



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : .08.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

and

M.P(MD)No.2 of 2012

A.S(MD)No.27 of 2012:-

SP.V.M.Thiyagarajan

... Appellant

vs.

1. R.Prema

2. R.Karthick

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 11.08.2011 in O.S.No.347 of 2004 on the file of the Additional District Judge, (FTC No.I), Madurai.

For Appellant
For R1

: Mr.VR.Shanmuganathan
: Mr.ARL.Sundaresan, Senior Counsel for
Mr.K.Guhan



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

A.S(MD)No.28 of 2012:-

SP.V.M.Thiyagarajan

... Appellant

VS.

R.Prema

... Respondent

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 11.08.2011 in O.S.No.36 of 2009 on the file of the Additional District Judge, (FTC No.I), Madurai.

For Appellant	: Mr.VR.Shanmuganathan
For Respondent	: Mr.ARL.Sundaresan, Senior Counsel for M/s.A.L.Ganthimathi

A.S(MD)No.25 of 2015:-

1. R.Prema

2. R.Karthick

... Appellants

VS.

SP.V.M.Thiyagarajan

... Respondent

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 11.08.2011 in O.S.No.347 of 2004 on the file of the Additional District Judge, (FTC No.I), Madurai.



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

For A1

: Mr.ARL.Sundaresan, Senior Counsel for
M/s.A.L.Ganthimathi

For A2

: Mr.K.K.Ramakrishnan

For Respondent

: Mr.VR.Shanuganathan

COMMON JUDGMENT

One SP.V.M.Thiyagarajan, as a plaintiff, filed O.S.No.347 of 2004, on the file of the Additional District Judge, (FTC No.I), Madurai, against one R.Prema and R.Karthick, who are defendants in the said suit, for the relief of partition and separate possession of A, B and C schedule properties and to give a share to the plaintiff in the business run in D and E schedule properties and also a share in the Fixed Deposit in F schedule property with costs of the suit. O.S.No.36 of 2009 on the file of the Additional District Judge, (FTC No.I), Madurai, was filed by the 1st defendant in the above suit namely, Prema, as a plaintiff, against one SP.V.M.Thiyagarajan/plaintiff in O.S.No.347 of 2004, for a permanent injunction restraining the defendant and his men from interfering with her peaceful possession and enjoyment of the suit property therein. As pleadings and submissions were common, the trial Court conducted a joint trial and by a common judgment and decree, dated 11.08.2011, dismissed the suit for partition in O.S.No.347/2004 with costs and



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

decreed O.S.No.36 of 2009 granting permanent injunction. Aggrieved by the dismissal of the partition suit in O.S.No.347/2004, the plaintiff in the said suit namely, SP.V.M.Thiyagarajan filed appeal in A.S(MD)No. 27/2012. As against the disallowed portions of the counter claim, the defendants in O.S.No.347/2004 filed A.S(MD)No.25/2015. Aggrieved by the decree of permanent injunction granted by the trial Court in O.S.No. 36/2009, the defendant therein namely, SP.V.M.Thiyagarajan filed A.S(MD)No.28/2012.

As pleadings and submissions are common, all the appeals are heard together and disposed of by this common judgment.

2. Brief averments in the plaint in O.S.No.347/2004, are as follows:-

One S.P.V.Manickam Chettiar had two sons namely, plaintiff/SP.V.M.Thiyagarajan and M.Ramakrishnan and four daughters namely, R.M.Valliammal, K.Kamatchi, M.Vijayalakshmi and R.M.Meenatchi @ Chella Meenal. On 15.07.1989, M.Ramakrishnan, one of the sons of Manickam Chettiar died, leaving behind his wife namely, R.Prema and his son R.Karthick who are the defendants, as his legal



