



A.S.(MD)No.59 of 2009

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.59 of 2009

Sariba ... Appellant / 6th defendant

-Vs-

1.Uthiravelu

2.Nagammal

... Respondents 1 and 2 /
Plaintiffs

3.Rathinam (died)

4.Sarasu

5.Sivabackiyavathi

6.Karuppan Nadar (died)

7.Abusaliq

... Respondents 3 to 7 /
Defendants 1 to 5

8.Pushpam

9.Senthilkumar

10.Kamaraj

11.Samunteeshwari

12.Muthulakshmi

13.Logambal

14.Nagavalli (died)

1/18



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WEB COPY 15.Kaladevi

16.Ulaganathan

17.Kalaiyarasi

18.Ponnarasi

19.Uthumankani

20.Muniyasamy

21.Manoj

22.Munish

... Respondents 8 to 22

(R8 to R11 are brought on record as LRS., of the deceased R3 and R12 to R18 are LR., of the deceased R6 vide Court Order dated 23.11.2018 made in M.P. (MD)Nos.1 to 4 of 2012 in A.S.(MD)No.59 of 2009)

(R19 is impleaded as per Order dated 13.02.2019 in C.M.P.(MD)No.11247 of 2017 in A.S.(MD)No.59 of 2009)

(R20 to R22 are brought on record as LR., of the deceased R14 vide Court Order dated 03.12.2021 made in C.M.P.(MD)Nos.4572 to 4573 of 2020 in A.S.(MD)No. 59 of 2009)

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure to set aside the decree and judgment made in O.S.No.184 of 1999 dated 23.11.2007 on the file of the Additional District Judge Cum Fast Track Court, Ramnad.



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For Appellant &

R19 : Mr.M.V.Venkateseshan

For R1 and R2 : Mr.S.A.Ajmal Khan

For R5, 12, 13, 15

to 18 and 20 to 22 : Mr.J.M.Hassanul Bazari

For R10 : Mr.P.Pethurajesh

JUDGMENT

The appellant is the 6th defendant in the suit in O.S.No.184 of 1999, which was filed by the respondents 1 and 2 for partition.

2.The brief facts of the plaint are as follows:-

The suit property originally belonged to one Chithira Velu, who had two wives. He had begotten one son by name Ulagusundaram through the first wife. The first plaintiff and one Jegannathan are the sons of Chithira Velu through the second wife. During the life time, the said Chithira Velu had partitioned his properties. After his death, his second wife, the first plaintiff and Jegannathan had in possession and enjoyment of the suit property. After the death of their mother, the first plaintiff and Jegannathan had each entitled to ½ share in the suit property. However, the said Jegannathan died without partitioned the suit



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properties. Therefore, the first plaintiff is entitled to $\frac{1}{2}$ share and the legal heirs of the said Jegannathan, namely, the 2nd plaintiff and the defendants 1 to 3 are entitled to $\frac{1}{2}$ share equally. Since the defendants 4 to 6 had encumbered the property, they are impleaded in the suit. The plaintiffs asked the defendants 1 to 3 to partition their share. Since they delayed it, the present suit is filed for partition.

3.The brief facts of the written statement filed by the 4th defendant are as follows:-

The 4th defendant admitted the fact that the suit property belonged to the said Chithira Velu, he had two wives and through first wife, he had begotten one son by name Ulagu Nadar. However, the plaintiffs deliberately suppressed the legal heirs of the said Ulagu Nadar, who had two sons, namely, Ulagusundaram and the 4th defendant. When the father of the 4th defendant died, the said Ulagusundaram and the 4th defendant were minor. Therefore, the suit properties were managed by Jegannathan. The said Ulagusundaram died in the year 1958. Therefore, the 4th defendant is in possession and enjoyment of the share of the said Ulagusundaram also. The first plaintiff went Srilanka during the childhood and his whereabouts are not known for more than 30 years. He has been declared



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as dead in the earlier suit filed by this 4th defendant also. The suit property is in joint possession and enjoyment of the defendants 1 and 4 and Jegannathan without partition. In the meantime, the said Jegannathan, his son, 1st defendant had sold the property to one Panjavarnam and the defendants 5 and 6. In the suit filed by the 5th defendant, it has been held that the suit property is family property and the same is binding on the plaintiffs and the defendants also. The properties are in the name of Jegannathan and he is paying tax. Since the said Jegannathan and his son 1st defendant had sold the properties to one Panjavarnam and the defendants 5 and 6, they are entitled to the share of their vendors Jegannathan and the 1st defendant. The other statements are denied by the 4th defendant.

4. Based on the above said pleadings and also the documents annexed with the pleadings, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to partition as prayed for?

2. whatever reliefs are the plaintiffs entitled to?

3. Whether the 4th defendant is entitled to partition as prayed for?

4. whatever relief is the 4th defendant entitled to?”



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5. In order to substantiate the case, during the trial on the side of the plaintiffs, one witness was examined as P.W.1 and 2 documents were marked as Exs.A.1 to A.2. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and 19 documents were marked as Exs.B.1 to B.19. Exs.X.1 to X.21 were also marked.

6. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court has decreed the suit, stating that the first plaintiff is not entitled to the relief as prayed for, the 2nd plaintiff is entitled to 1/8th share and the 4th defendant is entitled to 4/8th share in the suit property.

7. Aggrieved by the same, the 6th defendant in the suit has filed the present Appeal Suit before this Court.

8. The learned counsel for the appellant and 19th respondent would submit that in the earlier suit in O.S.No.179 of 1986, the appellant herein had already obtained a decree for partition dated 28.04.1988 in respect of two items of present schedule property. The specific case set up by the 6th respondent herein /



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plaintiff in the earlier suit that he was only surviving legal heir of Ulagu Nadar, who was the original owner of the suit property. He has set up the respondents 1 and 2 herein to file a false suit and obtained a collusive decree. Unfortunately, this fact could not be placed before the trial Court, due to the absence of the appellant. The trial Court has given finding that since the 4th defendant filed E.P., and took possession of certain lands, the relief of partition should not be granted for the very same items once again in the present suit. Further, the respondents 1 and 2 have not at all proved the alleged genealogy or the legal heirship traceable to one Ulangandal.

9.He would further submit that the suit is the collusive suit between the 2nd respondent and the 4th respondent. Therefore, the respondents 3 to 5 conveniently remained *ex-parte*, before the trial Court. The property for which the partition was claimed are not at all available for partition on the date of filing of the suit. The 6th respondent has played a fraud on the Court with connivance of the second respondent. The trial Court failed to consider the fact that already the partition has taken place between the sons of Chithira Velu and in the earlier litigation also, the same was confirmed. Therefore, the present suit for partition is



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not maintainable. The trial Court failed to appreciate the oral and documentary evidence, hence, the judgment and decree passed by the trial Court are to be set aside.

10.The learned counsel for the contesting respondents would submit that in the present suit the appellant was shown as 6th defendant. The appellant did not contest the suit and set *ex-parte*. The 6th respondent pleaded that he has no legal knowledge about to deal with the properties. The third respondent, who is the son of the said Jegannathan sold the property to the 7th respondent and the appellant herein. The purchasers from the third respondent are entitled to only in respect of the share of the third respondent alone. The appellant and the 7th respondent can claim only what was the share devolved to the third respondent, who is the son of the said Jegannathan and the appellant has no right to claim the property from the 6th respondent.

11.He would submit that the suit property originally belonged to one Chithira Velu. After his life time, it was devolved to their legal heirs. The deceased Chithira Velu had two wives. Through his first wife, he begotten one



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son, namely Ulagu Nadar, who had two sons, namely, Ulagusundaram and Karuppan Nadar / 6th respondent herein. The said Ulagusundaram died without any issues. As per succession, ½ share of the suit property has been devolved to the first wife of Chithira Velu and the 6th respondent is entitled to get ½ share in the suit property. The trial Court in its judgment in Paragraph No.34 after analyzing oral and documentary evidence as well as legal provisions categorically held that the 6th respondent is entitled to 4/8th share.

12.He would further submit that the appellant is no way connected with the family of the said Chithira Velu. She did not file any written statement and claim any share. Even in the earlier suit in O.S.No.179 of 1986 also, she did not participate and remained *ex-parte*. It is settled principle of law that the Court should not consider any evidence without pleadings. In the suit also, the appellant neither filed written statement nor adduced any oral and documentary evidence, she remained *ex-parte* and she did not challenge either the plaint or the written statement filed by the 6th respondent. Therefore, she is not entitled to file this appeal.



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13.He would further submit that the trial Court rightly come to the conclusion and held that the 6th respondent is entitled to 4/8th share and the second respondent is entitled to 1/8th share. The respondents 3 to 5 are equally entitled to 1/5th share respectively and since the appellant had purchased the property from the third respondent, she is entitled to get 1/8th share of the third respondent alone, during the final decree proceedings, she could work out her remedy. At best, she could get right and title from her own vendor not from other co-sharers.

14.Further, he would submit that the appellant claimed only based on the sale deed executed by the third respondent. If she has got any grievance, she can work out her remedy against her vendor. The suit properties are not partitioned. In that situation, the sale alleged by the appellant is invalid. It will not bind other coparcener and she cannot prevent the legal rights of other co-sharers. The appellant did not file any counter claim to declare her status or right in the property. Therefore, the appeal is liable to be rejected on that score.



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15.He would further submit that the appellant has no right to proceed with this appeal and she has no right or title over the property because she transferred her right to her son on 28.10.2015. The appellant suppressing the material facts, is continuing this appeal. At presence, she has no right or interest over the property. Even the appellant did not contest the earlier suit in O.S.No.179 of 1986. After passing preliminary decree, the appellant challenged the same. Even that was also set aside and no rights have been conferred in the earlier proceedings. Therefore, at any cost, the appellant has no valid grounds to agitate the appeal. Therefore, the appeal is liable to be dismissed.

16.Heard the learned counsel on both sides and perused the materials available on record carefully.

