



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.729 of 2002

A.Ramaswamy

...Appellant

Vs

1.Periakulandai Ammal
2.Yasoda Ammal
3.Kalliammal
4.S.Murugan
5.Panchavarnam
6.Yasoda Ammal
7.Ellammal
8.B.Ramesh
9.R.Dharma Gounder

... Respondents

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.3 of 1995 dated 30.11.2001 on the file of the Sub Court, Vellore, dismissing the judgment and decree made in O.S.No.36 of 1987 dated 31.10.1994 on the file of the Additional District Munsif, Vellore.



For Appellant : Mr.T.Ramkumar

For R1, R5 to R8 : No appearance

For R2, R3 & R4 : Ms.D.Malarselvi

JUDGMENT

The 1st defendant in O.S.No.36 of 1987 on the file of the Additional District Munsif Court, Vellore, which suit had been filed by the 1st, 2nd, 3rd and 4th respondents herein in their capacity as plaintiffs and which suit was filed for partition and separate possession of the suit schedule properties with specific relief to divide the suit schedule properties into three equal shares and allot one share to the plaintiffs, which had been decreed on 31.10.1994 and the subsequent First Appeal in A.S.No.3 of 1995 had been dismissed by the Sub Court Vellore by judgment dated 30.11.2001 is the appellant herein. The Second Appeal had been filed questioning the preliminary decree granted.

2.The Second Appeal had been admitted on the following substantial question of law:-



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“1. Whether the Courts below ought not to have upheld the plea of the appellant that the panchayat of 20.03.1959 wherein the husband of the plaintiff released his share and obtained Rs.200 in view of the fact that the appellant has settled all the debts and by means of uninterrupted long possession the appellant has proved his title and the absolute owner of the property and the character of the property is not a joint family property after 20.03.1959?

2. Whether the Courts below did not err in granting a decree of 1/3 share to the 1st plaintiff when admittedly the other co-parcenaries are living and even assuming that the 1st plaintiff is entitled to a share in the joint property, even then she could be entitled to 1/5 share only?

3. Whether such exchange had the effect of superseding the final decree?”



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3.The learned counsel for the appellant raised a contention that the properties which are subject matter of the partition, should be divided into five equal parts taking into consideration also two daughters of the original owner of the properties. However, the suit had been instituted by the legal representatives of one pre-deceased son and they had impleaded as parties the other two sons, but had left out the two daughters. It is contended by the learned counsel for the appellant that there was an oral partition before the panchayat wherein, the plaintiffs / respondents herein had been paid a sum of Rs.200/- in view of their share.

4.However, a division of properties by metes and bounds will necessarily have to be done in manner known to law and only through a decree passed by the Court. If the panchayat were to enter upon division of the properties, such decision must be recorded in writing in manner stated by law. Mere statement that property had been divided before the panchayat is neither legally acceptable nor tenable in a Court of law.



5.The learned counsel stated that since there were two other daughters, the properties should have been divided into five parts and the plaintiffs would be entitled to only 1/5th share and not 1/3rd share as claimed by them.

6.In ***Ganduri Koteshwaramma v. Chakiri Yanadi, (2011) 9 SCC 788***, the Hon'ble Supreme Court held as follows:

“14. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining



the rights and interests of the parties having regard to the changed situation.

*15. We are fortified in our view by a three-Judge Bench decision of this Court in **Phoolchand v. Gopal Lal** [AIR 1967 SC 1470] wherein this Court stated as follows: (AIR p. 1473, para 7)*

“7. We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. ... So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; ... There is no prohibition in the Code of Civil Procedure against



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passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility. ... for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. ... a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree.”

7.It is clear from the above, that a second preliminary decree or a further preliminary decree can be passed to readjust the shares already



granted by the Court. The parties may take advantage of the above said position in law. If the daughters seek a share in the property, then they may either implead themselves as parties and seek change in the shares allotted.

8. At any rate, the two aspects which had been put up for question namely, the division of property before the panchayat and the right of the daughters to claim share and that the property should have been divided into five equal shares are answered against the appellant herein. The Trial Court, if it finds that the daughters have a share has every right to re-examine the preliminary decree already granted. I would direct the parties to go back to the Trial Court and file necessary application for final decree, implead the daughters and seek examination of the preliminary decree already granted. The Second Appeal is dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
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To

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- 1.The Sub Court, Vellore.
- 2.The Additional District Munsif, Vellore.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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