



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.1242 of 2011

and

M.P. (MD)No.1 of 2014

WEB COPY

1.Agustin (Died)

2.Angel Mary

... Appellants

(A2 is suo motu impleaded as LR of the deceased sole respondent vide order dated 13.08.2021 made in S.A.(MD)No.1242 of 2011 by GRSJ)

Vs.

1.Maria Pushpam

2.A.Santhoose Mary

... Respondents/Appellants/Plaintiffs

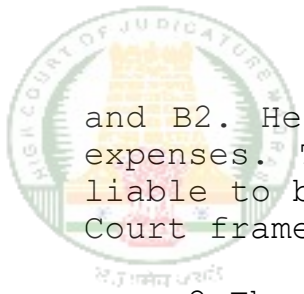
Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.03.2011 passed in A.S.No.81 of 2010 on the file of the Subordinate Court at Padmanabhapuram by setting aside the judgment and decree dated 28.04.2010 passed in O.S.No.89 of 2007 on the file of the Principal District Munsif Court at Padmanabhapuram.

For Appellants : Mr.J.John Jayakumar

For Respondents : Mr.V.M.Balamohan Thambi

JUDGEMENT

This second appeal arises out a suit for partition. O.S.No.89 of 2007 on the file of the Principal District Munsif Court, Padmanabhapuram was filed by the respondents herein namely, Maria Pushpam and Santhoose Mary. Their case was that the suit properties originally belonged to their father namely., Late.Ambrose. Ambrose got married to Barbara Ammal. The plaintiffs/Maria Pushpam and Santhoose Mary and the defendant/Agustin were born through the wedlock. Ambrose passed away on 28.06.1980 without executing any Will. Later the mother also passed away intestate. The case of the plaintiffs is that thereafter the suit property devolved in equal shares in favour of the plaintiffs and the defendant. Since the defendant was declining to amicably partition the suit property, they had to file the said suit. The defendant filed written statement controverting the plaint averments. The defendant also pointed out that even before the filing of the suit, he had settled the property in favour of his wife on 07.12.2006 (Ex.B4). The suit was therefore bad for non-joinder of necessary parties. He also pointed out that even during his life time, their father/Ambrose gifted certain items in favor of each of the plaintiffs vide Exs.B1



and B2. He would also state that it was he, who bore the marriage expenses. Therefore, according to him, the suit for partition was liable to be dismissed. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The first plaintiff/Maria Pushpam examined herself as P.W.1 and marked Exs.A1 to A9. The defendant examined himself as D.W.1 and one Paulpillai was examined as D.W.2. Exs.B1 to 12 were marked on the side of the defendant.

3.After a consideration of the evidence on record, the trial Court by judgment and decree dated 28.04.2010 dismissed the suit. Questioning the same, the plaintiffs filed A.S.No.81 of 2010 before the Sub Court, Padmanabhapuram. By the impugned judgment and decree dated 10.03.2011, the first appellate Court set aside the judgment and decree passed by the trial Court and allowed the appeal and held that the plaintiffs are entitled to get the relief of partition and separate possession of 1/3rd share each in the suit properties and buildings. Challenging the same, this second appeal came to be filed.

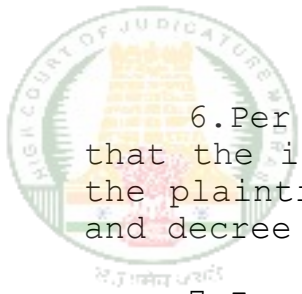
4.The second appeal was admitted on the following substantial questions of law:-

"1.Whether the lower appellate Court rightly reversed the judgment and decree for partition passed by the trial Court by holding that the Rule of partial partition is applicable to Hindus and not to Christians?

2.Whether the Courts below rightly held that the alienees are not necessary parties and the suit is not bad for non joinder? and

3.Whether the lower appellate Court rightly reversed the judgment and decree for partition passed by the trial Court by holding that there is no need to add the remaining properties as suit properties?"

