



A.S.(MD) No.64 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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- 1.Chinnaponnu
 - 2.Sarasu
 - 3.Susila
 - 4.Minor Tamilselvi
 - 5.Minor Ravichandran
 - 6.Minor Tamilselvan
- Minor appellants 4, 5 and 6 are
represented by their mother
and guardian of 3rd appellant Suseela
- 7.Chinnammal

... Appellants

-Vs-

- 1.Rajammal
- 2.Rathinam @ Rathinavel

... Respondents

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree in O.S.No.35 of 2005, dated 28.12.2007 on the file of the Fast Track Court /Additional District Judge, Pudukottai.

For Appellants : Mr.N.Balakrishnan



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For R1 : No appearance
For R2 : Mr.P.Ganapathi Subramanian

J U D G M E N T

The first respondent is the plaintiff. She filed a suit in O.S.No.35 of 2005 before the Additional District Judge (Fast Track Court), Pudukottai, against the appellants/defendants 1 to 6 and 8, for partition.

2. The trial Court, after trial decreed the suit allotting 1/6th share to the plaintiff and allotting 1/6th share to the 7th defendant, since he has paid the Court fee. Challenging the said judgment and decree, the defendants 1 to 6 and 8 have filed the present appeal.

3(i) . The brief facts of the case are as follows:

The suit properties originally in possession and enjoyment and belonged to one Velu Pandaram @ Chitha Pandaram, the father of the plaintiff herein. He died in the year 1985, without partitioning the suit



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properties. Chitha Pandaram had three wives namely, Chinnammal, the 8th defendant herein, Pappammal @ V.Lingammal and Sarasu, the second defendant. The first defendant and the first plaintiff are the children of the first wife Chinnammal. The second wife Pappammal @ V.Lingammal died without any issue. The third wife Sarasu had two sons namely, Chithalingam and Rathinavel. The said Chithalingam died in the year 2002. Hence, the plaintiff has filed the suit seeking partition of her 2/5th share in the suit property. The plaintiff and the first defendant are the only legal heirs of Velu Pandaram. The third marriage of the Velu Pandaram @ Chitha Pandaram is not legally valid. Hence, the second defendant, who is the third wife Velu Pandaram @ Chitha Pandaram had no right in the suit properties. Therefore, the children born to her viz., Chithalingam and Rathinavel, the 7th defendant herein are illegitimate children and has no right in the suit properties. On that score, the plaintiff is entitled to 2/5th share in the suit properties and the first defendant is also entitled to 2/5th share. The defendants 3 to 6, 7 and 8 each are entitled to 1/15th share in the suit properties. The suit properties are in joint enjoyment of the plaintiff and the defendants. Since the defendants



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have failed to give respect to the plaintiff, the plaintiff has sent a legal notice on 02.03.2005, seeking partition and separate possession of the suit properties. On receipt of the same, the defendants 1 to 6 gave their reply with false averments. The Patta for the suit properties have been changed by the defendants without the knowledge of the plaintiff and hence, the same will not bind the Plaintiff.

3(ii). The Items Nos. 11 and 12 of the suit properties were given to the plaintiff and the defendants for providing flowers and garlands to Arulmighu Thirumoorthy Swaraswamy Temple. Hence, the plaintiff has filed the suit for passing of a preliminary decree in respect of 2/5th share in the suit properties.

4. The Written statement filed by the second defendant, which was adopted by the defendants 1, 3 to 6 and 8th defendant, reads as follows:

Arumugam is the brother of Chitha Pandaram and Sankarammal is the wife of Arumugam. Chinnammal, the 8th defendant is the first wife of Chitha pandaram. The plaintiff and the first defendant are the daughters



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born to Chitha Pandaram through his first wife Chinnammal. Sarasu is the second wife of Chitha Pandaram. The said Sarasu had two sons namely, Chithalingam and Rathinavel (7th defendant) and one daughter viz., Chinnammal born through Chithapandaram. Chithalingam died in the year 2002. The third defendant is his wife and the defendants 4 to 6 are his children. The said Sankarammal, wife of Arumugam had relinquished her right of half share in the suit properties in favour of Chithalingam by way of oral partition in the year 1985. Hence, Chithalingam is entitled to half share in the suit property, which belongs to Sankarammal, wife of Arumugam Pandaram. The defendants 1 and 8 relinquished their rights in the share of the suit properties in favour of the third defendant, by way of oral partition. Chitha Pandaram died in the year 1985 and in the very next year, the plaintiff claimed partition over the suit properties. The Item Nos.11 and 12 of the suit properties were given only for performing service to Muktheeswarar Temple. The said service was done by Chitha Pandaram, then by Chithalinga Pandaram and then by the defendants 5 and 6 in the suit. The female members of the family have not done the said service to the