heirs. Thereafter, the defendants were living with Manickam Chettiar and all their needs were fulfilled by the said Manickam Chettiar. The suit properties were purchased out of the income derived from the ancestral properties of Manickam Chettiar. While so, Manickam Chettiar died intestate on 26.08.2003 and his wife predeceased him. The defendants were maintained by Manickam Chettiar till his death. During his life time, Manickam Chettiar paid cash to his four daughters to avoid them from claiming share in the suit properties. Manickam Chettiar also paid Rs.2,20,000/- towards educational expenses of the 2nd defendant/grandson. Further, Manickam Chettiar was also doing finance business at Aranthangi in the name and style of Lakshmi Finance and cash in hand of the said business upto 30.06.2003 amounting to Rs.17,75,598/- is in possession of the 1st defendant and the plaintiff is entitled to his half share in the said amount. Manickam Chettiar was also running a finance business in the name and style of Karthick Finance and the cash in hand of the said business upto 30.06.2003 amounting to Rs.16,17,436/- is in possession of the 1st defendant and the plaintiff is entitled to his half share in the said amount. The 2nd defendant is also liable to repay half of a sum of Rs.2,20,000/- spent by Manickam



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

Chettiar towards his educational expenses. Further, out of a sum of Rs. 8,00,000/- kept by Manickam Chettiar in ICICI Bank, the plaintiff is entitled to his half share. Thus, the plaintiff sent an advocate notice dated 15.09.2003 to the defendants, seeking partition of properties, for which, the defendants sent a reply notice dated 23.09.2003, with false allegations. Hence, the suit.

3. Brief averments in the written statement filed by the 1st defendant in O.S.No.347/2004 are as follows:-

The relationship is admitted. After the death of M.Ramakrishnan, the defendants were living in the parents' house of the 1st defendant and not with Manickam Chettiar as alleged in the plaint. The suit notice was sent only to the residential address of the parents of the 1st defendant. Since the 1st defendant was having knowledge in textile industry, she was employed in the mills at Oddanchatram. Apart from that, she was running various businesses like, Hardware, Finance etc., and she is an income-tax assessee. She owned various house properties and is deriving rental income. Thus, the defendants were never depending on the income of Manickam Chettiar. The allegation that the suit properties



were purchased out of the income derived from the ancestral properties of Manickam Chettiar, is denied. Further, Manickam Chettiar not died intestate, whereas, during his life time, a partition was made in the form of family arrangement. The said family arrangement was made vide arbitration. Actually, Manickam Chettiar was seriously disturbed by the plaintiff and hence, he filed a suit in O.S.No.1081/95 against the plaintiff, in which, a compromise was entered into, and pursuant thereto, there was a family arrangement on 25.05.1997, by which, the plaintiff was given share in the properties and he was living separately with his family. Thus, the plaintiff is not entitled to any share in the suit properties. The alleged amount of Rs.2,20,000/- given to the 2nd defendant's educational expenses by Manickam Chettiar was from his own income. The alleged business in the name of Lakshmi Finance at Aranthangi is the business run by the 1st defendant and not the business of Manickam Chettiar. The plaint A schedule property was purchased in the name of the 2nd defendant by the 1st defendant through her business income and C schedule property was given to the 2nd defendant, pursuant to the family arrangement dated 25.05.1997, as such, the plaintiff has no right over A and C schedule. D and E schedule properties are the



businesses run by Manickam Chettiar in B schedule property belonged to the 1st defendant in the name of style of Meenatchi Finance and Karthick Finance. After the death of Manickam Chettiar, the plaintiff is responsible for the accounts of those businesses and he is liable to hand over possession of B schedule property to the 1st defendant. F schedule deposit amount belongs to the sister of the plaintiff namely, Kamakshi which was also taken by herself. Further, the suit is bad for non joinder of the four sisters of the plaintiff. The plaintiff alone is receiving the rental income of the ancestral properties of Manickam Chettiar situated at Ahamed Colony at Ramalinga Nagar and Paganeri and he is responsible to partition those properties and give shares of the defendants. Thus, the 1st defendant made a counter claim in the written statement that to dismiss the suit as far as the plaint A, B and C schedule of properties; to direct the plaintiff to give equal share to the defendants in plaint D and E schedule properties; to direct the plaintiff to divide the written statement A schedule properties equally and hand over possession to the defendants and to restrain the plaintiff by permanent injunction from interfering with the peaceful possession and rightful enjoyment of the written statement B schedule properties got by them



through family arrangement and written statement C schedule properties purchased by the defendants.

4. Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the plaintiff is entitled to half share in the plaint A, B and C schedule properties?

(ii) Whether the plaintiff is entitled to get half share in D and E schedule business and F schedule deposits?

(iii) Whether the 1st defendant is entitled to get half share in written statement D and E schedule properties?

(iv) Whether the plaintiff is directed to hand over the possession of half share in A schedule properties to the defendants?

(v) Whether the plaintiff is to be restricted by way of permanent injunction from interfering with the peaceful enjoyment of written statement B and C schedule properties by the defendants?

(vi) To what other reliefs, the plaintiff and defendants are entitled to?



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

4.1. On 28.08.2009, the following additional issues were framed:-

(i) Whether it is true that there is no ancestral properties for the deceased Manickam Chettiar?

(ii) Whether it is true that family arrangement was effected among the plaintiff, defendants and Manickam Chettiar?

(iii) Whether the 1st defendant is entitled to get half share in the plaint D and E schedule properties?

(iv) Whether the 1st defendant is entitled to get half share in written statement A schedule properties?

(v) Whether the 1st defendant is entitled to get permanent injunction against the plaintiff in respect of written statement B and C schedule properties?

5. Brief averments in the plaint in O.S.No.36/2009 are as follows:-

The suit property originally belonged to one Ramaiah, son of Vairavan. The plaintiff herein/Prema purchased the property by a sale deed dated 26.11.1996 along with her partners V.Thirunavukkarasu Chettiar, R.Valliammal Achi and G.Shanthi. Thus, the above four persons



are the owners of the suit property. Later, the plaintiff/Prema purchased the entire suit property from three other owners, by a sale deed dated 04.06.2003 and is paying property tax, water tax and electricity charges etc. The plaintiff is in actual possession of the suit property by leasing it to third parties and also to her father-in-law to run a business in the name and style of Meenakshi & Co. The defendant/Thiagarajan is the elder brother of the plaintiff's husband. After the death of Manickam Chettiar, the defendant entered into the suit property to settle the accounts of the business. According to the plaintiff, as per the Government Order, on 20.07.2005 itself, the said business of Meenakshi & Co wound up, but the defendant claiming share in the suit property filed O.S.No.347/2007 and attempting to lease out the suit property to third parties. Hence, the suit.

6. Brief averments in the written statement in O.S.No.36/2009 are as follows:-

The suit for mere injunction without the relief of declaration is not maintainable. The defendant alone is in separate possession of the suit property and that the plaintiff did not let out the suit property to her



father-in-law. The plaintiff and the defendant are coparceners of the suit property and therefore, the defendant filed a partition suit in O.S.No. 347/2004. Thus, the suit for injunction is not maintainable and liable to be dismissed.

7. Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(ii) To what relief, the plaintiff is entitled?

8. The trial Court conducted a joint trial of two suits. In order to substantiate the case, on the side of the plaintiff, one witness was examined as PW1 and one document was marked as Ex.A1. On the side of the defendants, 3 witnesses were examined as DW1 to DW3 and 15 documents were marked as Exs.B1 to B15.

9. The trial Court, considering the pleadings, oral and documentary evidence on either side, by a common judgment and decree



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

dated 11.08.2011 dismissed the suit for partition in O.S.No.347/2004 with costs and decreed O.S.No.36 of 2009. Aggrieved by the dismissal of the partition suit in O.S.No.347/2004, the plaintiff in the said suit namely, SP.V.M.Thiyagarajan filed A.S(MD)No.27/2012. As against the disallowed portions of the counter claim, the defendants in O.S.No. 347/2004 filed A.S(MD)No.25/2015. Aggrieved by the decree of permanent injunction granted by the trial Court in O.S.No.36/2009, the defendant therein namely, SP.V.M.Thiyagarajan filed A.S(MD)No. 28/2012.

