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S.A.(MD)NO.1052 OF 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.1052 of 2011

1. Rajan (died)
2. R.Thilagavathy
3. R.Jayanthi
4. R.Jayakumar
5. M.R.Lakshmi
6. R.Geetha
7. R.Ganesh Kumar

(Appellants 2 to 7 are brought on record as LR's of the deceased
sole appellant vide order dated 08.12.2016 in C.M.P.(MD)NO.7768 of 2016)

... Appellants

Vs.

1. Sampantham
2. Sakubai
3. Saraswathi
4. Kamala
5. Pattammal @ Santha

... Respondent / 1st Respondent /
Petitioner / Plaintiff

... Respondents / Respondents 2 to 5 /
Respondents 2 to 5 / Defendants 2 to 5



Mottaiyan Chettiar(died)

6. Chellammal

Palanivelu(died)

7. Subramanian

8. Mani

9. Pappa

10. Indirani

11. Thanam ... Respondents / Respondents 6 to 13 /
Respondents 6 to 13 / LR's of R-6

12 P.Lalitha

13. P.Swaminathan

14. P.Senthil ... Respondents / Respondents 14 to 16 /
LR's of 8th defendant / LR's of 8th Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 09.04.2011 made in A.S.No.135 of 2003 on the file of the Additional District Court(Fast Track Court No.1), Thanjavur for partially disallowing certain portions against the judgment and decree dated 23.11.2001 in I.A.No.46 of 1985 in O.S.No. 40 of 1981 on the file of the Principal Subordinate Judge, Kumbakonam, thereby allow the present second appeal.

For Appellants : Mr.A.N.Ramanathan

For R-1 to R-5 : No appearance.

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J U D G M E N T

The first defendant in the suit filed the second appeal. During its pendency, he passed away and his legal heirs have come on record. The first respondent herein is the contesting party. His counsel reported “no instructions”. The first respondent herein Thiru.Sampantham filed O.S.No.40 of 1981 on the file of the Sub Court, Kumbakonam seeking the relief of partition and separate possession of 2/7th share in suit 'A' to 'F' schedule properties and for other reliefs. Thiru.Rajan who filed the appeal was the contesting defendant. The plaintiff examined himself as P.W.1. Four other witnesses were examined on his side. Ex.A.1 to Ex.A.15 were marked. Rajan examined himself as D.W.1. Three other witnesses were examined on the side of the defendants. Ex.B.1 to Ex.B.38 were marked. Preliminary decree was passed on 27.09.1983. Aggrieved by the same, Rajan filed A.S.No.590 of 1985 before the High Court. The plaintiff also filed Cross Objections. Both were dismissed on 22.03.1999.

2. After the disposal of the first appeal, final decree petition filed by Sampantham / plaitniff in I.A.No.46 of 1985 was taken up by the



Principal Sub Court, Kumbakonam. An Advocate Commissioner was appointed and his reports and plans were marked as Court Exhibits 1 to 4. Final decree was passed on 23.11.2001. Aggrieved by the same, Rajan filed A.S.No.135 of 2003. The appeal was partly allowed on 09.04.2011. Remand was made in respect of certain items alone. Challenging the same, the second appeal came to be filed.

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

“(i) Whether the plaintiff ought to have been non-suited for not having rendered accounts in respect of the bus transport business?

(ii) Whether the judgments of the Courts below are vitiated for not having taken note of the land acquisition proceedings in respect of some of the suit items?”

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the affidavit filed in support of the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and allow this appeal.



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5. The counsel engaged by the respondents had reported “no instructions”. I therefore undertook an independent examination of the record.

6. There are 6 suit schedules (ie.) “A” to “F”. In schedule “A” , there are as many as 19 items. The suit properties belonged to Thiru.Manickam Chettiar who died intestate in the year 1976. He was survived by his wife Seethalakshmi Ammal, two sons and four daughters. Seethalakshmi had executed a Will bequeathing her 1/7th share in favour of the plaintiff. According to the plaintiff, he had 2/7th share in the suit schedules whereas the other legal heirs had only 1/7th share. Rajan, the original appellant resisted the suit by contending that the bus transport business which belonged to the family was run by him and that he had to render accounts therefor. It is not in dispute that the preliminary decree passed by the learned trial Judge on 27.09.1983 contained the following direction:-

“ 6) that the plaintiff do render accounts for the profits derived from items 7 to 12 of A schedule and also the amounts realised from the bus transport run by him to the first defendant;”



7. The High Court by dismissing A.S.No.590 of 1985 and the

memorandum of Cross Objections confirmed the trial Court's preliminary decree. It is well settled that the Court disposing of a final decree petition is bound by the terms of the preliminary decree. When in the preliminary decree, a direction has been given for rendering accounts by the plaintiff in respect of the bus transport business, the plaintiff cannot wriggle out the said direction. The final decree application could not have been disposed of without insisting on compliance of the aforesaid direction. In the final decree, this aspect of the matter has not at all been dealt with. The first appellate Court also has not gone into the said aspect. That apart, it was pointed out that item 6, 8, 9, 11 and 12 have been acquired by the Government. This aspect of the matter was also not dealt with. Hence, I answer both the substantial questions of law in favour of the appellants. The impugned judgments and decrees are set aside. It is open to the parties to file a fresh petition for passing final decree. I grant this liberty because it is stated that the compensation amount in respect of the land acquisition proceedings has been deposited by the Government. Therefore, the parties would be at liberty to withdraw the same based on their respective shares.



8. With this liberty to the parties to approach the trial Court for

withdrawal of the compensation amount, the second appeal is allowed.

No costs.

03.08.2021

Index : Yes / No
Internet : Yes/ No
KMM/ PMU

To:

1. The Principal Subordinate Judge,
Kumbakonam.
2. The Additional District Judge(Fast Track Court No.1),
Thanjavur.



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G.R.SWAMINATHAN,J.

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