



AS.No.389/2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

AS.No.389/2015

1.Nagarajan

2.Anbalagan

.. Appellants /
Plaintiffs

Vs.

1.Manoharan

2.Nallaiyan

.. Respondents
/ Defendants

Prayer:- Appeal Suit filed under Order 41 Rule 1 read with Section 96 of CPC against the judgment and decree dated 14.09.2009 made in OS.No.10/2008 on the file of the learned Additional District Judge, Pondicherry at Karaikal.

For Appellants	:	Mr.N.Manokaran
For Respondents	:	Mr. R.Sreedhar



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JUDGMENT

[Judgment of the Court was made by S.S.SUNDAR, J.,]

- (1) This appeal suit is filed by the plaintiffs in the suit in OS.No.10/2008 on the file of the Additional District Court, Puducherry, at Karaikal.
- (2) The appellants filed the suit for partition in OS.No.10/2008 for partition of their 2/3rd share in all the suit properties which are described as A and B Schedule properties. The suit 'A' Schedule property consists of building in door No.19/8 at Illaikara Sandhu, Karaikal. Suit 'B' Schedule Properties consists of three items.
- (3) The appellants filed the suit as sons of one Dakshinamurthy who died in the year 2000. The 1st defendant in the suit is admittedly the other son of Dakshinamurthy. The 2nd defendant in the suit is stated to be a tenant in respect of one of the suit properties. It is admitted by the appellants before this Court that the suit for partition was dismissed mainly on the ground that the appellants have not impleaded their sisters who are the daughters of the said



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Dakshinamurthy, and who are also entitled to a share in the properties of Dakshinamurthy.

- (4) As regards 'A' schedule property, admittedly, the properties belonged to a Devasthanam. The Trial Court dismissed the suit in respect of 'A' schedule only on the ground that the tenant of 'A' Schedule property is not impleaded as a party to the proceedings. It may not be proper to dismiss the suit merely on the ground that the tenant is not made as a party. Even if the tenant is not a party, the appellants can take symbolic possession of the property subject to the rights of the tenant to remain in possession. However, the tenant may be a proper party if the plaintiffs want to seek further remedy before the Court as against the tenant also. In the absence of any further relief and the relief that is prayed for in the suit is not likely to affect the tenant, the suit cannot be dismissed on the ground that the appellants have not impleaded the tenant.
- (5) Though this Court finds no document by the appellants to show the availability of Item [b] of 'B' Schedule properties for partition, the learned counsel for the appellants relied upon a judgment of a



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Division Bench of this Court in the case of *A.Ramachandra Pillai Vs. Valliammal [died]* reported in *1987 [100] LW 486*, wherein the Division Bench relied upon the principles reiterated by Hon'ble Supreme Court that a suit for partition is liable to be dismissed for non joinder of any one of the parties. However, the Division Bench went further and held that though the suit is liable to be dismissed as not maintainable, it would be proper that all the findings on merits should also be set aside and leave all the issues at large while remitting the matter. Though the Division Bench has observed that the decision on other issues can be relegated to an independent suit that may be filed in future, in this case, having regard to the facts, we are inclined to remit the matter to the Trial Court. Therefore, the other findings on merits are also set aside.

- (6) As regards 'B' Scheduel property, it is contended that the 2nd item which is described under [b], namely the property in S.No.190/3, measuring an extent of 13 acres, in Puthakudi village, it is contended that the Trial Court has found that the appellants have not established the title from the perusal of the records particularly



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the patta in respect of the said property which is standing in the name of a third party. The appellants have not filed any document or pleaded a case to claim right over the property. When the appellants have neither pleaded the source of title of Dakshinamurthy over the said suit item, this Court is unable to find fault with the findings of the Trial Court in dismissing the suit as regards item [b] in 'B' Schedule of the suit properties. However, the matter being remitted, the Trial Court may decide every issue afresh in the presence of all necessary parties.

- (7) In a suit for partition, every joint owner is necessary and proper party and therefore, this Court finds that the suit is bad for non joinder of necessary parties. However, when the Court is of the view that some of the parties are necessary, it may not be proper to dismiss the suit on that ground, without giving an opportunity to implead the necessary parties. It is to be noted that the appellants can still file a suit for partition and the cause of action survives till the common property is divided among all the heirs. This Court is unable to find a specific plea of adverse possession.



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- (8) In such circumstances, it will be appropriate that the matter should be heard by the Trial Court after impleading necessary and proper parties to the suit. Since the suit is dismissed for non joinder of necessary parties, findings on all other issues are also set aside.
- (9) In the result, the Appeal Suit is **allowed** and the judgment and decree dated 14.09.2009 made in OS.No.10/2008 on the file of the learned Additional District Judge, Pondicherry at Karaikal, are set aside and the matter is remitted back to the Trial Court for denova trial. The appellants are permitted to implead all necessary parties, namely, their sisters as well as any other heir/s of Marimuthu from whom it is stated that Mr.Dakshinamurthy inherited the property. Parties shall appear before Trial Court on 21.12.2022. No costs.

[SSSRJ] [NMJ]

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AP

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To

1. Additional District Judge, Pondicherry at Karaikal.
2. The Section Officer
VR Section, High Court
Chennai.



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S.S.SUNDAR, J.,

AND

N.MALA, J.,

AP

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