



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 24.11.2021

JUDGMENT PRONOUNDED ON : 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD)No.183 of 2005

WEB COPY

1.Ravi
S/o.Shamugaiah

2.Seenivasan
S/o.Shanmugaiah

...Appellants/Appellants/
Defendants 3 & 4

Vs

1.Subbiah
S/o.Muthu

2.Karpagam
W/o.Mariappan

3.Rajalakshmi
W/o.Chinnakaruppasamy

4.Bhanumathi
W/o.Balasundaraj

5.Minor Gnanapalam
S/o.Subbiah

...Respondents 1 to 5/Respondents 1 to 5/
Plaintiffs

(5th respondent represented though his
guardian and father, the first respondent)

6.Ramar
S/o.Subbiah

7.Lakshmanan
S/o.Subbiah

...Respondents 6 & 7/Respondents 6 & 7/
Defendants 1 & 2

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 15.10.2004 made in A.S.No.16 of 2004 on the file of the Sub Court, Sivakasi, confirming the judgment and decree dated 23.10.2002 made in O.S.No.90 of 2000 on the file of District Munsif Court, Sivakasi.

For Appellants : Mr.T.Selvan

Advocate

For Mr.Srinath Sridevan

Advocate

For Respondent :Mr.P.Arunjagatram

Advocate

for Mr.N.Damodaran



JUDGMENT

The defendants 3 and 4 are the appellants herein.

2.The plaintiff filed O.S.No.90 of 2000 before the District Munsif Court, Sivakasi for the relief of partition and separate possession of their 5/7th share in the suit schedule properties. The suit was dismissed with regard to the 1st item and decreed as prayed for with regard to items 2 to 6. Defendants 3 and 4 have filed A.S.No.16 of 2004 before the Sub Court, Sivakasi. The First Appellate Court had dismissed the appeal and confirmed the findings of the trial Court. Hence, the defendants 3 and 4 have filed the present second appeal.

3.The second appeal has been admitted on the following substantial questions of law.

"1.Is not the suit claim liable to fail for non-joinder of necessary parties thus contravening the provisions of order XXIX of C.P.C.,?

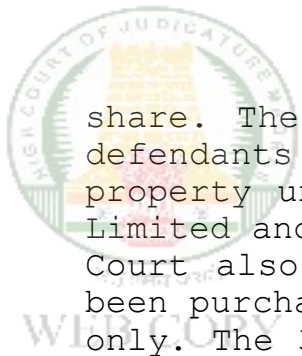
2.Whether the provisions of Or.II R.1 and 2 vitiates the judgment rendered in a suit for partial partition?

3.Whether Section 51 of the Transfer of Property Act provide shelter to the appellants?"

4.It is the case of the plaintiffs that the suit schedule properties originally belonged to one Karuppasamy who died leaving behind his only daughter namely Chellammal. The said Chellammal died leaving behind her husband namely the first plaintiff, three daughters namely plaintiffs 2 to 4 and three sons namely defendants 1 and 2, and 5th plaintiff. The plaintiffs contended that both Karuppasamy and Chellammal died intestate and the plaintiffs and the defendants would be entitled to each 1/7th share in all the 6 items of the suit schedule properties.

5.Defendants 1 and 2 remained exparte and a written statement was filed by the defendants 3 and 4 who are the purchasers from the defendants 1 and 2. The defendants have admitted the relationship between the parties. The 1st item of suit schedule property has been sold to one Rajkamal Fire Works Private Limited by way of a sale deed which was executed jointly by all the plaintiffs and the defendants and hence, the suit is not maintainable with regard to the 1st item.

