

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.112 of 2013

1.R.Krishnamoorthy (Died)

2.K.Packiathammal

3.R.Girija

4.P.Jayanthi

5.T.Rama

6.M.Sumathi

7.K.Karthikeyan

8.K.Sachidanantham

...Appellants/Defendants 1,2,4- 9

(Appellants 2 to 8 and the respondents

1 & 2, who are already on record,
are recorded as Lrs of the deceased

1st appellant vide Court Order
dated 19.07.2022)

Vs.

1.Savithri

...1st Respondent/Plaintiff

2.A.Vanaja

3.S.Sahayarani

...Respondents 2, 3/Defendants 3,10

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree, dated 12.02.2013 passed in O.S.No.53 of 2011, on the file of the III Additional District Judge, Thiruchirappallai insofar as decreeing the suit in respect of item Nos.1 to 3 of the suit property.

For Appellants	: Mr.M.Saravanan
For R1	: Mr.R.Rajaraman
For R2	: Mr.M.Pitchaimuthu
For R3	: Mr.B.Saravanan

J U D G M E N T

The appellants are the defendants 1,2, 4 to 9, respondents 2 & 3 are the defendants 3 & 10. The first respondent is the plaintiff. The first respondent/plaintiff filed a suit in O.S.No.53 of 2011, on the file of the III Additional District Judge, Tiruchirappalli for partition and separate possession against defendants. After trial, the trial Court came to the conclusion that the plaintiff is entitled for 1/9 share in item Nos.1 to 3 of the suit property. As far as the item Nos.4 and 5 of the suit properties are

concerned, the claim of the plaintiff is dismissed with cost and also granted the relief of permanent injunction with respect to suit properties item Nos.1 to 3 and partly decreed the suit with costs and the sale deed in favour of the 10th defendant is declared as null and void. Challenging the said judgment and decree, defendants 1,2,4 to 9 in the said suit have filed the present appeal.

2. Brief plaintiff averments are as follows:-

The plaintiff is the daughter of the defendants 1 & 2. The defendants 3 to 9 are the brothers and sisters of the plaintiff. The 10th respondent is the subsequent purchaser. The suit properties 1 to 3 are ancestral in nature owned by Rasappan Muthiriyar and Rajathi. After their death, the properties are jointly enjoyed by plaintiff and defendants 1 to 9. The 2nd item of the suit property is a dwelling house and other properties are agricultural lands. The 4th item of the suit property was purchased in the name of 8th defendant out of the income of the ancestral property. The 5th item of the suit property was purchased in the name of 2nd defendant out of

the income of the ancestral property. Hence, items 1 to 5 of the suit properties are ancestral properties. Since the plaintiff and the defendants 1 to 9 jointly enjoyed the suit properties they all are entitled for a share. While so, the plaintiff was offered cash consideration for her 1/8th share, for which, she refused. Hence, the 2nd defendant compromised her to allot her 1/8th share. But the plaintiff learnt that the defendants 1 to 9 intentionally and illegally created a sale in favour of the 10th defendant as regard to the 1st item of the suit property. Hence, she has claimed the relief of declaration to declare the sale as illegal. The plaintiff issued notice on 18.10.2010 to the defendants. But they suppressed the fact and have not come forward to partition and rather the defendants 1,2,8 and 9 have given a vexatious reply that the plaintiff has no right over the suit properties. Hence, the plaintiff has come forward with this suit.

3. Brief averments stated in the written statement filed by the first defendant and adopted by the defendants 2,4 to 9:-

All the allegations in the plaint are denied. The relationship of the

parties alone is admitted. The first item of the suit property is though ancestral property, the extent are not correct. The father of the 1st defendant owned 19-1/3 cents out of 53 cents and a vacant site of 11 cents out of 22 cents only in the 1st item of the suit properties. The remaining portion of the 1st item of the suit property and 2nd item of the suit property and the remaining portion of the 3rd item of the suit property were purchased by the father of the Rajathi Ammal. After the death of Rajathi Ammal, the property devolved on the 1st defendant. Ever since the death of his parents, the 1st defendant was in possession and enjoyment of the properties. The 1st defendant was cultivating the lands of 3rd parties and he raised plantain crops and betals in the lease hold lands and earned lot. Out of his income, he purchased items 4 and 5 of the suit properties in the name of 2nd and 8th defendants. Hence, it is false that the item Nos. 4 and 5 were purchased out of ancestral profit. The allegations that the suit properties are enjoyed in common are also false. The plaintiff is not entitled for any share in the suit property and hence, there is no necessity for accounting the profits there is no cause of action for the suit with respect to permanent injunction and

hence, the relief cannot be granted. The 1st defendant has spent a huge amount for maintenance of his large family and meeting out the marriage expenses of all the daughters. The suit is filed only for harassing the defendants. Hence, the suit is liable to be dismissed.