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temple. Hence, the plaintiff has no right to claim partition over the Item Nos.11 and 12 of the suit properties. The daughter of Sarasu viz., Chinnammal is necessary party to the suit and hence, the suit is bad for non-joinder of necessary party.

5. The Written statement filed by the seventh defendant reads as follows:

The suit filed by the plaintiff is a false one. The 7th defendant had accepted the averments in the plaint. The relationship between the parties has been accepted. This defendant had fully accepted the averments made in Paragraph Nos.1 to 9 in the plaint. This defendant is the son born to Sarasu, the third wife of Vel Pandaram @ Chitha Pandaram. This defendant, plaintiff and other defendants are in joint possession and enjoyment of the suit properties. As per Hindu Succession Act, the plaintiff and the first defendant are entitled to 2/5th share and the defendants 3 to 6 are entitled 1/15th share in the suit properties and this defendant had accepted the same. The value of the suit property is Rs.13,19,500/- and out of the same, worth



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of this defendant's share is Rs.87,966/-. Hence, this defendant has paid the Court fee of Rs.250/- as per Section 37(3) of the Tamil Nadu Court Fees and Suits Valuation Act. This defendant is entitled to 1/15th share in the suit properties. Hence, this defendant has prayed for passing of a preliminary decree in respect of his 1/15th share in the suit properties by metes and bounds.

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

1. Whether the plaintiff is entitled for share and enjoyment in the suit properties as prayed for by her?

2. Whether the plaintiff has cause of action to file the suit?

3. To what other relief, the Plaintiff is entitled to?

7. The learned trial Judge has framed the following additional issues for consideration:

1. Whether the suit filed by the plaintiff is valid for non-joinder of necessary share holders?



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2. Whether Sarasu is the legally wedded wife of Chithapandaram?

3. Whether the children of Sarasu are entitled to equal share in the suit properties?

8. In order to substantiate the case, on the side of the plaintiff, two witness were examined as P.Ws.1 and 2 and 6 documents were marked as Exs.A1 to Ex.A6. On the side of the defendants, one witness was examined as D.W.1 and 6 documents were marked as Exs.B1 to Ex.B6.

9. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, decreed the suit, allotting 1/6th share to the plaintiff in the suit schedule properties and allotting 1/6th share to the 7th defendant, since ha has paid the Court fee. Challenging the said judgment and decree, the defendants 1 to 6 and 8 have filed the present appeal.



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10(i). The learned counsel appearing for the appellants would submit that when the plaintiff and the 7th defendant had admitted in their evidence that the plaintiff had a sister *Chinnaponnu*, who is a co-sharer having interest in the subject matter of suit, the trial Court should have dismissed the suit for non-joinder of said *Chinnaponnu*, who is necessary and proper party for the suit. He would further submit that without impleading the said *Chinnaponnu* as a party and without hearing her, the trial Court is not proper and legal in declaring a share for her in her absence. The trial Court has failed to consider various rulings of the High Court and the Supreme Court cited on the above point, which warrant the dismissal of the suit for non-joinder of necessary and proper party for the suit, particularly in the suit for partition. Further, the trial Court has failed to consider the proviso to Order 1 Rule 9 of C.P.C.

10(ii). The trial Court should have held that Chitha Pandaram had a brother Arumugam and Shankarammal is the wife of Late Arumugam, which is proved by Ex.B1. When Ex.B1 had been proved according to law,



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which clearly establishes that Arumugam, the husband of Shankarammal is the brother of said Chitha Pandaram, the trial Court is not proper in holding that Chitha Pandaram is the owner of the suit properties. When the trial Court had not rejected Ex.B1, it ought to have found that his wife Shankarammal had relinquished her interest in the suit properties in favour of Chithalingam ie., the husband of the 3rd defendant and father of defendants 4, 5 and 6. The trial Court should have found from the cogent and convincing testimony of D.W.1/8th defendant that Chithalingam had a brother by name Arumugam and Shankarammal is the wife of the said Arumugam.