6.The defendants further contended that some properties have been omitted in the suit schedule properties and hence, the suit is bad for partial partition. The trial Court found that all the suit schedule properties are the properties of Chellammal and the plaintiffs and the defendants 1 and 2 are each entitled to 1/7th

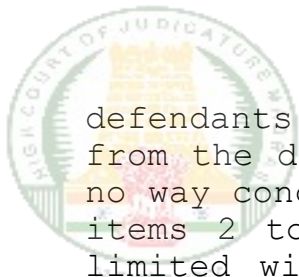


share. The trial Court also found that all the plaintiffs and the defendants have jointly sold the 1st item of the suit schedule property under Exhibit B1 in favour of Rajkamal Fire Works Private Limited and dismissed the suit with regard to the 1st item. The trial Court also found that 5th item of the suit schedule properties has been purchased by the defendants 3 and 4 from the defendants 1 and 2 only. The 3rd and 4th defendants are not the *bona fide* purchasers and they have purchased the properties without properly verifying the title of the defendants 1 and 2. The trial Court decreed the suit with regard to items 2 to 6 and dismissed the suit for the 1st item.

7.The First Appellate Court confirmed the judgment and decree of the trial Court. As against the same, the present second appeal has been filed. There is no dispute that the suit schedule properties are the absolute properties of one Chellammal. There is also no dispute with regard to the relationship of the parties. The defendants 3 and 4 have contended that the suit is bad for partial partition on the ground that some of the properties have not been included. The defendants have not specifically stated which property has been left out and hence, the pleading regarding partial partition is vague. This Court is not in a position to consider the said plea of partial partition without any proper pleadings or documents to the said fact.

8.The defendants have further contended that the 1st item of the suit schedule properties has been sold to one Rajkamal Fire Works Private Limited and the said Company has not been impleaded as one of the defendants in the suit and the suit is bad for non-joinder of necessary parties. The trial Court as well as the First Appellate Court have found that the 1st item of the property has been sold away jointly by all the plaintiffs and the defendants 1 and 2 in favour of the said Rajkamal Fire Works Private Limited. On the said finding, the Courts below have dismissed the suit with regard to the 1st item of the suit property. Hence, the contention of the appellants that the suit is bad for non-joinder of necessary parties is not legally sustainable.

9.The defendants further contended that the revenue records pertaining to 5th item stands in the name of the defendants 1 and 2 and relying upon the said documents, they have purchased the 5th item of the suit schedule property from the defendants 1 and 2. The 1st item of the suit schedule property has been purchased by the said Rajkamal Fire Works Private Limited from all the legal heirs of the deceased Chellammal. The purchaser of the 5th item is none other than the Director of the Company. Hence, the defendants 3 and 4 are very well aware about the existence of all the legal heirs of the deceased Chellammal. Hence, they cannot take umbrage under the revenue records which disclose only the name of defendants 1 and 2. The 1st item was purchased by the Company under Exhibit B1 in the year 1997 and the 2nd item has been purchased by the Director of the Company under Exhibit B2 in the year 2002. Hence, the



defendants 3 and 4 cannot be said to be the *bona fide* purchasers from the defendants 1 and 2. The appellants/ defendants 3 and 4 are no way concerned with other items of suit schedule properties namely items 2 to 4 and 6. Hence, the scope of present second appeal is limited with regard to the 5th item of the suit schedule property alone.

WEB COPY

10.This Court has already held that defendants 3 and 4 are not the *bona fide* purchasers from defendants 1 and 2 and the sale deed in favour of defendants 3 and 4 will be binding only with regard to the share of defendants 1 and 2 in the 5th item of the suit schedule property and Exhibit B2 sale deed will not be binding upon the plaintiffs.

11.All the substantial questions of law are answered as against the appellants. The judgment and decree of the First Appellate Court are confirmed and the second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

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, Sivakasi

2.The District Munsif, Sivakasi.

COPY TO:-

The Section Officer

V.R.Section

Madurai Bench of Madras High Court, Madurai (2 Copies)

+1 CC to M/s.SRINATH SRIDEVAN, Advocate (SR-37234[F]
dated 03/12/2021)

Judgment made in
S.A.No.183 of 2005
01.12.2021

pk (CO)

GC (24.01.2022) 4P 6C

<https://hcservices.ecourts.gov.in/hcservices/>