



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.239 of 2010

WEB COPY

- 1.Kumarasamy Nadar (died) ... Appellant / Appellant / Plaintiff
- 2.Sellavadiivu
- 3.Selva Jayaseelan
- 4.Jayakumar
- 5.Vijayalakshmi
- 6.Jayaram
- 7.Rajaram
- 8.Jagaselvan ... Appellants

(Appellants 2 to 8 brought on record as Lrs of the deceased sole appellant vide order dated 24.10.2016 in M.P.(MD)Nos.2 & 3 of 2013 in Sa 239 / 2010)

-Vs-

- 1.Somasundaram Nadar (died)
- 2.Duraipazham @ Kutty Nadar (died)
- 3.Annapandi
- 4.Indira Selvi

(4th respondent who is already on record is recorded as Lrs of the deceased 1st respondent vide order dated 24.08.2021 made in C.M.P.(MD)Nos.5636, 5638, 5641, 5642 & 5643 of 2021 in SA 239/2020)

- 5.Ravichandran ... Respondents / Respondents / Defendants
- 6.Nataraja Kani
- 7.Ravikumar

(Respondents 6 & 7 are brought on record as Lrs of the deceased 1st respondent vide order dated 24.08.2021 made in C.M.P.(MD)No.5636, 5638, 5641, 5642 & 5643 of 2021)



8.Thangapazham

9.Selva Sekar

10.Jaya Gowri

(Respondents 8 to 10 are brought on record as Lrs of the deceased 2nd respondent vide order dated 24.08.2021 made in C.M.P. (MD) Nos.5636, 5638, 5641, 5642 & 5643 of 2021 in SA 239/2010)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.89 of 2007 on the file of the Subordinate Judge, Valliyoor dated 16.11.2009 confirming the judgment and decree of the trial court passed in O.S.No.7 of 2004 on the file of the Principal District Munsif Court, Valliyoor, dated 16.10.2006.

For Appellants	: Mr.M.P.Senthil
For R1 to R4	: Mr.D.Saravanan
For R5	: Mr.A.Arumugam

JUDGMENT

The plaintiff in O.S.No.7 of 2004 on the file of the Principal District Munsif Court, Valliyoor filed this second appeal. During the pendency of the second appeal, he passed away and his legal heirs came on record. Likewise, some of the respondents also passed away and their legal heirs have also been brought on record.

2. The original appellant filed the said suit seeking partition of 1/4th share in the suit schedule properties. The suit properties comprised two schedules namely 1st schedule & 2nd schedule. According to the plaintiff, the 1st schedule properties were jointly purchased by the plaintiff and his three brothers namely D1, D2 & D3. The 2nd schedule properties belonged to their mother Ramalakshmi. Since the defendants did not come forward for amicably partitioning the same, the suit was laid. D4 is the daughter of the first defendant. The other defendants are the subsequent purchasers of a portion of the 1st schedule property. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. His brothers examined themselves as D.W.1 to D.W.3. EX.B1 to Ex.B36 were marked. An Advocate Commissioner was appointed and his report was marked as Ex.C1. After consideration of the evidence on record, by judgment and decree dated 16.10.2006, the suit was dismissed. Challenging the same, the plaintiff filed A.S.No.89 of 2007 before the Sub Court, Valliyoor. By the impugned judgment and decree dated 16.11.2009, the first appellate court confirmed the decision of the



trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. On the last occasion, the substantial questions of law were formulated as to whether the courts below were justified in non-suiting the plaintiff on merits after rendering a finding that the details regarding the previous partition have not been set forth in the plaint and whether the courts below ought to have granted relief atleast in respect of the 2nd schedule property.

3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and grant preliminary decree as prayed for.

4. Per contra, both the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The plaintiff came out with a specific contention that the 1st schedule properties were jointly purchased by four brothers including himself under Ex.A1, Ex.A2, Ex.A3 & Ex.A4. He further claimed that the 2nd schedule properties were also purchased by four brothers in the name of their mother Ramalakshmi Ammal under Ex.A5 to Ex.A7. The defendants have convincingly demonstrated before the trial court that apart from the suit schedule properties, ancestral properties were also available. The defendants took a stand that there was oral partition among four brothers in three stages namely in the year 1987, again in the year 1970 and again in the year 1987 after the demise of the mother. According to them, the properties standing in the name of the mother and the 1st schedule property were all orally partitioned and that they have also been independently dealt with and hence, there was no cause of action for maintaining the suit for partition. The sale deeds executed by the plaintiff in respect of the ancestral properties were also marked before the trial court. The trial court seriously faulted the plaintiff for not making a full and frank disclosure in the plaint. The suit was filed only in January 2004. He was a party to quite a few transactions before filing of the suit. He was obliged to set out all the facts in the plaint. He did not do so. That is why, the trial court repeatedly held that the suit was hit by under Order 2 Rule 2 of C.P.C. Thereupon, the plaintiff tried to come out with an explanation that the ancestral properties alone were partitioned and that the properties jointly purchased by them as well as the properties belonging to the mother were not the subject matter of any partition. This appears to be a clear after thought.



7. The learned counsel appearing for the respondents took me through the testimony of P.W.1. In quite a few places, the plaintiff had admitted that there was a partition of the properties. It is well settled that a litigant who suppresses material facts ought to be shown the door at the very threshold. Therefore, I sustain the approach of the courts below in non-suiting the plaintiff. But then, non-suiting should have been only on the aforesaid grounds and not on merits.

8. The trial court rightly pointed out that while filing proof affidavit, the plaintiff had confined his prayer for partition only in respect of the 2nd schedule properties. Before me, the learned counsel produced a copy of the sale deed dated 28.07.2011 (settlement deed) executed by the plaintiff in favour of his sons Jeyakumar and Rajaram, in which, it stated that the property purchased by the four brothers under Document No.722 / 1969 had already been orally partitioned. Though this document has not been formally marked before me and I am not supposed to take the same into account, in order to satisfy my conscience that the courts below have correctly approached the issue, I looked into the same and am also making a reference to it in this judgment.

9. The 2nd schedule property admittedly stood in the name of the mother. The defendants have taken a stand that after the demise of the mother Ramalakshmi, there was oral partition among the family members. But the details regarding the said partition are absolutely wanting. There is nothing on record to show that the plaintiff was allotted any portion of the 2nd schedule properties. Therefore, answering the substantial questions of law in favour of the appellants, even while sustaining the judgment and decree passed by the courts below in respect of the 1st schedule property, I grant liberty to the appellants to file a fresh suit for partition in respect of the 2nd schedule properties alone.

10. With this liberty to the appellants, the second appeal stands dismissed. No cost.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Valliyoor.

2.The Principal District Munsif Court, Valliyoor.

Copy To

1.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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

+1 CC to M/s.D. SARAIVANAN, Advocate (SR-17401[F] dated 08/04/2022)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-17468[F] dated 08/04/2022)

+1 CC to M/s.A. ARUMUGAM, Advocate (SR-17695[F] dated 11/04/2022)

+1 CC to M/s.A. ARUMUGAM, Advocate (SR-17273[F] dated 07/04/2022)

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KM(CO)

KB(13.06.2022) 5P 10C