10. The learned counsel for the appellant in A.S.27 & 28/12 would submit that the trial Court failed to see that the suit properties were purchased out of the funds from the joint family business by Manickam Chettiar, father of the appellant and father-in-law of the 1st respondent. At the time of purchase of the suit properties, the respondents had no independent sources of income and that the 2nd respondent was a minor. The appellant's father was running financial concerns at various places as joint family businesses and the suit properties were purchased out of the income from such businesses. Thus, the appellant is entitled to equal



share in the suit properties. At the time of purchase of A schedule property, the 2nd respondent was a minor and he could not have purchased the property out of his own income. Thus, the burden is heavily upon the respondents to prove that A schedule property is their exclusive property and was purchased out of their own funds.

11. The learned counsel would further submit that B schedule property and the business in the name of style of Meenakshi & Co conducted therein, belongs to the appellant's father Manickam Chettiar and though it was purchased out of the funds of Manickam Chettiar, later, it was transferred to the name of the 1st respondent. The appellant's father executed a will dated 05.06.2003, cancelling all his earlier wills bequeathing B schedule property in favour of the appellant and in the said will, Manickam Chettiar categorically narrated the manner, in which, the respondents siphoned the funds of the testator. The trial Court ought to have seen that B schedule property was never a subject matter of partition under Ex.B1 and the said document will show how much the respondents enjoyed and sidelined the appellant's property. In the said will, the Manickam Chettiar has categorically stated



that B schedule property and the business conducted therein, absolutely vest with the appellant. Though the B property was purchased in the name of the 1st respondent, it was let out by Manickam Chettiar in the capacity of owner of the property. Pursuant to the death of Manickam Chettiar, the appellant inducted his tenants to the suit property and the respondents were out of possession of the suit property right from the beginning. All the revenue taxes for B schedule property was paid by the appellant's father Manickam Chettiar from the beginning and thereafter, by the appellant. Therefore, the respondents have no exclusive title or interest or possession over the suit property.

12. The learned counsel for the appellant would further submit that the accounts relating to Meenakshi & co situate in B schedule would prove that the B schedule property belongs to Manickam Chettiar and that the licence for the said business has been renewed in favour of the appellant. The trial Court erroneously held that the suit property in O.S.No.36/2009 belongs absolutely to the 1st respondent, ignoring the fact that the appellant is also a coparcener and failed to note the failure of the 1st respondent to prove her possession in the suit property. The



trial Court merely relied on the admission of the appellant that he had closed the said business and erroneously decreed O.S.No.36/2009, ignoring the fact that mere closure of business does not lead to a conclusive proof that the appellant is out of possession. In fact, he had let out the suit property to the tenants. Further, the plaintiff in O.S.No. 36/2009 failed to prove her possession and enjoyment, but the trial Court failed to consider the facts in proper perspective and erroneously decreed the suit for permanent injunction and dismissed the suit for partition. Thus, the learned counsel would submit that the common judgment and decree passed in O.S.Nos.347/2004 & 36/2009 are liable to be set aside.

13. The learned Senior Counsel appearing for the appellants in A.S.25/2015 would admit the relationship of the parties and submit that the trial Court ought to have granted the relief of partition in respect of the counter claim in the written statement in O.S.No.347/2004, A schedule-items 2 and 3, B schedule-items 2 to 13 and C schedule-3rd item, when the respondent herein had not denied the counter claim averments. He would further submit that the trial Court failed to



consider that items 2 and 3 of A schedule properties in the written statement in O.S.No.347/2004 are devolved equally to the appellants and the respondent herein, after the demise of Manickam Chettiar. As far as 3rd item in C schedule in the counter claim, it is a finance business in the name and style of Lakshmi Finance, Aranthangi at Pudukkottai District. When the respondent/Thiayagarajan himself admitted that Rs.8 lakhs was available in the said business, the trial Court ought to have ordered half share in that amount to the appellants herein. As far as items 2 to 13 in B schedule property in the written statement in O.S.No. 347/2004, they were allotted to the appellants herein on the basis of Ex.B1-partition dated 25.05.1997 by Manickam Chettiar partitioning his properties equally between his son namely, respondent/Thiayagarajan and the legal heirs of another deceased son M.Ramakrishnan who are the appellants herein. Without considering the contents of Ex.B1, the trial Court erroneously declined the relief sought for in the counter claim, on the ground of non joinder of necessary parties. After the death of Manickam Chettiar, his properties were devolved on his heirs as per Ex.B1 and therefore, impleadment of other heirs is not necessary. Further, when there was no specific denial of the counter claim



