



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.166 of 2012

WEB COPY

1. Periasami
2. Raja @ Perumal Thevar
3. Ulagappa Thevar ... Appellants/Appellants/Plaintiffs

Vs.

1. Krishnan
2. Mariappan(died)
3. Jeyam
4. Ramathal
5. Poosaiithai

(R-4 & R-5 are brought on record as LRs
of the deceased R-2 vide Order dated 22.01.2021
in M.P. (MD)Nos.9084 to 9086 of 2016) ... Respondents/
Respondents/Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.46 of 2010 dated 12.08.2011 on the file of the Sub Court, Sankarankoil, confirming the Judgment and Decree passed in O.S.No.308 of 2008 dated 15.07.2010 on the file of the Additional District Munsif, Sankarankoil.

For Appellants : Mr.V.Meenakshi Sundaram,
for Mr.D.Nallathambi

For R-3 : Mr.D.Rajkumar,
for Mr.R.Balakrishnan.

For R-4&R-5 : Ms.M.Maria Vinola

J U D G M E N T

The plaintiffs in O.S.No.308 of 2008 on the file of the Additional District Munsif, Sankarankovil, are the appellants in this second appeal.

2. The said suit was filed seeking relief of declaration and injunction in respect of the suit property. In the said suit, Krishnan, Mariyappan and Jeyam was shown as defendants. The defendants filed written statement opposing the suit claim. The parties went to trial. The second plaintiff Raja @ Perumal Thevar was examined as P.W.1 and one Subramanian was examined as P.W.2. Ex.A.1 to Ex.A.5 were marked. On the side of the defendants, no oral



evidence was let in. However, three documents (Ex.B.1 to Ex.B.3) were marked.

3. The trial Court after considering the evidence on either side, dismissed the suit vide Judgment dated 15.07.2010. Questioning the same, the plaintiffs filed A.S. No.46 of 2010 before the Sub Court, Sankarankovil. By Judgment dated 12.08.2011, the Judgment of the trial Court was confirmed and the first appeal was dismissed. Aggrieved by the same, this second appeal came to be filed.

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

"When the respondents herein / defendants have not let in any evidence to prove their defense that they are entitled to 3.45 acres out of 5.90 acres in the suit property by virtue of the family arrangement and that oral partition took place on 18.05.1968 and 04.06.1978 between the heirs of Ramaiah Thevar, whether the Courts below are right in holding that the defendants are having share in the suit schedule property? "

5. When the matter was taken up for hearing, the learned counsel appearing for the appellants submitted that one more substantial question of law deserves to be framed.

6. After hearing the learned counsel appearing for the appellants, this Court was of the view that an additional substantial question of law has to be framed. Therefore, the following substantial question of law was framed:-

"Even when the Courts below came to a conclusion that these plaintiffs predecessor Karuppayee Ammal is having title only to 2.45 acres in the suit property by accepting the statement of the defendants, whether correct in dismissing the suit in entirety which is against the settled proposition of law that the civil Courts are always having jurisdiction to grant lesser relief and the parties should not be denied to the relief to which they are entitled and hence the finding of the Courts below warrants interference under Section 100 of C.P.C?"

7. As required by C.P.C., the learned counsel appearing for the respondents was put on notice and the learned counsel addressed the Court on both the substantial questions of law.

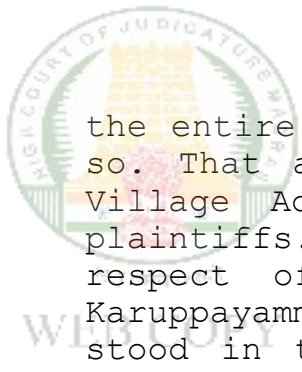
8. Out of the three defendants, the first defendant Krishnan had passed away. Likewise, the second defendant Mariappan had also passed away. However, the appellants had been able to implead only the legal representatives of Mariappan, but could not implead the legal heirs of Krishnan for want of details.



9. I am of the view that the omission to bring the legal representatives of Krishnan on record need not come in the way of taking the second appeal for disposal on merits. This is because Krishnan and Mariappan are brothers and before filing the present suit, Krishnan and Mariappan had sold 3.45 acres of the suit schedule property in favour of the third defendant Jeyam. Jeyam is represented by counsel. In fact in view of the alienation made by Krishnan and Mariappan in favour of Jeyam, it is only Jeyam who has stake in the matter.

10. The case of the plaintiffs is that the suit schedule property is comprised in Survey No.121/1 in Maruthankinaru Village, Melaneelithanallur, Sankarankovil Taluk, Thenkasi District and measures 5 acres 90 cents. It belonged to one Karuppayeeammal. The said Karuppayeeammal sold the property vide sale deed dated 19.12.1975. It is a registered document. Sale deed was executed in favour of Periyasamy Thevar who is none other than the father of the appellants herein. Patta was also changed. Periyasamy Thevar appears to have died shortly thereafter. The case of the plaintiffs is that the suit schedule property has been in their possession and enjoyment ever since. Ex.A.2 Patta has been issued in favour of the plaintiffs. According to the plaintiffs, Krishnan and Mariyappan filed O.S.No.250 of 2008 on the file of the Additional District Munsif Court, Sankarankovil, against the plaintiffs seeking relief of declaration and injunction. They also tried to bring coercive pressure on the plaintiffs through the local police. That necessitated filing of the instant suit, namely, O.S.No.308 of 2008.

