiff had failed to implead the other legal heirs of Balan. It is admitted that apart from the parties herein, Balan had one other son and three other daughters. Obviously, all of them do have an interest in the property. The plaintiff has of-course pleaded that though they given up their interest in the suit property, but Courts cannot go by such self-serving pleadings. Nothing prevented the plaintiff from impleading the other legal heirs.

9.If they had remained exparte, then, the pleadings of the plaintiff would have been unrebutted and an appropriate decree could have been passed on that basis. Therefore, the first Appellate Court was fully justified in non suiting the plaintiff for having failed to implead the other legal heirs. The first Appellate Court also took into account the stand taken by the plaintiff in O.S.No.45 of 2000. The plaint in the earlier suit was marked as Ex.B7. In the first plaint, the plaintiff had stated that the property of



Balan had not been partitioned. But in the present case, the plaintiff took the stand that except the suit item, all the other items were partitioned. This contradictory stand taken by the plaintiff had also been swayed the mind of the Court below.

10. Be that as it may, the judgment and decree passed by the first Appellate Court can be sustained on the ground of non-joinder of necessary parties. In this view of the matter, the substantial questions of law are answered against the appellant. The second appeal is dismissed. The judgment and decree passed by the first Appellate Court is confirmed. However, the appellant is given liberty to file a fresh suit seeking the relief of partition. I make it clear that all the contentions of the plaintiff are left open. If any such fresh suit is filed within a period of three months from the date of receipt of a copy of this judgment, the same will be dealt with without reference to limitation or the stand earlier taken by the plaintiff. In other words, the plaintiff will be entitled to adjudication on merits.

11. With this observation and liberty, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Sub Judge, Ramanathapuram.

2.The District Munsif cum Judicial Magistrate, Thiruvadanai.

3.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-22334[F] dated 13/07/2021)
+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-22448[F] dated 14/07/2021)

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