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

averments by the respondent/Thiayagarajan, the counter claim is proved, but however, the trial Court on erroneous appreciation of the facts and evidence on record, disallowed the abovesaid portions of the counter claim. Thus, he would pray for setting aside the judgment and decree passed in O.S.No.347/2004 in respect of the disallowed the portions of the counter claim and allow the appeal in A.S.No.25/2015.

14. As regards A.S.27 & 28/2012, the learned Senior Counsel appearing for the respondents in the said appeals would submit that the 1st respondent in both the appeals is the wife of M.Ramakrishnan, who is one of the sons of Manickam Chettiar and the 2nd respondent in A.S. 27/2012, is the son of the 1st respondent in both the appeals and M.Ramakrishnan. After the death of M.Ramakrishnan, the respondents started living in the house of the parents of the 1st respondent. During the life time of Manickam Chettiar, partition was made in the form of family arrangement that too by a compromise arrived at in the presence of Arbitrators on 25.05.1997, by which, the appellant in both the appeals/Thiagarajan was separated by giving certain properties. Thus, his claim that Manickam Chettiar died intestate is not tenable. Except



the properties situated at Ahamed Colony at Ramalinga Nagar and Baganeri, which are described as items 1 and 2 in A schedule properties to the counter claim sought in the written statement filed by the 1st appellant herein in O.S.No.347/2004, there is no other ancestral property. The plaint schedule properties in O.S.No.347/2004 are not ancestral properties.

15. The learned Senior Counsel would further submit that the plaint A schedule property was purchased in the name of the 2nd respondent/R.Karthick in A.S.27/2012, out of the funds of the 1st respondent in both these appeals. Plaint B schedule is also the absolute property of the 1st respondent/R.Prema in both the appeals purchased out of her own funds. Plaint C schedule was given to the 2nd respondent/R.Karthick in A.S.27/2012, as per Ex.B1, as such, the appellant/Thiagarajan has no right over the same. D and E schedule properties are businesses run by Manickam Chettiar in B schedule property belonged to the 1st respondent/R.Prema in both the appeals, in the name of style of Meenakshi Finance and Karthick Finance. After the death of Manickam Chettiar, appellant/Thiagarajan is responsible for the



accounts of those businesses and he is liable to hand over possession of B schedule property. F schedule deposit amount belongs to the sister of the appellant/Thiagarajan namely, Kamatchi, which was also taken by herself.

16. The learned Senior Counsel would further submit that the trial Court rightly considering the oral and documentary evidence, dismissed the suit for partition filed by the appellant/Thiagarajan, but however, on erroneous appreciation of facts in respect of the counter claim, disallowed certain portions of the counter claim, despite there is no denial of counter claim averments by the appellant/Thiagarajan. Thus, there is no perversity in the dismissal of the partition suit in O.S.No. 347/2004 by the trial Court, but in respect of disallowed portions of the counter claim, the judgment and decree passed in O.S.No.347/2004 is liable to be set aside. As regards the judgment and decree passed in O.S.No.36/2009, the trial Court finding from the sale deed Ex.B5 that the 1st respondent/Prema was the owner of the suit property therein, rightly granted a decree for permanent injunction injunctioning the appellant/Thiagarajan from interfering with her peaceful possession and



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

enjoyment of the suit property in O.S.No.36/2009. Thus, there is no infirmity in the judgment and decree passed in O.S.No.36/2009 and accordingly, A.S.Nos.27 & 28/2012 are liable to be dismissed.