11. Before the Court below, the second plaintiff Raja @ Perumal Thevar examined himself as P.W.2. He claimed that the entire suit property belongs only to him and that his other brothers do not have any right in the property. The trial Court felt that this was running contrary to the case of the plaintiffs. When the plaintiffs have moved the Court for declaration that the property belongs to them, it is not open to one plaintiff to make an exclusive claim. This contradiction between pleadings and testimony made the learned trial Munsif to take an adverse view of the case of the plaintiffs. That apart in the written statement, the defendants have specifically challenged the title of Karuppayeeammal over the entire suit schedule property. The defendants had categorically asserted that the suit schedule property stood in the name of four persons, namely, Karuppayeeammal, Ramasamy Thevar, Periyasamy Thevar, Chellaiya Pillai. Defendants 1 and 2 are sons of Ramaiah Thevar. According to them, they had title and interest over 3.45 acres of the suit schedule property. When the defendants have thus questioned the title of Karuppayeeammal, it is not enough for the plaintiffs to simply file Ex.A.1 sale deed executed by Karuppayeeammal covering the entire suit property in favour of Periyasamy Thevar. The plaintiffs were obliged to prove that Karuppayeeammal had title over



the entire suit property. The plaintiffs had miserably failed to do so. That apart P.W.2 who is an independent witness and also the Village Administrative Officer had undermined the case of the plaintiffs. Through him, patta was also marked. 'A' Register in respect of the suit property contains not only the name of Karuppayammal but also three other persons. The revenue records stood in the name of four persons. This clearly probablised the defence taken by the defendants. For these two reasons, the learned trial Munsif chose to dismiss the suit.

12. For the very same reasons, the first appellate Court had also sustained the decision of the trial Court.

13. Though I am inclined to sustain the aforesaid reasons given by the Court below, as rightly pointed out by the learned counsel appearing for the appellants, the Courts below could not have dismissed the suit in *toto*. It is well settled that even if the plaintiff is unable to make out a case for grant of the entire relief, still if he is entitled to lesser relief, the Courts below are not having power but are also obliged to grant it.

14. Order 7 Rule 7 of C.P.C. enables the Court to grant lesser relief to which the plaintiffs may otherwise be entitled to. In the case on hand, the specific stand of the defendants is that they are entitled to 3 acres and 45 cents in the suit schedule property. In fact Ex.A.3 sale deed was executed by defendants 1 and 2 in favour of the third defendant Jeyam measuring 3.45 acres in the suit schedule property. The learned counsel appearing for the appellants draws my attention to Ex.A.4. Ex.A.4 is nothing but the plaint filed by defendants 1 and 2 in O.S.No.250 of 2008 before the very same Court. The said suit contains three schedules. The first schedule contains the entire extent of the property measuring 5 acres 90 cents, second schedule covers property measuring 3 acres 45 cents and the third schedule covers property measuring 2 acres 45 cents. The specific case of defendants 1 and 2 is that the second schedule property belonged to them. The third schedule property is only in possession and enjoyment of the plaintiffs/appellants herein. As rightly pointed out by the learned counsel appearing for the appellants, as per Section 18 of the Indian Evidence Act, statements made by a party to the proceeding or by an agent to any such party can be taken as an admission. In the case on hand, the defendants did not enter into the witness box to controvert the averments made in Ex.A.4 plaint. Interest of justice obviously required that going by the case of the defendants themselves, appellants' title and possession over the remaining extent of 2 acres 45 cents ought to have been declared. The defendants' specific case in the written statement is that they are entitled to possession of 3 acres 45 cents. Therefore, to this extent, the Judgments of the Courts below are interfered with. While answering the first substantial question of law against the appellants, the



second substantial question of law is answered in favour of the appellants. The plaintiffs are entitled to declaration and injunction in respect of the third schedule property set out in the plaint in O.S.No.250 of 2008 on the file of the Additional District Munsif Court, Sankarankovil. Likewise, the defendants are entitled to declaration and injunction in respect of the second schedule property in O.S.No.250 of 2008. The benefit of the declaration and injunction will enure in favour of the third defendant Jeyam. The plaint in O.S.No.250 of 2008 on the file of the Additional District Munsif Court, Sankarankovil, will form part of the decree.

15. This second appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge, Sankarankoil.
2. The Additional District Munsif, Sankarankoil.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai(2 copies)

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-15725[F] dated 09/04/2021

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-15907[F] dated 15/04/2021)

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PM(CO)

TR(10.06.2021) 5P 7C