



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.592 of 2013 and

CMP (MD) No.1 of 2013

WEB COPY

Sugumar

... Appellant /Appellant/Plaintiff

Vs

1.M.Arasakumar

2.M.Selvakumar

3.M.Gnanapushpam

... Respondents/Respondents/Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.02.2013 passed in A.S.No.60 of 2012 on the file of the Sub Court, Thoothukudi confirming the judgment and decree dated 27.01.2012 passed in O.S.No.50 of 2010, on the file of the Principal District Munsif, Thoothukudi and set aside the same.

For Appellant

: Mr.G.Prabhu Rajadurai

For R1

: Mr.Ananth C.Rajesh

For R2 & R3

: No Appearance

JUDGMENT

The plaintiff in O.S.No.50 of 2010 on the file of the Principal District Munsif Court, Tuticorin is the appellant herein. The primary relief sought by the plaintiff was one for partition.

2.The case of the plaintiff is that the suit property was originally natham and his father namely Manonmani occupied it several decades ago. Manonmani got married to one Gnanapushpam and the plaintiff and defendants 1 & 2 were born. Apart from the three sons, two daughters were also born to Manonmani and Gnanapushpam. The Government, however issued patta only in the name of the third defendant Gnanapushpam, the mother of the plaintiff. The case of the appellant is that later a house was put up by utilising the joint family fund. While so, the mother executed two settlement deeds in favour of the defendants 1 & 2. The plaintiff's father passed away long time back. Claiming $\frac{1}{2}$ share in the suit property and for declaring that the settlement deeds executed by the mother are void, the suit came to be instituted. The defendants filed written statement controverting the various plaint averments. The plaintiff examined himself as PW 1. The second defendant was examined as DW 1. The third defendant/the mother did not enter the witness box. The trial Court by judgment and decree dated 27.01.2012 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.60 of 2012, before the Subordinate Court, Tuticorin. The first Appellate Court also dismissed the appeal by confirming the judgment and decree



passed by the trial Court. Aggrieved by 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 Courts below are correct in law in holding that the third respondent is the absolute owner of the suit property without examining the third respondent in witness box and without marking any documents relating to title and ownership?

ii. Whether the Courts below are correct in law in dismissing the partition suit without framing any issue with regard to the construction of schedule house by joint fund though it was pleaded in the plaint?

iii. Whether the Courts below are correct in law in dismissing the entire partition suit mainly for non-joinder of necessary parties?

4.Heard the learned counsel on either side.

5.The suit was one for partition. As the plaintiff failed to implead his sisters as defendants in the suit, the Courts below were justified in holding that the suit was bad for non-joinder of necessary parties. However, no issue as regards the non-joinder of parties was framed by the trial Court. The trial Court also did not frame any issue as regards the construction of house from out of joint family funds, as pleaded in the plaint. Even though, the defendants contended that the partition suit is not maintainable, in view of the execution of settlement deeds by the third defendant/mother, she never entered the witness box. The defendants did not also mark the settlement deeds.

6.I am of the view that proper issues were not framed for consideration. Therefore, even while answering the substantial questions of law in favour of the appellant, the matter has to be remitted to the file of the trial Court. The impugned judgment and decree are set aside and the matter is remitted to the file of the trial Court. The parties shall appear before the trial Court on 01.11.2021. The plaintiff shall file a petition for impleading his sisters. It is stated that during the pendency of the Second Appeal, the third defendant has passed away. Though, in the plaint the plaintiff had claimed that the whereabouts of another brother were not known, it is asserted by the learned counsel for the respondent that he is very much available. Hence, the plaintiff is directed to implead the other brother also. The parties are at liberty to adduce further evidence.



7. With the above direction, the Second Appeal is disposed of.
No costs. Consequently, connected Miscellaneous Petition is filed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn/tmg

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 Court,
Tuticorin.

2. The Principal District Munsif Court,
Tuticorin.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.S.JAWAHARLAL, Advocate (SR-28967[F] dated 14/09/2021)

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13.09.2021

DJ(CO)

RS (06.10.2021) 3P 6C