



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.375 of 2014

and

M.P. (MD) .No.1 of 2014

WEB COPY

1. Selvaraj (died)
2.Martin Manoharan ... Appellants 1 and 2/
Appellants/ Defendants

3. Rose Mery
4. Devid Chelladurai
5. Christhu Raja ... Appellants 3 to 5

**(Appellants 3 to 5 are suo motu
impleaded vide Court order dated
27.07.2021 by GRSJ)**

Vs.

1. S.Paulraj (Died)
2. Dorathy Paulraj
3. Vasantharani
4. Kala
5. Joy ... Respondents/Respondents/
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgement and Decree made in A.S.No.229 of 2004 dated 20.07.2010 on the file of the Additional Subordinate Judge, Dindigul confirming the Judgment and Decree made in O.S.No.124 of 2001 dated 24.01.2003 on the file of the First Additional District Munsif Court, Dindigul.

For Appellants : Mr.M.Thirunavukarasu
For Respondents : Mr. S.Sarvagan Prabhu
For R2 to R5.
R1 - Died.

JUDGMENT

The defendants in O.S.No.124 of 2001 on the file of the First Additional District Munsif, Dindigul are the appellants in this Second Appeal. The suit was for partition. It was filed by one Paulraj and his wife against one Selvaraj and Martin Manoharan. The father of the defendants namely, Chelladurai was the elder brother of Paulraj/first plaintiff. According to the plaintiffs, the suit property belonged to Janaki ammal, the mother of Paulraj and Chelladurai. The suit property was settled in her favour by one Savariappan on 07.06.1919 (Ex.A2). Janaki ammal died later. Thereafter, the suit property devolved on her sons namely, Chelladurai and Paulraj.



2. According to the plaintiffs, there was an oral partition between them and half share in the suit property was allotted to the plaintiff/Paulraj. Since he was employed out of the district, he leased out what was allotted to him to his brother Chelladurai. Chelladurai passed away in the year 1984. Thereafter, the sons of Chelladurai/the defendants were in enjoyment of the suit property. Under these circumstances, the plaintiffs issued a legal notice dated 30.03.2000 (Ex.A1). The defendants did not comply with the demand set out in the suit notice. Hence, the plaintiffs filed a suit in O.S.No.124/2021 seeking the relief of partition and separate possession of their share in the suit property.

3. The defendants filed their written statement resisting the suit claim. According to the defendants, the suit is not maintainable. If at all the plaintiffs can only seek the relief of recovery of possession. They further contended that their father Chelladurai had obtained patta in his name and that the suit property is their absolute property. The revenue records reflect only the name of Chelladurai for several decades. The defendants sought dismissal of the suit.

4. Based on the rival pleadings, the trial Court framed the necessary issues. The second plaintiff examined herself as PW1 and one Antony was examined as PW2. Exs.A1 to A4 were marked. The first defendant Selvaraj examined himself as DW1 and Exs.B1 to B38 were marked.

5. After consideration of the evidence on record, the trial Court passed a preliminary decree granting half share in the suit property in favour of the plaintiffs. Aggrieved by the same, the defendants filed A.S.No.229 of 2004 before the Additional Sub-Court, Dindigul. By the impugned judgment and decree, dated 20.07.2010, the appeal was dismissed and the decision of the trial Court was confirmed. Challenging the same, the Second Appeal came to be filed.

6. The Second Appeal was admitted on the following substantial questions of law:

"i) Whether the mutation in revenue records will confer title to the defendants 1 and 2 or not?

ii) Whether the plaintiffs are estopped from claiming title to the suit property?"

7. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He pointed out that the plaintiffs marked Ex.A3 claiming that they had leased out the suit property, which was allotted to their father and that the defendants, who are the sons of Chelladurai are only lease-holders. Therefore, they are clearly estopped from making a further



claim for partition. He would also state that Ex.A2 settlement deed executed in favour of Janaki ammal contained number of properties. The suit property was one among the several items. The plaintiffs choose to remain silent in respect of the other items ; only in respect of the suit items, they filed the present suit. He submitted that unless all the properties belonging to the joint family are included in the suit schedule, a suit for partition cannot be maintained. He also faulted the decision of the trial Court for failing to discuss the contentions advanced by the defendants. He called upon this Court to answer the substantial questions of law in favour of the appellants, to set aside the impugned judgments and decrees and to dismiss the suit.

8.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment does not call for any interference.

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

10.The specific case of the plaintiff is that the suit property was settled in favour of Janaki ammal vide Ex.A2 dated 07.06.1919. The original document has also been marked before the Court. The contention advanced by the defendants before the trial court was that in Ex.A2, the entire extent of the suit property has not been reflected. The learned trial judge, after perusing Ex.A2, had categorically stated that the suit property is very much covered by the said document. There is correspondence and co-relation between the present S.No.266/5 and the old S.No.650/8. That is why, the learned counsel appearing for the defendants contended before the trial Court that the entire extent has not been shown. The learned trial judge, after perusing Ex.A2, had come to the conclusion that the suit property originally belonged only to Janaki ammal. This is a pure finding of fact which has been confirmed by the first appellate court.

11.Paulraj, the first plaintiff was also the son of Janaki ammal and thus the biological brother of the Chelladurai. Therefore, the trial Court came to the conclusion that the plaintiffs are entitled to half share in the suit property. It is true that if other items belonging to the joint family had been left out, the suit would have been bad for partial partition. I wanted to know from the learned counsel for the respondents whether he can make a statement that there are no other properties available for partition. The learned counsel for the respondents, on instructions, stated that apart from the suit property, there are no other properties belonging to the joint family. If the grievance of the appellants is that other items have been left, nothing stopped them from filing an application for including the same. No material has been placed before this Court regarding the existence of such left out properties belonging to the joint family. It is not enough to make



a simple plea that the suit is bad for partial partition. The defendant is obliged to furnish particulars in the written statement as to how the suit is bad for partial partition. If details are not spelt out in the written statement, the plaintiff cannot be non-suited on that ground. The learned counsel for the appellant would state that the other items mentioned in Ex.A2 have not been included in the suit schedule. I do not find any merit in this contention. It is true that Ex.A2 does contain properties apart from the suit schedule. But then, the plaintiffs have come out with a specific case that the suit property alone belongs to the joint family. Since the defendants have failed to substantiate their contention, the courts below rightly declined to non-suit the plaintiffs on this ground.

12.Even though the plaintiffs have projected that there was an earlier partition and also claimed that there are lease agreement between Paulraj and Chelladurai, the defendants did not accept the said plea. If the defendants had accepted that they are in occupation of half of the suit property as tenants, then, the suit for partition would not have been maintainable. But the defendants having denied the case of the plaintiffs in toto cannot now take advantage of a passing plea set out in the plaint.

13.It is true that the revenue records stand in the name of the father of the defendants, namely, Chellathurai. But it has been held in the decision reported in **(2017) 8 MLJ 417 (Ammasiammal Vs. M. Karupananan)** that one cannot sustain the plea of ouster on the ground of mutation made in the revenue records. The courts below had given a categorical finding that the suit property belonged to Paulraj and Chelladurai, the sons of Janaki ammal and given half share in the suit property to the plaintiffs. The substantial questions of law are answered against the appellants/defendants. The defendants' claim for equities will be taken note of at the time of passing final decree. In the result, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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.

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To:

- 1.The Additional Subordinate Judge, Dindigul.
2. The I Additional District Munsif, Dindigul.

Copy to:

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

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-24106[F] dated
28/07/2021)

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-24272[F] dated
29/07/2021)

S.A. (MD) No.375 of 2014
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RD/NS(22.11.2021) 5P 7C