17. Heard both sides and perused the records.

18. The relationship of the parties are admitted. According to the appellant in A.S.27 & 28/2012, his father Manickam Chettiar died intestate leaving behind the appellant and his brother Ramakrishnan. Ramakrishnan predeceased the Manickam Chettiar. After the death of Ramakrishnan, the respondents who are the wife and son of Ramakrishnan, were maintained by Manickam Chettiar till his death. During his life time, Manickam Chettiar paid cash to his four daughters to avoid them from claiming share in the suit properties. Manickam Chettiar also paid Rs.2,20,000/- towards the educational expenses of the 2nd respondent. Further, Manickam Chettiar was also doing finance businesses at various places which are now in possession of the 1st respondent and the appellant/Thiagarajan is entitled to his half share in the said business income. Thus, the appellant/Thiagarajan sent an



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

advocate notice dated 15.09.2003 to the respondents, claiming half share in the suit properties, for which, they sent a reply notice dated 23.09.2003 with false allegations. Hence, the suit in O.S.No.347/2004 was filed for partition.

19. According to the respondents in A.S.27 & 28/2012 who are the defendants in O.S.No.347/2004, since the appellant in both the appeals/Thiagarajan seriously disturbed his father Manickam Chettiar, he filed a suit in O.S.No.1081/95, in which, there was a compromise and pursuant thereto, there was a partition in the form of family arrangement-Ex.B1 dated 25.05.1997, by which, plaintiff C schedule was given to the 2nd respondent/R.Karthick in A.S.27/2012 and the appellant in both the appeals was also allotted properties and thereafter, he was ceased to be a coparcener. After the death of Manickam Chettiar, the appellant only took up his businesses and disposed of all the assets and liabilities. The trial Court considering the oral and documentary evidence, rightly dismissed the suit for partition in O.S.No.347/2004.



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

20. As rightly pointed out by the learned Senior Counsel for the respondents in A.S.27 & 28/2012, if at all the suit properties are undivided joint family properties, admittedly, since Manickam Chettiar has four daughters, the suit being for the relief of partition, the said four daughters should have been impleaded as parties. Thus, non impleadment of the four daughters itself clearly shows that the appellant/Thiagarajan admitted Ex.B1-partition dated 25.05.1997 and it falsifies the case of the appellant/Thiagarajan and the case of the respondents in A.S.27 & 28/2012 has to be accepted.

21. Apart from filing A.S.27 & 28/2012, the appellant/Thiagarajan also filed M.P(MD)No.2/2012 in A.S(MD)No.27/2012 to receive the documents enclosed in the said petition as additional evidence. In the affidavit to M.P(MD)No.2/2012, the appellant/Thiagarajan has stated that some of the documents which were not available with him, during the trial of the above two suits, had come to his hands subsequently during the second week of January 2012, while he was doing some cleaning work at his ancestral house, Paganeri. The said documents which were kept by his father Manickam Chettiar safely inside the iron safe locker,



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

came to the hands of the appellant/Thiagarajan and the said documents are vital documents for effective adjudication of the appeals. Thus, the appellant/Thiagarajan has taken out this miscellaneous petition.

22. In the additional evidence, the appellant/Thiagarajan has produced a will said to have been executed by his father dated 05.06.2003. He has also produced other documents namely, proceedings of the Madurai South RDO dated 17.01.2005, tenant agreements for interest dated 02.03.2006 and 29.11.2007 respectively, agreements for rent dated 01.03.2001, 01.11.2000 and 09.06.2003, legal notice to ICICI Bank Manager dated 08.01.2010 and tax receipts paid by the appellant/Thiagarajan.

23. The learned Senior Counsel for the respondents in A.S.27 & 28/2012 would oppose the said petition, stating that the appellant/Thiagarajan in the plaint in O.S.No.347/2004, has stated that his father died intestate. Thus, unless the plaint is amended to the effect that his father died with testamentary succession, the proposed document namely, will of the Manickam Chettiar dated 05.06.2003



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

cannot be received as additional evidence, as without pleadings, no evidence can be taken. Further, the appellant/Thiagarajan has not specifically stated in M.P(MD)No.2/2012, as to what are the documents he traced out from the iron safe locker. Admittedly, Manickam Chettiar died on 26.08.2003. Except the will of Manickam Chettiar dated 05.06.2003 and agreement for rent dated 09.06.2003, all the other proposed documents are after the year 2003. Therefore, a question would arise as to how the Manickam Chettiar could keep the documents in the iron safety locker, which came into existence only after his death in 2003.