5.The learned counsel for the appellants submitted that it has been established beyond dispute that even before filing of the suit, the defendant had settled the suit property in favour of his wife namely, Angel Mary. The suit was conducted without impleading the settlee/Angel Mary. Of course, during the pendency of the second appeal, the original appellant passed away and Angel Mary had come on record in her capacity as his wife. But then, that would not cure the initial defect. He submitted that the decision of the trial Court must be restored.



6.Per contra, the learned counsel for the respondents submitted that the issue regarding non joinder was already held in favour of the plaintiffs and therefore, on that ground, the impugned judgment and decree ought not to be interfered with.

7.I carefully considered the rival contentions and went through the evidence on record.

8.The suit property belonged to Ambrose, the father of the plaintiffs and the original defendant namely, Agustin. He died intestate. His wife/Barbara Ammal also died few years later interstate. Therefore, in the very nature of things, the two daughters and the son will be entitled to 1/3rd share in the suit properties. The only contention urged by the learned counsel for the appellants is that the suit was obviously bad for non joinder of necessary parties. This contention does not have merit because as rightly pointed out by the learned counsel for the respondents, after the suit properties were settled in her favour, Angel Mary sold the same in favour of third parties vide Ex.B8 dated 04.04.2008 and Ex.B9 dated 19.05.2008. Thus Angel Mary ceased to have any interest in the suit properties. The plaintiffs therefore filed I.A.No.447 of 2009 to implead the alienees namely, Yesudhas, Jackuline and Cyrill. Interestingly the alienees contested and opposed I.A.No.447 of 2009. Accepting their objections, I.A.No.447 of 2009 came to be dismissed. That is why, the trial Court after framing the first issue as to whether the suit is hit by non joinder of necessary parties, answered the same in favour of the plaintiffs. Paragraph No.8 of the judgment of the trial Court reads as follows:-

"Issue No.1: It is the main contention of the defendant that the suit is bad for non-joinder of necessary parties. The learned counsel for the defendant vehemently argued that first plaintiff's husband Masillamony being a purchaser of suit properties is a necessary party to the suit. He further argued that as the defendant has no issues he has gifted the properties to his wife Angel Mary. Being so, wife of the defendant Angel Mary in whose name patta stands in operation of the gift deed is also a necessary party. During the pendency of the suit, it is revealed that the so called Angel Mary has alienated the suit properties in favour of Yesudhas, Jackuline and others under Ex.B8 and B9. The learned counsel for the plaintiffs vehemently argued that the plaintiffs side filed a I.A.No.447/2009 to implead Yesudhas, Jackuline and Cyrill be subsequent purchasers and for the above I.A. was dismissed, and hence, he argued that the issue becomes infructuous before this Court. It is to be noted



that when the so called purchasers Yesudhas, Jackuline and Cyrill have purchased the property under Ex.B8 and B9, it is to be decided that they have purchased the property from the wife of the defendant at risk subject to the result of the suit. In case the defendant and her wife Angel Mary had no right to alienate the property Ex.B8 and B9 become void documents. This being so, this Court feels that the so called purchasers namely Yesudhas, Jackuline and Cyrill are not necessary parties to the suit. At this stage, it is to be considered who is a necessary party to the suit. The necessary parties to the suit is a party without whose presents a suit cannot be adjudicated effectively. This Court does not feel that presence of in the above named subsequent purchasers are not necessary parties to the suit. Even in their absence this suit can be effectively tried and adjudicated. For the above said reasons and discussions, it is decided that the suit is not hit by non-joinder of necessary parties and the above issue is answered accordingly against the defendant."

9.Since Angel Mary had already divested herself of all interest in the suit properties and sold the same in favour of the aforesaid three parties, such a contention can no longer be advanced by her. Therefore, I decline to answer the substantial questions of law in favour of the appellant. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:

1.The Sub Court,
Padmanabhapuram

2.The Principal District Munsif Court,
Padmanabhapuram.

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V.R. Section,
Madurai Bench of Madras High Court,
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+1 CC to M/s.V.M.BALMOHAN THAMPI, Advocate (SR-26672[F] dated
18/08/2021)

+1 CC to M/s.J.JOHN JAYA KUMAR, Advocate (SR-26695[F] dated
18/08/2021)

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RS (22.09.2021) 5P 7C