

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED: 27.07.2021**CORAM****THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

SA(MD)No.332 of 2014
and
MP(MD)Nos.4 & 5 of 2014

1.V.Sambandam ... Appellant / Appellant /Defendant

2.Savithri

3.Kerakalakshmi

4.Swarnamuki

5.Veda

6.Chitra

7.Shanmugapriya ...Appellants

(Appellants 2 to 7 are brought on record as
LRs of the deceased first appellant vide
order dated 10.02.2014).

Vs.

1.M.Dhanabal

2.S.Jayalakshmi

3.S.Sudha

4.S.Balamurugan

5.S.Sumalatha ... Respondents / Respondents
Plaintiffs



Prayer: Second Appeal filed under Section 100 of CPC to set aside the judgment and decree made in A.S No.30 of 2008 dated 27.02.2012 on the file of the Principal Sub Judge, Thanjavur partly modifying the judgment and decree of the District Munsif Court, Thanjavur in O.S No.284 of 2003 dated 18.10.2006.

For Appellants : Mr.R.Murali

For Respondents : Mr.S.Deenadhayalan

* * *

JUDGMENT

This second arises out of a partition suit. One Sambandam and Dhanapal filed O.S No.284 of 2003 on the file of the District Munsif Court, Thanjavur for partition and separate possession of their 2/5th share in the suit property and for declaration that “B” schedule property is a common pathway. The suit was decreed vide judgment and decree dated 18.10.2006. Out of 23 cents, the plaintiffs were given half share. “B” schedule property was to be treated as common pathway till final decree was passed.

2.Aggrieved by the same, the sole defendant who was also named as Sambandam filed A.S No.30 of 2008 before the Principal Sub Court,



Thanjavur. The first appellate court vide judgment and decree dated 27.02.2012 set aside the judgment and decree of the trial court in respect of “B” schedule alone and the parties were to work out their rights at the time of passing final decree. Challenging the same, the defendant filed this second appeal. During the pendency of the second appeal and his legal heirs were brought on record.

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

“a) Whether the courts below are right in granting decree of $\frac{1}{2}$ share in favour of plaintiffs in respect of suit schedule property as against the prayer in the plaint claim of $\frac{2}{5}$ share in A schedule alone is sustainable ?

b) Whether the judgment and decree of the lower appellate court in directing the parties to work out the remedy of pathway right in final decree proceedings after rejecting the claim of the plaintiffs regarding the common pathway is sustainable?”

4.The learned counsel for the appellants reiterated the contentions set out in the grounds of appeal and called upon this court to answer the substantial questions of law in favour of the appellants and set aside the



judgments and decrees passed by the courts below and allow this second appeal.

5.The learned counsel for the respondents submitted that interference is not warranted.

6.I carefully considered the rival contentions and went through the evidence available on record.

7.The suit property measures an extent of 23 cents. It belonged to one Pakkirisamy Thevar. He had two wives, namely, Ammalu Ammal and Ammani Ammal. He had three sons, namely, Vembaiyan, Thiagarajan and Panneerselvam. He had also had a daughter by name Jeyalakshmi born through the second wife. Panneerselvam is said to have passed away during the lifetime of Ammalu Ammal. The defendant had purchased the entire suit property from Vembaiyan and Thiagarajan vide Ex.B1 sale deed dated 28.02.1991. The plaintiffs have purchased 3/5th share in the suit property vide Ex.A9 sale deed dated 08.08.2002 from Ammalu Ammal and Ammani Ammal and Vasanthi and Manikandan. Vasanthi and Manikandan were born to Jeyalakshmi, the



daughter of Ammani Ammal. In the said sale deed, it has been mentioned that Panneerselvam was born to Ammani Ammal, the second wife. But in the suit, they had prayed for 2/5th share. The trial court had noted that their calculation is wrong and that is why, it granted preliminary decree for half share. The first appellate court has also confirmed the same. This is because, there is no clarity as to the devolution of the share of Panneerselvam. The death certificate and legal heir certificate of Pakkirisamy Thevar had not been marked. The evidence on record indicate that the defendant had purchased the shares of only two of the legal heirs of Pakkirisamy Thevar. Ammalu Ammal had one share. Jeyalakshmi born to Ammani Ammal had one share. She passed away and her share devolved on her children Vasantha and Manikandan and on her mother Ammani Ammal. Thus, the plaintiffs have also purchased the shares from the remaining two branches. That is why, the courts below came to the conclusion that both will have half share each. Even though the plaintiffs sought lessor extent in a partition suit the courts are obliged to award the share to which a party is entitled to. The first substantial question of law is answered against the appellants.



8. There is nothing on record to show that “B” schedule pathway independently existed. The plaintiffs had purchased only the undivided shares belonging to their vendors. The question of working out the common pathway right does not arise at all. In fact, the first appellate court had correctly answered the issue in Paragraph 11 of the impugned judgment. In paragraph 12, the observation made appears to have given rise to ambiguity. The second substantial question of law is answered in favour of the appellants because the finding rendered in para 11 and the decretal portion do not go together.

9. It is declared that the plaintiffs are entitled to half share in the suit property which measures 23 cents of land. The decree passed by the courts below in respect of the “B” schedule is set aside. The decree passed by the first appellate court holding that the parties have to work out their remedy to have pathway right at the time of passing of final decree is also set aside.

10. This second appeal is partly allowed. No costs. Connected miscellaneous petitions are closed.

27.07.2021

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7



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G.R.SWAMINATHAN, J.

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