



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.648 of 2013

A.Pitchi

... Appellant/Appellant/5th Defendant

Vs.

1.M.Meenakshi

2.M.Chidambaram

3.M.Sethuraman

4.M.Muthu Mahesh

... Respondents 1to 4/ Respondents 1to 4/
Plaintiffs

5.M.R.Chidambaram

... 5th Respondent/7th Respondent/
3rd Defendant

6.M.R.Shanmugham

... 6th Respondent/8th Respondent/
4th Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 03.12.2012 made in A.S.No.39 of 2007 on the file of the Sub Court, Pudukkottai, confirming the judgment and decree dated 19.12.2006 made in O.S.No.75 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam.

For Appellant :Mr.Alagusundar

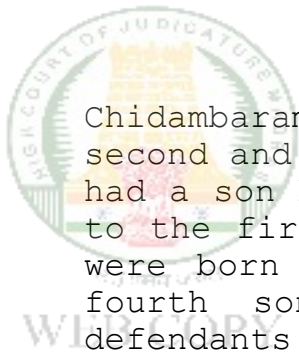
For Respondents :Mr.Madhavan

For Mr.M.Karthikeyavenkitachalaphy for R1 to R4

No appearance for R5 & R6

JUDGEMENT

The fifth defendant in O.S.No.75 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam, is the appellant in this second appeal. The appeal arises out of a partition suit. The suit was filed by the respondents 1 to 4 herein for partition and separate possession of half share in the suit property. There is no dispute that the suit property originally belonged to Annamalai Chettiar. Annamalai Chettiar had four sons namely, Chinnathambi @ Raman Chettiar, Muthaiah Chettiar,



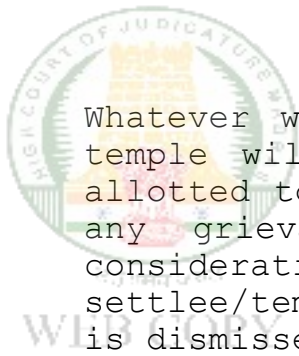
Chidambaram Chettiar, Murugappa Chettiar. There is no dispute that second and third sons died issueless. Chinnathambi @ Raman Chettiar had a son by name Muthaiah Chettiar. Muthaiah Chettiar got married to the first plaintiff/Meenakshi and the remaining three plaintiffs were born through the said wedlock. The Murugappa Chettiar, the fourth son of Annamalai Chettiar had four sons namely, the defendants 1 to 4. The wife and children of Murugappa Chettiar filed O.S.No.75 of 2004 claiming their half share in the suit property. The fifth defendant/Pitchi had purchased 2 acres and 33 cents from the sons of Muthaiah Chettiar vide sale deeds dated 30.05.1994 and 06.04.1995 under Exs.B1 and B2. The fifth defendant filed his written statement controverting the plaint averments. It was also pointed out that the Muthaiah Chettiar, through whom the plaintiffs claim their right and interest in the suit property had already settled his share in the suit property in favour a local temple vide settlement deed dated 24.08.1994. Therefore, the fifth defendant contended that the plaintiffs cannot maintain the present suit for partition. Based on the divergent pleadings, the Court below framed the necessary issues.

2.The power agent of the plaintiffs namely, Subbiah was examined as P.W.1 and Exs.A1 to A14 were marked. One Alagu was examined as D.W.1 and Exs.B1 to B9 were marked.

3.After consideration of the evidence on either side, the trial Court by judgment and decree dated 19.12.2006 granted preliminary decree allotting half share in the suit property. Aggrieved by the same, the fifth defendant filed A.S.No.39 of 2017 before the Sub Court, Pudukkottai. The first appellate Court by the impugned judgment and decree dated 03.12.2012 dismissed the appeal and confirmed the decision of the trial Court. Challenging the same, this second appeal came to be filed.

4.The learned counsel appearing for the appellant submitted that the appellant proposed to file additional evidence. When I wanted to know the details, it was submitted that the appellant wanted to mark the settlement deed dated 24.08.1994 executed by Muthaiah Chettiar in favour of the local temple.

5.I am of the view that the appeal need not be adjourned on that account. There is no dispute that the suit property originally belonged to Annamalai Chettiar. Out of the four sons of Annamalai Chettiar, two sons died issueless. Therefore, the suit property devolved in equal shares on the first son namely, Chinnathami @ Raman Chettiay and last son namely, Murugappa Chettiar. The plaintiffs claim through the first branch. The defendants claim through the other branch. Therefore, each branch will have half share. There is no dispute that Muthaiah Chettiar had executed his 1/4th undivided share in the suit property in favour of the local temple. The learned counsel for the plaintiffs points out that this matter was already gone into by the Court below.



Whatever was settled by Muthaiah Chettiar in favour of the local temple will be adjusted as against the half share that will be allotted to the plaintiffs. Therefore, the appellant need not have any grievance. No substantial question of law arises for consideration. The plaintiffs are directed to implead the settlee/temple in the final decree proceedings. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ias

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 Subordinate Judge,
Pudukkottai.
- 2.The District Munsif Cum Judicial Magistrate,
Thirumayam.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A. (MD) No.648 of 2013
07.09.2021

MGJ(27.01.2022) 3P 5C