



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.653 of 2006

WEB COPY

Chinnadurai

... Appellant / Appellant / Plaintiff

-Vs-

- 1.Ponnammal
- 2.Rengammal
- 3.Tulasi Ammal
- 4.Seeni Selvaraj
- 5.Shanmugam
- 6.Kasi Ponnammal
- 7.Boollammal @ Pechiammal
- 8.Iyyammal @ Suryakala

... Defendants 1 to 3, 6 to 10 /
Respondents 1 to 3, 5 to 9 /
Respondents

- 9.Velammal
- 10.Ponnammal
- 11.Jeyalakshmi

... Respondents 10 to 12 / Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.01.2005 made in A.S.No.12 of 1990 on the file of the Subordinate Court, Tuticorin by confirming the judgment and decree dated 24.10.1989 made in O.S.No.138 of 1985 on the file of the District Munsif Court, Tuticorin.

For Appellant : Mr.S.Kadarkarai
For R2 & R3 : Mr.M.P.Senthil

JUDGMENT

The son of the original plaintiff is the appellant in this second appeal. The appellant's father late Rengasamy Naicker filed O.S.No.138 of 1985 on the file of the Principal District Munsif Court, Tuticorin seeking the relief of declaration and permanent injunction. The suit schedule comprises as many as 56 items.

2. The case of the plaintiff was that the plaintiff's father and the father of the defendants 1 to 5 were brothers. According to him, partition took place between himself and the 5th defendant namely T.V.Perumal Naicker under Ex.A1 dated 29.08.1974. He would further claim that the properties allotted to him under Ex.A1 were in his possession and enjoyment. Since he faced rival claim, he had to file the aforesaid suit. The defendants 1 to 6 and 8 to 10



contested the suit, since D7 alone remained exparte. They controverted the plaint averments. Based on the rival pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A62. On the side of the defendants, three witnesses were examined. Ex.B1 to Ex.B66 were marked. After a consideration of the evidence on record, the trial court by judgment and decree dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.12 of 1990 before the Sub Court, Tuticorin. During the pendency of the appeal, he passed away and his son Chinnadurai/appellant came on record. The first appellate court by judgment and decree dated 17.01.2005 confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

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

"(a) Whether the courts below are correct in dismissing the suit, when the compromise decree passed in O.S.No.276 of 1980 would not bind on the plaintiff wherein the plaintiff had signed only as a witness?

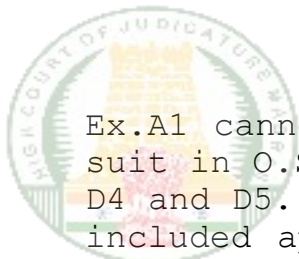
(b) Whether the courts below are correct in dismissing the suit when the suit property was already partitioned on 29.07.1984 and accordingly, the plaintiff is in possession and enjoyment of the suit property by paying kist as per documents A3 to A61?

(c) Whether the courts below are correct in coming to the conclusion that the plaintiff is estopped from asserting his title to the plaint schedule property merely putting attestation in the compromise memo?"

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and decreed the suit as prayed for. The learned counsel placed reliance on an un-reported decision in S.A.(MD)No.202 of 2015 for the proposition that attestation will not operate as estoppel.

5. Per contra, the learned counsel appearing for the respondents would contend that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record. There is no dispute that in respect of the suit schedule properties, partition was entered into between the plaintiff Rengasamy Naicker and the fifth defendant T.V.Perumal Naicker under Ex.A1. The suit properties belonged to the father of the plaintiff and the father of D1 to D5. D1 to D3 daughters of Venkata Krishnappa Naicker were not made as parties. Therefore,



Ex.A1 cannot bind D1 to D3. Obviously, D1 to D3 filed a partition suit in O.S.No.276 of 1980 before the Sub Court, Thoothukudi against D4 and D5. In the said suit, the suit schedule properties were also included apart from the other properties. Since under Ex.A1 dated 29.08.1974, the properties set out in the suit schedule of O.S.No.276 of 1980 are also involved, they filed I.A.No.10 of 1981 for impleading Rengasamy Naicker. Unfortunately, Rengasamy Naicker filed the counter opposing the impleadment. The counter filed by him was marked as Ex.B1 by the defendants. I went through the contents of Ex.B1. Rengasamy Naicker had taken the stand that only those persons who have any claim or right over the suit properties will have to be impleaded. He had also taken a stand that there was no basis for proposing to implead him in O.S.No.276 of 1980. In other words, according to Rengasamy Naicker, he has nothing to do with the properties set out in the suit schedule of O.S.No.276 of 1980. When I compared the suit schedule of O.S.No.276 of 1980 and the present suit schedule, I find that the present suit schedule are also included in the suit schedule of O.S.No.276 of 1980. The said O.S.No.276 of 1980 came to be compromised. Compromise decree has been marked as B7 dated 31.07.1981. The compromise decree was attested by the plaintiff Rengasamy Naicker.

7. Of-course, in normal circumstances, a person cannot be attributed with the knowledge of the contents of the document which he is attesting. Rengasamy Naicker is not a stranger. On the other hand, he was sought to be impleaded in O.S.No.276 of 1980. He also filed a counter opposing the impleadment. When such a person attests the compromise memo, obviously one can come to the conclusion that he was fully aware of the contents of the compromise memo. It was on that ground the courts below held that the principle of 'estoppel' will operate against the very maintainability of the present suit. Therefore, I have no hesitation to answer the substantial questions of law against the appellant. That apart, the compromise decree was also acted upon. D1 to D3 have alienated the properties that were allotted to their share. The alienees were also not impleaded as defendants in the suit. Therefore, the suit was also clearly hit by non-joinder of necessary parties. Thus, looked at from any angle, there is no scope for interfering with the well considered decisions of the courts below. The substantial questions of law are answered against the appellant. I do not find any merit in the second appeal. It stands dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



1.The Subordinate Judge, Tuticorin.

2.The District Munsiff, Tuticorin.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-29428[F] dated 17/09/2021)

+1 CC to M/s.S.KADARKARAI, Advocate (SR-29402[F] dated 17/09/2021)

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PS (CO)

SB/UV(01.11.2021) 4P 7C