



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

AS.NO.922 OF 2018

1.Deivasigamani
2.Vasanthi Subramaniam
3.Thilagavathi

... Appellants /
Plaintiffs

vs.

1.Saraswathi
2.Vaneeswari @ Miniayammal
3.Easwaran
4.Dharmaraj
5.Alagusami
6.Shanthi
7.Raju

... Respondents/
Defendants

Appeal Suit filed under Section 96 of CPC read with Order XLI Rule 1 of CPC, to set aside the judgment and decree dated 26.10.2017 passed in O.S.No.215 of 2013 on the file of the IV Additional District Court, Erode District at Bhavani and consequently allow the suit in O.S.No.215 of 2013 on the file of the IV Additional District Court, Erode District at Bhavani, with costs throughout.

For Appellants	..	Mr.C.P.Sivamohan
For R2 to R6	..	Mr.R.Prabakar
For R1 and R7	..	No appearance

JUDGMENT

The plaintiffs in O.S.No.215 of 2013 on the file of the IV Additional District Court, Bhavani, Erode District, are the appellants herein.



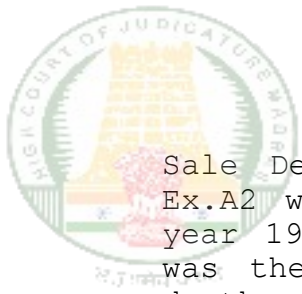
2.They had filed O.S.No.215 of 2013, seeking division of the suit property into sixteen equal shares by metes and bounds and to allot four such shares to the plaintiffs and put them in separate possession and also to restrain the 5th and 6th defendants from alienating the suit property and also for costs of the suit. The suit property is land measuring total extent of 7.16 acres in Jambai Village in S.Nos.821 and 822 together with usufructs in R.S.No.542/1 in Bhavani, Erode District.

3.It was the contention of the plaintiffs that one Nallammal and the 1st defendant in the suit, were wives of late Subramania Gounder. Nallammal had a son Rangasamy, who predeceased the father. The plaintiffs are the legal heirs of Rangasamy. Subramania Gounder had married the 1st defendant, and the 2nd and 4th defendants are the daughter and sons of the 1st defendant. The 5th and 6th defendants are also co-sharers of the suit property and the 5th defendant is also a purchaser of the property from the 1st, 3rd and 4th defendants. It had been stated that there had been a partition in the year 1974 and thereafter, there had been a purchase of the property in the year 1979. The 1st and 2nd defendants executed a release deed on 25.06.2013. However, the plaintiffs and the defendants continue to enjoy the property which had been purchased by Subramania Gounder. The same is still undivided. Claiming that they have a right over the property, the suit had been filed.

4.Written statement had been filed by the 5th defendant. Thereafter, on the basis of such written statement, as many as ten issues were framed, namely, whether the suit was bad for non-joinder of necessary party; whether the suit was barred by limitation; whether the plaintiffs and the defendants were in joint possession of the suit properties; whether the defendants were entitled to execute General Power of Attorney regarding the remaining portion of the property; whether the sale by power agent to the 6th defendant is binding on the plaintiffs; whether the plaintiffs were entitled for partition of the properties; whether the property was purchased by Subramania Gounder as ½ share in common; whether there was earlier partition of the property and whether the sale to the 5th defendant is binding on the plaintiffs.

5.Order 14 of CPC is instructive which examining framing of issues. When a fact is asserted and when that fact is denied it leads to a issue being framed to be determined and examined and answered by the Court.

6.In the instant case, the other defendants did not participate in the trial proceedings. The plaintiffs were called upon to adduce evidence and accordingly, the 1st plaintiff filed proof affidavit. Exs.A1 to A8 were also marked. Ex.A1 was the



Sale Deed in favour of Subramania Gounder in the year 1971. Ex.A2 was the Sale Deed in favour of the 5th defendant in the year 1999. Ex.A3 was the Release Deed in the year 2013. Ex.A4 was the Partition Deed in the year 1974. Exs.A5 and A6 were death certificates of Subramania Gounder and Nallammal, the 1st wife and Ex.A7 was the legal heirship certificate. Ex.A8 was the Chitta.

7.The witness was however not cross-examined on behalf of the defendants. When the chief was recorded, the following was the endorsement in the notes / B record on 13.09.2017,

"PW-1 chief recorded. Ex.A1 to A8 marked. The defendants called absent. No representation. For appearance of defendants and for cross of PW-1 by 20.09.2017".

8.On 20.09.2017, the defendants did not appear and they were set exparte. The case was posted for examining further witness on the side of the plaintiffs on 04.10.2017. The matter was again adjourned to 11.10.2017 for examination of further witnesses on the side of the plaintiffs. On 11.10.2017, the evidence on the side of the plaintiff was closed and the matter posted for judgment on 26.10.2017, on which date, the suit was dismissed.

9.I do understand that it is the prerogative of the learned Presiding Officer to decree or dismiss a suit based on the evidence available. While doing so, an obligation is cast on the learned Presiding Officer to answer the issues framed, and indicate whether the suit had been dismissed on each one of the issues, particularly, since the issues framed also involved issues on limitation, issues on non-joinder of proper party, issue on joint possession of the suit property and whether the particular sale deed is binding on the plaintiff. At least, the issues of non-joinder and limitation should have been answered.

10.A cursory repetition of the facts and then dismissal of the suit is not a proper approach. If the Court fees had not been properly paid, then under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1965 that issue must be taken as a preliminary issue and adjudication has to be made.

11.In view of the fact that the judgment appears to have been rendered more with an idea to dispose of the suit, then to give a finding on each one of the issues, I set aside the judgment and decree and remand the matter back to the Trial Court.

12.Order 41 Rule 23 and Order 41 Rule 23 A of CPC gives the procedure for remand, but in this case, the issues framed have not been answered and therefore, it is only appropriate that the



entire suit is re-heard by the IV Additional District Court, Bhavani.

13. Any conclusion can be drawn by the learned Presiding Officer based on pleadings and evidence. Each issue should be answered by the learned Trial Judge.

14. I would therefore, set aside the judgment and decree dated 26.10.2017 passed by the learned IV Additional District Court, Bhavani in O.S.No.215 of 2013. The First Appeal is allowed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

15. The Registry may forward back the entire records to the IV Additional District Court, Bhavani. The learned IV Additional District Judge, Bhavani, is directed to re-hear the entire suit on the basis of the evidence already adduced by the plaintiffs and grant opportunity for cross-examination and even if the defendants do not come forward to cross-examine the witness, answer each one of the issues framed for adjudication and then render a judgment.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Additional District Judge,
The IVth Additional District Court, Bhavani, Erode.

Copy To

VR Section, High Court Madras.

+1cc to Mr.R.Prabakar, Advocate, S.R.No.16729

+1cc to Mr.C.P.Sivamohan, Advocate, S.R.No.16552

AS.No.922 of 2018

and

CMP.No.23596 of 2018

SPD(CO)

PM/26/04/2022