4. Brief averments stated in the written statement filed by the 10th defendant:-

The suit is false, baseless and is frivolous. The averments in the plaint are false. The defendant is a bonafide purchaser of the suit properties as per the sale deed, dated 26.08.2010 and she is in possession and enjoyment of the same. The sale deed executed in favour of this defendant is valid. The suit is misconceived and has to be dismissed with cost.

5. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

(i) Whether the sale deed, dated 26.08.2010 executed by defendants 1,2,4 to 9 in favour of 10th defendant

is valid?

(ii) Whether the plaintiff is entitled to 1/9 shares in item No.1 to 5 of suit properties and whether the plaintiff is entitled to past and future profits from the above said properties in respect of his share?

(iii) Whether the plaintiff is entitled to permanent injunction as prayed for?

(iv) To what other relief the plaintiff is entitled?

6. In order to substantiate the case of the plaintiffs, on the side of the plaintiff, one witness was examined as P.W.1 and 14 documents were marked as Ex.A1 to Ex.A14. In order to substantiate the case of the defendants, 2 witnesses were examined as D.W.1 and D.W.2 and 6 documents were marked as Ex.B1 to Ex.B6.

7. After completing the trial and hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, partly decreed the suit with costs and the sale deed in favour of the

10th defendant is declared as null and void and the plaintiff is entitled for 1/9th share in item Nos.1 to 3 of the suit property. As far as the item Nos.4 and 5 of the suit properties are concerned, the claim of the plaintiff is dismissed with cost. The plaintiff is also granted the relief of permanent injunction with respect to item Nos.1 to 3 of suit properties that the defendants or their men and agents shall not encumber or alienate the same.

8. The learned counsel appearing for the appellants would submit that they have no dispute with reference to the findings given by the trial Court with regard to the 2nd item of property is concerned. As far as item Nos.1 & 3 are concerned, the learned counsel for the appellants stated that the Rajathiammal got only 19-1/3 cents out of 53 cents in the 1st item of the suit schedule property and that was purchased under Ex.B3-sale deed and therefore, granted a decree for partition for the larger extent in item No.1 is not valid. Further, he would submit that as far as item No.3 is concerned, the said Rajathiammal has got only 11 cents out of 22 cents under Ex.B2. Therefore, partition for larger extent of 22 cents of land is not valid.

9. He would further submit that as per Ex.B2 to B4 in item No.1, the said Rajathiammal got only 19-1/3 cents of land and item No.3 she got 11 cents, therefore, the judgment and decree passed by the trial Court to the larger extent has to be set aside. He would further submit that the respondents are entitled to only 1/8th share in the extent of 19-1/3 cents in item No.1 and 1/9th share in the extent of 11 cents in item No.3 and the respondents have not filed any documents to prove that the said Rajathiammal has got more extent than 19-1/3 cents in the item No.1 and 11 cents in item No.3.

10. The learned counsel appearing for the first respondent would submit that in paragraph-5 of the written statement filed by the deceased first appellant has admitted that apart from 19-1/3 cents in item No.1 of the property, the said Rajathiammal has got the remaining extent and one Appavoo Muthuraja, who is the maternal grand-father of the deceased first appellant, purchased the property in the name of the Rajathiammal and the

trial Court has considered the submission made by the appellants and set aside the sale deed in favour of the 10th defendant and preliminary decree has been passed for partition. As far as the item no.3 is concerned, in the very same Paragraph No.5 of the written statement, the deceased/first appellant categorically admitted that apart from 11 cents in the third item of the property his grand-father purchased the remaining extent in the name of Rajathiammal and therefore, the trial Court granted the decree for the total extent of Item Nos.1 & 3 in the plaint schedule properties and there is no merit in the appeal and it is liable to be dismissed.

11. Heard the learned counsel appearing for the appellants and the respondents, perused the pleadings, issues framed by the trial Court and oral and documentary evidence adduced and produced by both parties.

12. The relationship of the parties are not in dispute and the character of the properties are not in dispute. Both the appellants and the respondents are deriving the title of grandmother Rajathiammal. The trial