10(iii). Item Nos.11 and 12 of the suit properties are the properties granted for rendering service in Arulmighu Muktheeswaran Temple ie., for cleaning the temple and flowering the deities and the said service could not be done by the ladies and the same was also proved by the evidence. Therefore, the trial Court is not proper and legal in decreeing the suit in respect of these items also by declaring the share for the plaintiff and other females. In any event, the trial Court ought to have found that ½ share



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of Arumuga Pandaram inherited by his wife Sankarammal had been acquired by the deceased Chitalingam on oral release by her in his favour and on his death, by the defendants 2, 3, 4 and 5. Hence, the quantum of share worked out by the trial Court is not correct and not according to law. The appreciation of evidence by the trial Court is not proper and legal. Therefore, the appeal is liable to be allowed and the judgment and decree passed by the trial Court are liable to be set aside.

11. The learned counsel appearing for the second respondent would submit that the said Chinnammal is also one of the legal representatives and she is also entitled to share in the suit schedule properties. Though the said Chinnammal was not added as a party, the trial Court has rightly allotted share to her and no way it would prejudice to the case of the appellants. Hence, there is no interference required by this Court and the appeal is liable to be dismissed.

12. Heard the learned counsel for the appellants, the learned



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counsel for the second respondent and perused the materials available on record.

13. This is the suit for partition and the relationship of the parties is not in dispute. Even though one of the legal heirs of the second defendant viz., Chinnammal was not a party to the suit, the trial Court has allotted a share to her. The character of the properties are not in question. One of the defence taken by the appellants is that the second defendant is not legally wedded wife and their children are not legitimate children. However, the appellants have not proved that the marriage of the second defendant held after the Hindu Marriage Act came into force. Therefore, it was not established that the second defendant is not legally wedded wife. In the absence of the same, the second defendant and their children are also entitled for the share. This fact also not challenged by either of the parties by filing appeal or cross - objection.

14. Now, the only question is whether the suit is hit by non-



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joinder of necessary parties and the allotment of share to the person, who is not party to the suit is valid. The relationship of the parties is not in dispute and the quantum of the share is also not in dispute. Merely because one of the parties not impleaded, though Suit is bad for non-joinder of necessary party under Order 1 Rule 9, however, the suit is for partition and the entitlement of Chinnammal is also not in dispute and the share allotted to the said Chinnammal also not against Law. Therefore, there are two options to this Court, either this Court has to set aside the judgment and decree passed by the trial Court and remand back the matter to the trial Court to add the said Chinnammal as a party and allot a share or this Court has to give a direction to the parties to work out their remedies in the final decree proceedings, since the suit is of the year 2005 and the appeal is of the year of 2012. There is no dispute regarding the relationship, entitlement of the parties and the quantum of share allotted.

15. In order to avoid multiplicity of proceedings to meet ends of justice, this Court is not inclined to set aside the judgment and decree



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passed by the trial Court and remitted the matter back to the trial Court.

However, it is settled law that any number of preliminary decrees can be passed even after passing the preliminary decree. If any one of the party left at the time of approaching the Court, if such party is entitled to get a preliminary decree, the Court can also pass a preliminary decree by impleading suo motu.

16. Considering the facts and circumstances of the case, this Court finds that there is no perversity in the judgment of the trial Court. 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



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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."

17. 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 trial Court is directed to initiate *suo motu* final decree proceedings and pass a final decree. Since already the suit is pending



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from 2002, 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.

18. The trial Court is directed to send notice to the said Chinnammal and if the Chinnammal is ready to pay the Court fees for her share, the trial Court is directed to implead the Chinammal as one of the respondents in the final decree proceedings and the parties are at liberty to work out their remedies in the final decree proceedings.

19. In the result, the Appeal Suit is dismissed. Considering the nature of the case, facts and circumstances of the case and the relationship between the parties, there will be no order as to costs.



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P.VELMURUGAN,J.

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To

1. The Fast Track Court /Additional District Judge,
Pudukottai.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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