



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 396 of 2014 and

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

WEB COPY

Ponnuthai

... Appellant/1st Respondent/
Plaintiff

Vs.

1. Ramalingam
2. Neerathulingam
3. Lingam
4. Angammal

... Respondents 1 to 3/Appellants/
Defendants 1 to 3
... 4th Respondent/2nd Respondent/
4th Defendant

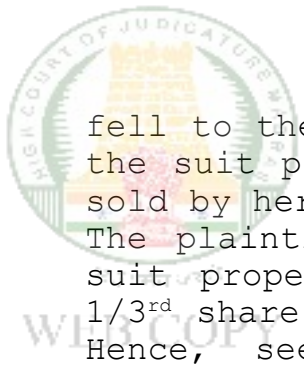
Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.08.2013 in A.S.No.95 of 2007 on the file of the Sub Court, Srivilliputhur and by reversing the Judgment and Decree dated 26.09.2007 in O.S.No.343 of 2004 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellant	: Mr.F.X.Eugene
For R-1 & R-2	: Mr.A.R.M.Ramesh
For R-3	: Mr.R.Ramadurai
For R-4	: No appearance.

J U D G M E N T

The plaintiff in O.S.No.343 of 2004 on the file of the Additional District Munsif, Srivilliputhur, is the appellant in this second appeal.

2. The appellant filed the said suit for partition claiming 2/3rd share in the suit properties. The suit items are two in number. There is no dispute that they originally belonged to one Dhadan and Karuppi and that they were eventually settled in favour of their grandson Solaikudumban. Solaikudumban had three daughters, namely, Solaimalai, Chinna Peruma and Ramu. Solaimalai had a daughter, by name, Alagumalai. Alagumalai got married to one Karuppanan. After the demise of Alagumalai, Karuppanan got married to Ponnuthai. There is no dispute that Karuppanan executed a will dated 09.08.1990 (Ex.A.6) in favour of the plaintiff giving her life estate and the remainder in favour of their son Karuppusamy. Following the demise of the Solaikudumban, the suit properties devolved on his three legal heirs. Karuppanan during his life time had purchased 1/3rd share from the third daughter of Solaikudumban, namely, Ramu vide Ex.A.2 dated 06.02.1961. 1/3rd share that devolved on Solaimalai also



fell to the share of Karuppanan. Thus, Karuppanan had $2/3^{\text{rd}}$ share in the suit properties. $1/3^{\text{rd}}$ share that devolved on Chinna Peruma was sold by her son Muthiah in favour of Neeruru vide Ex.A.3 05.06.1961. The plaintiff claimed that she was entitled to $2/3^{\text{rd}}$ share in the suit properties while Neeraru's family was entitled to remaining $1/3^{\text{rd}}$ share and that there had been no partition of the suit items. Hence, seeking the aforesaid relief of partition, she filed O.S.No.343 of 2004.

3. The suit was resisted by Neeraru's branch. Neeraru's son Lingam was shown as the third defendant and defendants 1 and 2 are none other than the sons of Lingam. They filed written statement contending that the partition had taken place long time back and that the defendants were allotted the premises bearing door No.168. According to them, the suit for partition is not maintainable. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined herself as P.W.1 and two other persons were examined on her side. Ex.A.1 to Ex.A.11 were marked. An Advocate Commissioner was appointed and he submitted report and plan and they were marked as Court exhibits 1 and 2. After considering the evidence on record, the trial Court by judgment and decree dated 26.09.2007 granted preliminary decree allotting $2/3^{\text{rd}}$ share in favour of the plaintiff. The plaintiff was given right to file final decree petition for obtaining separate possession of $2/3^{\text{rd}}$ share.

4. Aggrieved by the same, the defendants filed A.S.No.95 of 2007 before the Sub Court, Srivilliputhur. By the impugned judgment and decree dated 30.08.2013, the appeal was allowed and the suit was dismissed. Challenging the same, this second appeal came to be filed.

5. This second appeal was admitted on the following substantial questions of law:-

"Whether the first appellate Court is correct in deciding that since because the plaintiff is not entitled to $2/3^{\text{rd}}$ share, the entire suit has to be dismissed without moulding the prayers?

2. Whether the first appellate Court is correct, in holding that the second schedule pathway is the Municipal pathway because the defendants disclaimed their rights in second schedule pathway?"

6. 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 restore the decision of the trial Court.

7. Per contra the learned counsel appearing for the respondents submitted that the impugned judgment and decree passed by the first appellate Court do not call for any interference.



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

9. At the very outset, the learned counsel appearing for the respondents submitted that they are not questioning the 2/3rd right to which the appellant is entitled to in the suit properties. His only contention is that the partition was already effected between Neeraru and Karuppanan several decades ago. Though the exact particulars could not be placed, on ground the fact remains that the properties are being separately enjoyed by the parties. He also pointed out that Lingam had sold 1/3rd share in the suit item No.2 in favour of the fourth respondent herein. At present Lingam's family is residing in door No.168. He also pointed out that a reading of Ex.A.8 would show that it would probabilise the defence of prior partition projected by the defendants.

10. Even though the first appellate Court is not justified in non-suiting the plaintiff on the ground of non-joinder of necessary parties, still I am of the view that the appellant cannot have any real grievance in view of the categorical stand taken by the respondents herein. A mere perusal of the Advocate Commissioner's report and plan would show that the appellant is very much in possession and enjoyment of 2/3rd share in the suit items.

11. In this view of the matter, the substantial questions of law are answered against the appellant. With the above clarification and observation, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 Sub Judge,
Srivilliputhur.



2. The Additional District Munsif,
Srivilliputhur.

3. The Record Keeper, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.RAMADURAI, Advocate (SR-25150[F] dated 04/08/2021)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-25395[F] dated 05/08/2021)

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03.08.2021

MMS (CO)
KB (08.10.2021) 4P 6C