17.Admittedly, the suit property originally belonged to one Chithira Velu. After his life time, his legal heirs are entitled to the suit property. Chitra velu had two wives; through the first wife he had begotten one son namely, Ulagunadar, who had two sons by name Ulagusundaram and Karupan Nadar / 6th



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respondent herein. The said Ulagusundaram died without any issues. Through second wife, the said Chithira Velu begotten two sons by name Uthira Velu and Jegannathan. The said Uthira Velu left to Srilanka even during his childhood. After that he never turned up and even in the earlier proceedings, he was declared as dead. The said Jegannathan has four children, who are the respondents 2 to 5 herein. Since through the first wife, the 6th respondent is the legal heir, he has got ½ share. Since the whereabouts of the said Uthira Velu was not known, the said Jegannathan got ½ share. After the death of Jegannathan, his legal heirs / the respondents 2 to 5 are entitled to devolve ½ share of their father. In the suit the appellant has taken a stand that the said Uthira Velu came to India during the year 1999 and executed power of attorney in favour of the second respondent and she has filed suit for herself and also on behalf of the first respondent. The first plaintiff though has filed power of attorney, which is marked as Ex.A.1, the trial Court rejected that the 6th respondent filed written statement and objected the same. However, P.W.1 deposed that the power of attorney was executed in the year 1998, whereas the suit was filed in the year 1999. P.W.1 has further stated that during the year 1999 the said Uthira Velu came to India. However, the second respondent has not examined even the attester of power of attorney or



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anybody who had seen Uthira Velu / first respondent herein. During the year 1999, even in the earlier proceedings, he was declared as dead, since his whereabouts was not known for more than 7 year, as per Section 108 of Indian Evidence Act. Now, the second respondent introduced herself as the power agent of the first respondent and she has also having equal share along with her father. However, she has not proved that during the time of executing the power of attorney by the first respondent in favour of the second respondent, the first respondent was in India and was alive. Therefore, the trial Court rejected the claim of the second respondent. However the second respondent has not filed any appeal or cross appeal against the finding of the trial Court.

18. Therefore, now, the appellant as a stranger to the suit property cannot say anything about the quantum of share. One of the grounds taken by the appellant that before the trial Court, in O.S.No.179 of 1986, she already got decree in two of the items and the 6th respondent cannot get the share once again from the same items. As submitted by the learned counsel for the respondents, the appellant was arrayed as 6th defendant in the suit and never filed any written statement. Either the appellant or other defendants have filed any written



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statement, only the 6th respondent alone has filed written statement and also paid Court fees for his share. Even though in the plaint, Ulagu Nadar has not been shown as party, the 6th respondent told that his father Ulagu Nadar had two sons and his brother Ulagusundaram Died. Therefore, the 6th respondent alone is the legal heir of Ulagu Nadar and he is entitled to ½ share. Since Uthira Velu was declared as dead, the said Jegannathan, who is the father of the respondents 2 to 5 got ½ share. This has not been challenged by the 6th respondent and during the pendency of the appeal, the 6th respondent died and his legal heirs have been impleaded as respondents 12 to 18 and they have also not challenged. Even the third respondent, who is the vendor of the appellant also died and his legal heirs have been impleaded as respondents 8 to 11 and they have also not challenged anything about the relationship and the quantum.

19. Since the suit properties are undivided between the legal heirs, it amounts to coparcener and if a person purchased the property from one of the co-sharer from the undivided property, he / she is entitled to get share from his / her vendor alone and he / she cannot get any right from the share of other coparcener or shareholders or joint owners. The purchaser cannot get a better



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title than his or her vendor. In this case, the character of the property is not in dispute and neither the plaintiffs filed the appeal nor the contesting 4th respondent has filed the appeal. Other defendants remained *ex-parte*. The respondents 2 to 5 have not challenged the decree and judgment passed by the trial Court. Therefore, since the appellant is the purchaser from the third respondent, she can get the share only from the share of the third respondent. The vendor of the appellant / third respondent has got only 1/8th share in the suit properties. Therefore, the appellant is entitled to get whatever the rights only from the third respondent. The third respondent died, leaving behind his legal heirs / respondents 8 to 11. Since the appellant is a party to the present suit and the earlier suit, she never filed written statement and contested the suit and even the earlier suit filed the appellant was also dismissed. Therefore, without filing written statement and without let in any evidence before the trial Court, now after passing preliminary decree, the appellant has challenged the judgment and decree passed by the trial Court. Since the original owners / legal heirs of the rival owners have not challenged the character of the property or the quantum, the appeal filed by the appellant is not sustainable under law.



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20. Under these circumstances, this Court finds that the appellant failed to establish her case. At best, the appellant can work out her remedy during the final decree proceedings and can get the share of the deceased third respondent not more than that. Accordingly, this Appeal Suit is dismissed and the judgment and decree passed by the trial Court are confirmed. No costs.

23.06.2022

Index : Yes / No
Internet : Yes / No

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To

1. The Additional District Judge,
Fast Track Court, Ramnad.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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