24. As rightly pointed out by the learned Senior Counsel, when the appellant/Thiagarajan in O.S.No.347/2004, has averred that his father died intestate, now he seeks to introduce the will alleged to have been executed by his father to show that his father died with testamentary succession. It is a settled proposition of law that the plaintiff must plead the facts and prove the same. It is quite contra that by virtue of the proposed document namely, the will of Manickam Chettiar dated 05.06.2003, the pleadings in the plaint in O.S.No.347/2004 itself are to



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

be false. Further, the appellant/Thiagarajan has not stated how far the other documents are relevant to decide the case. Absolutely, there is no reason or explanation given regarding the relevancy of these proposed documents to decide the case. Thus, the appellant/Thiagarajan has not made out the ingredients under Order 41 Rule 27 CPC, for reception of additional evidence. Accordingly, M.P(MD)No.2/2012 is dismissed.

25. From the oral and documentary evidence, it is clear that Manickam Chettiar was running joint family businesses, but however, there was a suit filed by him in the year 1995 and subsequently, there was a partition in the form of family arrangement vide Ex.B1 dated 25.05.1997, by which, the appellant/Thiagarajan was given properties and he was separated from the joint family. Thus, the joint family business and joint family status after Ex.B1 dated 25.05.1997, was not established by the appellant/Thiagarajan. A careful perusal of the document regarding plaint A schedule property shows that it was purchased in the name of the 2nd respondent/R.Karthick represented by his mother/Prema as guardian. As far as plaint B schedule property is concerned, it is the absolute property of the 1st respondent/R.Prema as



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

per Ex.B5-sale deed dated 04.06.2003. Plaint C schedule properties were admittedly given to the 2nd respondent/R.Karthick as per Ex.B1, since his father M.Ramakrishnan died. The plaint D and E schedule properties are businesses run by Manickam Chettiar. It is the admission of the appellant/Thiagarajan that after the death of Manickam Chettiar, he took up those businesses and therefore, the trial Court found that the appellant/Thiagarajan alone is responsible for partition of the business income and to give share to the legal heirs of Manickam Chettiar. The plaint F schedule is a Fixed Deposit for Rs.8,00,000/- in ICICI Bank, South Masi Street, Madurai, kept by Manickam Chettiar. It was given to the plaintiff's sister Kamakshi by DW1/Prema. Even assuming that the said deposit is after Ex.B1-family arrangement, all the legal heirs of Manickam Chettiar are entitled to the same and since all the legal heirs of Manickam Chettiar are not impleaded as parties, the appellant/Thiagarajan cannot claim partition over F schedule property. Without impleading all the legal heirs of Manickam Chettiar, the suit is liable to be dismissed for non joinder of necessary parties.



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

26. As far as the counter claim in the written statement in O.S.No. 347/2004 is concerned, it is found from Ex.B9-sale deed dated 24.06.1987, that the first item of A schedule in the counter claim was purchased jointly by the appellant/Thiagarajan, his wife and 1st respondent/R.Prema, as such, the appellants in A.S.25/2015 are equally entitled to a share in the first item of A schedule in the counter claim. As far as items 2 and 3 in A schedule property in the counter claim is concerned, those properties were allotted to Manickam Chettiar as per Ex.B1 dated 25.05.1997. Since Manickam Chettiar died intestate, all the legal heirs of the Manickam Chettiar are entitled to the said items 2 and 3 and since all the legal heirs of Manickam Chettiar are not added as parties, the appellants cannot claim a share in items 2 and 3 in A schedule property in the counter claim. As regards B schedule properties in the counter claim, the said properties which are cited as C schedule properties in Ex.B1, were given to the 2nd appellant/minor in A.S.25/2015 represented by the 1st appellant/mother, as per Ex.B1-partition dated 25.05.1997 and therefore, granted a decree of permanent injunction restraining the respondent/Thiagarajan in A.S (MD) No.25 of 2015 from interfering with the peaceful possession and enjoyment of



