



S.A. Nos. 113 of 2016 & 39 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. Nos. 113 of 2016 & 39 of 2018

and

C.M.P. No. 7577 of 2019

S.A. No.113 of 2016

1. Kalavathi

2. Koteeswari

.. Appellants

Vs.

1. Sivakumar S.

2. Indira Devi

... Respondents

PRAYER in S.A.No.113 of 2016: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 21.09.2015 in A.S.No.38 of 2014 on the file of Principal District Judge, Thiruvallur modifying the judgment and decree passed in O.S.No.37 of 2010 dated 06.06.2013 on the file of Subordinate Judge, Thiruvallur.



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S.A. No.39 of 2018

Sivakumar,
S/o. Late Sambantham

.. Appellant

Vs.

1. Kalavathi,
W/o.Krishnan

2. Kotteeswari,
W/o. V.Poyyamozhi

3. Indira Devi,
W/o. K. Devaraj

... Respondents

PRAYER in S.A.No.39 of 2018: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 21.09.2015 in A.S.No.38 of 2014 on the file of Principal District Judge, Thiruvallur confirming the judgment and decree in respect of suit 'A' schedule properties made in O.S.No.37 of 2010 dated 06.06.2013 on the file of Subordinate Judge, Thiruvallur.

For Appellants in
S.A.No.113 of 2016 : Mr.P.B.Balaji

For Respondents : Mr.A.R.Suresh for R1
in S.A.No. 113 of 2016

Mr.D.Kumaralingam for R2



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For Appellant in
S.A.No.39 of 2018 : Mr.A.R.Suresh

For Respondents : Mr.P.B.Balaji for R1 & R2
in S.A.No. 39 of 2018
Mr.D.Kumaralingam for R3

JUDGMENT

The appellants herein in S.A.No.113 of 2016 are the plaintiffs in the suit in O.S.No. 37 of 2010 on the file of Sub-Court, Thiruvallur seeking for the relief of partition against their mother and brother. The plaintiffs as sister and legal heir of their father deceased Sambantham filed the suit. In the plaint schedule, they have mentioned 'A', 'B' and 'C' schedule of properties claiming that all the properties are ancestral properties of deceased Sambantham. The defendants claimed that the properties are belong to deceased Sambantham and after the marriage of plaintiffs, there was a oral partition during the life time of their father and settled the properties in favour of defendants. So, they denied the plaintiffs right over the suit properties.



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2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The Trial Court framed separate issues and on considering the evidence and records, the trial court decreed the suit. Aggrieved over that, appeal was filed in A.S.No. 38 of 2014 before the Principal District Judge, Thiruvallur, wherein the first appellate judge framed separate issues. While discussing the nature of properties as well as right and title over the suit properties, the first appellate judge observed that neither of the parties in dispute not produced the title deeds in respect of all the suit schedule properties. Further, oral partition in the family also not been properly established. The settlement deed said to have been executed by the 1st defendant. But, while discussing all the issues in para 15 of the lower court judgment, the appellate judge held that there is no evidence to show 'A' schedule property as the ancestral property of Kasibai, thereby disputing the right to execute the settlement deed. Accordingly, in respect of 'A' schedule property, the appeal is dismissed. With regard to 'B' and 'C'



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schedule properties, appeal is allowed. Against which, this Second Appeal is preferred.

4. Now, at the time of argument, the learned counsel for appellants submitted that with regard to 'B' and 'C' schedule properties, the suit may be remanded back to the trial court to adduce further evidence to prove their title. However, the learned counsel for appellant also submitted that with regard to 'A' schedule property, the preliminary decree in favour of plaintiffs may be confirmed.

5. On perusal of entire pleadings as well as evidence adduced, the 'A' schedule property is also claimed as ancestral property of deceased Sambantham. Subsequently, it was transferred to Kasibai, wife of deceased Sambantham. But, strangely, there is no title deeds to establish 'A' schedule property, which consists of 12 items situated at Nayapakkam Village, Tiruvallur District as ancestral property, but the plaintiffs counsel submitted that admission made by the parties concerned in the written statement that 'A' schedule property is an ancestral property is sufficient.



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Hence, they have not adduced any document to show that 'A' schedule property is ancestral property belonged to their family. But, mere admission is not sufficient to conclude title of parties in respect of 'A' schedule property. Independently, the parties to the suit should prove that 'A' schedule property is an ancestral property of their family by adducing title deeds and other materials with regard to the right and possession of the property. But, no such document was produced before the trial court. So also, with regard to 'B' and 'C' schedule properties, there is no document, but both the counsels stated that in respect of 'B' and 'C' schedule properties, there is sufficient documents to prove their claim and prayed to remand back the matter to the trial court for fresh disposal.

6. Considering the nature of relief claimed in the suit, and since the suit is pending before the trial court from the year of 2010 onwards, to render fair justice, these matters are remanded back to the Sub-Court, Tiruvallur for fresh trial by giving up opportunity to both parties to adduce oral and documentary evidence to prove their claim in respect of



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'A', 'B' and 'C' schedule properties with other available materials and the trial judge is directed to frame fresh issues based upon the pleadings and documents and dispose of the matter on merits as per manner known to law. Accordingly, these Second Appeals are disposed of by remanding the matters back to the trial court and the trial judge is directed to dispose of the matters as expeditiously as possible within 6 months. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Principal Sub-Judge,
Thiruvallur.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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