Court based on the pleadings, oral and documentary evidence, though dismissed the suit with reference to item nos.4 & 5, there is no appeal against the said findings. Now, the appeal is only as against the findings given by the trial Court in respect of item Nos.1 to 3. Even now the learned counsel for the appellants have given up his challenge regarding item No.2 is concerned. Now, the appellants have only challenged the judgment and decree with respect to item Nos.1 and 3, especially, with regard to the extent. The appellants would submit that item No.1, the parties are entitled to partition for $19\frac{1}{3}$ cents of land not from the entire extent of 53 cents, likewise item no.3 also parties are entitled for partition only 11 cents and not from the entire 22 cents. In this regard, the relevant documents are Ex.B1 to B3 and also Ex.A3. Though in Ex.B1 it is mentioned that $19\frac{1}{3}$ cents, but however, in Ex.A3 it is mentioned an extent of 53 cents in item No.1 of the suit schedule properties. Though the appellants have stated that as per Ex.B1 only $19\frac{1}{3}$ cents of lands are liable for partition. But, however in Ex.A3, the total extent of 53 cents has been mentioned in item No.1. For which, a close reading of paragraph 5 of the written statement

shows that the deceased first appellant has clearly admitted in his written statement that Rajathiammal has got an extent of 19-1/3 cents under the documents Ex.B1 and Ex.B2, but however, in the very same paragraph, he has further stated that Appavoo Muthuraja purchased the remaining extent in the name of Rajathiammal. Therefore, once the appellants admitted in his pleadings that the Rajathiammal has got entire extent of 53 cents mentioned in item No.1, now, he cannot turn back to say that the Rajathiammal is entitled to 19-1/3 cents alone. Ex.A3 is executed by the deceased first appellant, now, the contention is against his own stand taken in Ex.A3 and also against his own admission made in the written statement. Therefore, the appellant now cannot take different stand against his own document and own pleadings. When the appellants admitted the fact in the written statement and not seriously challenged during the evidence. As far as the third item of the suit schedule properties is concerned, the appellant relied on the admission that Rajathiammal was entitled to 11 cents and not 22 cents, again it is found in the written statement in the very same paragraph states that the deceased first appellant admitted that Appavoo Muthuraja has

purchased the remaining extent of lands in the name of Rajathiammal. Therefore, when the appellants admitted in their own pleadings that Rajathiammal entitled to 22 cents, now he cannot take a different stand in the appellate stage.

13. In the suit, he has admitted in the pleadings that the Rajathiammal is entitled to 22 cents in item No.3 of the property, now the appellants are not permitted to take different stand in the appeal. Since this Court as the first appellate Court is a fact finding Court it has to re-appreciate the entire evidence and give an independent findings. Now, this Court also carefully gone through the plaint, written statement and also oral and documentary evidence. This is a suit for partition and sought declaration that the document executed in favour of the 10th defendant is null and void. It is true that the suit properties are joint family properties and derived from ancestral nucleus and therefore, the appellants are not entitled to sell the entire properties. The first respondents is also grant daughter of the Rajathiammal and the first respondent is equally entitled to

share in the suit properties. Therefore, the sale deed Ex.A3 said to have executed in favour of the 10th defendant is null and void in respect of first respondent share is concerned there is no reason to interfere with the findings of the trial Court.

14. As far as the partition is concerned, as already stated by the trial Court that both the parties claiming title to the said Rajathiammal, who is none other than grand-mother of both appellants and the respondents. The appellants have admitted in the written statement itself that Rajathiammal has got the suit schedule property in item No.1,2 & 3, therefore, the trial Court has rightly passed the preliminary decree that the plaintiff/1st respondent is entitled for 1/9th share in item Nos.1 to 3 of the suit properties and therefore, this Court does not find any good reason to interfere with the findings of the trial Court. As far as item Nos.4 & 5 are concerned since the appellants have not challenged the findings of the trial Court and therefore, the appeal suit is liable to be dismissed.

15.Considering the facts and circumstances of the case while re-appreciating the entire evidence, this Court does not find any perversity in the judgment and decree passed by the trial Court and therefore, the appeal suit is dismissed and the judgment and decree of the trial Court is confirmed. In a recent judgment of the Hon'ble Supreme Court reported in **2022 Live Law (SC) 549, Kattukandi Edathil Krishnan and another vs. Kattukandi Edathil Valsan and others**, it has been held as follows:-

"33.We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree.

Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings.

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States."

16.As per the above latest decision of the Hon'ble Supreme Court, a party need not file a final decree application separately. The Court itself can *suo motu* initiate final decree proceedings after passing the preliminary decree. Therefore, the appellants are directed to divide the property by metes and bounds and hand over the possession to the respondents as per

the preliminary decree passed by the trial Court, within a month from the date of receipt of a copy of this judgment, otherwise, the trial Court is directed to initiate *suo motu* final decree proceedings and appoint an advocate commissioner and proceed with the same and pass a final decree. Since already the suit is pending from 2011, all the final decree proceedings shall be completed within a period of six months from the date of its initiation. Registry is directed to send the original records to the trial Court concerned along with the judgment and decree made in this appeal within a period of fifteen days from the date of this judgment.

17.Considering the facts and circumstances of the case and also the relationship between the parties, there shall be no order as to costs.

25.08.2022

Index : Yes / No

Speaking Order : Yes / No

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To

- 1.The III Additional District Judge,
Thiruchirappallai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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P.VELMURUGAN, J.

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