the appellants in A.S.25/2015. Therefore, B schedule in the counter claim are not liable for partition. As far as items 1 and 2 in C schedule properties in the counter claim is concerned, it is found that those properties are arrayed as plaint B and A schedule properties in O.S.No. 347/2004 and since it is already held that those properties belonged to R.Prema and his son, granted a decree of permanent injunction in respect of items 1 and 2 in C schedule to counter claim. So far as item 3 in C schedule of property to the counter claim, which is a finance business in the name and style of Lakshmi Finance, it is found from Ex.B7 that the said business was closed during August 2004, and therefore, the said relief does not survive.

27. Though at paragraph 44 in the common judgment, the trial Court granted permanent injunction in respect of all the items in B schedule property in the written statement in O.S.No.347/2004, at paragraphs 46 and 48 and decreetal order passed in O.S.No.347/2004, the trial Court erroneously stated as if there is an order of permanent injunction in respect of items 1 and 2 of schedule B and C in the written statement. Actually, in respect of all the 13 items in B schedule to the



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

written statement, permanent injunction was granted, since those properties were allotted to the 2nd appellant in A.S.25/2015 as per Ex.B1 which is admittedly not in dispute. Thus, the decree passed in O.S.No. 347/2004 in respect of B schedule properties to the counter claim in the written statement in O.S.No.347/2004, is modified to the effect that there shall be a decree of permanent injunction in respect of all the items of B schedule properties to the counter claim and the same are not liable for partition.

28. It is seen from the records, neither the plaintiff in O.S.No. 347/2004 nor the defendants in the counter claim have impleaded the daughters of the Manickam Chettiar in the suit. Therefore, the trial Court found that the suit for partition is bad for non joinder of four daughters of Manickam Chettiar. The trial Court rightly appreciating the oral and documentary evidence, dismissed the suit for partition in O.S.No. 347/2004.

29. As regards the judgment and decree passed in O.S.No. 36/2009, the trial Court finding from the sale deed Ex.B5 that the 1st



respondent/Prema is the absolute owner of the suit property in O.S.No. 36/2009, rejected the contention of the appellant/Thiagarajan that he is one of the coparceners to the said suit property. The suit property in O.S.No.36/2009 is cited as B schedule property in the plaint in O.S.No. 347/2004 and cited as item No.1 in C schedule property to the counter claim in O.S.No.347/2004. Even from the cross examination of the appellant/Thiagarajan, wherein, he has admitted that the finance business which was running in the suit property in O.S.No.36/2009 by the Manickam Chettiar, was already closed, the trial Court found that the appellant/Thiagarajan was not in possession of the suit property in O.S.No.36/2009 and rightly granted a decree for permanent injunction injuncting the appellant/Thiagarajan from interfering with her peaceful possession and enjoyment of the suit property in O.S.No.36/2009. Thus, there is no infirmity in the judgment and decree passed in O.S.No. 36/2009.

30. This Court as a first appellate Court which is a final Court of fact finding, has to re-appreciate and give independent finding. This Court independently weighing the entire materials and considering the



A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

oral and documentary evidence of both the parties and also the judgment of the trial Court, does not find any perversity or good reason to interfere with the common judgment and decree dated 11.08.2011 made in O.S.No.347/2004 and O.S.No.36 of 2009 except the modification stated in the previous paragraph.

31. In view of the above, A.S(MD)Nos.27 and 28 of 2012 are dismissed and A.S(MD)No.25 of 2015 is partly allowed. M.P(MD)No.2 of 2012 is also dismissed. No costs.

Index : Yes / No
Internet : Yes
bala

17.08.2022

To

The Additional District Judge,
(FTC No.I),
Madurai.



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A.S(MD)Nos.27, 28 of 2012 & 25 of 2015

P.VELMURUGAN, J.

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COMMON JUDGMENT MADE IN
A.S(MD)Nos.27, 28 of 2012 & 25 of 2015
DATED : 17.08.2022