



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.545 of 2010

WEB COPY

- 1.Thirumalaichamy (died) ... 1st Defendant/Appellant/
Appellant
- 2.Magudeshwari ... Appellant
(2nd appellant brought on record as LRs of the deceased sole
appellant vide court order daed 14.03.2014
made in M.P.(MD)No.2 of 2014)

-Vs-

- 1.Murugasamy ... Plaintiff / 1st Respondent /
1st Respondent
- 2.Murugasamy Gounder ... 2nd Defendant / 2nd Respondent /
2nd Respondent
- 3.Palanichamy Gounder ... 3rd Defendant / 3rd Respondent /
3rd Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.93 of 2008, dated 09.02.2010 passed by the Subordinate Judge, Palani confirming the judgment and decree passed in O.S.No.1421 of 2004, dated 24.10.2008 by the District Munsif, Palani.

For Appellant : Mr.T.Tamilmani

For R1 : Mr.N.Anand Chandrasekaran
for M/s.Sarvabhauman Associates

JUDGMENT

This second appeal arises out of a suit for partition. There is no dispute that the three suit items originally belonged to one Palaniammal. Palaniammal passed away in the year 2000. She was blessed with three children. One of them pre-deceased her. The plaintiff Murugasamy and the first defendant Thirumalaichamy were the surviving legal heirs. The husband of Palaniammal had also pre-deceased her. According to Murugasamy/plaintiff, while the suit items 2 and 3 remain intact, a portion of the first item had already been alienated in favour of Ramasamy Gounder way back in the year 1972. Ramasamy Gounder had passed away and the alienated portion had devolved on his son Murugasamy Gounder who was impleaded as the



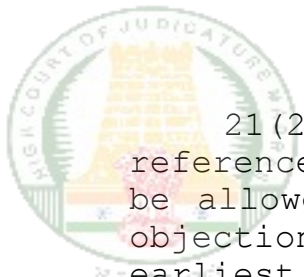
second defendant. Murugasamy Gounder had sold a portion of his portion thereof in favour of the third defendant. According to the plaintiff, while he is having 50% share in suit items 2 and 3, he is having 1/6th share in the suit 1st item. The second and third defendants remained exparte. The first defendant / brother of the plaintiff filed written statement controverting the plaint averments. He took a number of defences. He contended that the trial court lack pecuniary jurisdiction even to try the suit. He also contended that the sale deed dated 12.10.1972 is a fabricated document. According to him, the plaintiff is out of possession and the valuation of the suit was not proper. Based on the divergent pleadings, the trial court ought to have framed an issue as to whether the alienation said to have been made by Palaniammal was actually true or not. But no such issue was framed. The plaintiff examined himself as P.W.1. The 3rd defendant Palanichamy entered the witness box as P.W.2, though he remained exparte in the suit. Ex.A1 to Ex.A6 were marked. The first defendant examined himself as D.W.1. In support of his claim that he is in exclusive possession of all the three suit items, one Ganesan was examined as D.W.2. Ex.B1 to Ex.B17 were marked. After consideration of the evidence on record, the trial court granted preliminary decree as prayed for. Challenging the same, the first defendant filed A.S.No.93 of 2008 before the Sub Court, Palani. The first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, the second appeal came to be filed. Though the second appeal was filed way back in the year 2010, till date it has not been admitted. During the pendency of the second appeal, the first defendant passed away and his legal heirs have come on record.

2. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit this appeal and take it up 'for disposal' later.

3. Per contra, the learned counsel appearing for the contesting respondent submitted that no substantial question of law arises for consideration.

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

5. The contention as regards pecuniary jurisdiction can be disposed of first. It is true that the contesting defendant had pleaded that the munsif court lacked pecuniary jurisdiction to try the suit on hand. In fact, a specific issue was also framed in that regard. Unfortunately, the trial court failed to render a finding thereon or answer that issue. Be that as it may, the impugned judgment and decree do not warrant interference on that ground. This is primarily because Section 21(2) of C.P.C is as follows:-



21(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

Though an objection was taken in the Court of first instance at the earliest possible opportunity, the trial court ought to have answered the issue before the evidence was recorded. For the error committed by the trial court, the plaintiff cannot suffer. It is well settled that the act of the Court should harm none. In any event, there has been no consequent failure of justice. Invoking this statutory principle, I decline to interfere with the impugned judgment and decree on this ground. There is no dispute regarding the ownership of the suit properties. There is no dispute regarding the relationship between the parties. Therefore, even if the suit had been tried by a Court of unlimited pecuniary jurisdiction, still, there would not have been any change in the eventual outcome.

6. Since there is no dispute regarding relationship of the parties and since the suit items 2 and 3 remain intact, preliminary decree passed by the trial court allotting 50% share in the suit items 2 and 3 in favour of the plaintiff is confirmed. As regards the suit item No.1, the plaintiff himself confined his share to $1/6^{\text{th}}$. According to him, D2 and D3 together will be entitled to $4/6^{\text{th}}$ share in suit item No.1. But then, this concession made by the plaintiff was contested by the first defendant. When the first defendant filed written statement, the defendants 2 and 3 ought to have stepped in. For reasons best known, they remained exparte. The first defendant claims that the so called alienation made by Palaniammal in favour of Ramasamy Gounder was forged. He also claims to be in exclusive possession of suit item No.1. Since the first defendant had not filed any suit for impeaching the sale made by the mother and since D2 and D3 have not filed any counter claim or independent suit against the first defendant, the said issues are left open. The conferment of $1/6^{\text{th}}$ share in suit item No.1 by the court below is also confirmed.

7. No substantial question of law arises for consideration. The impugned judgment and decree is confirmed. Inter-se claims between the legal heir of the first defendant on the one hand and D2 and D3 on the other are left open. With this clarification and observation, the second appeal is disposed of. No cost.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1.The Sub Judge, Palani.

2.The District Munsif Court, Palani

Copy To

The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-9394[F] dated 02/03/2022)

+1 CC to M/s.N.TAMILMANI, Advocate (SR-9334[F] dated 01/03/2022)

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MGJ(11.04.2022) 4P 7C