



S.A.(MD) No.733 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD) No.733 of 2010

- 1.Smt.Krishnammal
- 2.S.K.V.Rajendran
- 3.R.Selvarani
- 4.V.Udayakumar

... Appellants/Appellants/Plaintiffs

-VS-

- 1.K.Subbaraj
- 2.K.Gopalsamy
- 3.The District Collector,
Virudhunagar District,
Virudhunagar.

- 4.The Sub Registrar,
Sattur, Virudhunagar District.

... Respondents/Respondents/
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 08.03.2010 made in A.S.No.19 of 2009 on the file of Subordinate Judge, Sivakasi confirming the judgment and decree dated 17.08.2009 made in O.S.S.R.No.1760 of 2009 on the file of District Munsif, Sattur.



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For Appellants : Mr.Antony Arul Raj
For R1, 3 & 4 : No appearance
For Respondent-2 : Mr.C.S.Ravichandran

J U D G M E N T

This second appeal is preferred by the plaintiffs challenging an order of the trial Court rejecting the plaint even before it was taken on record.

2.1. The facts are minimal and they run as follows:-

2.2. A certain piece of property which includes the suit property herein originally belonged to Thayammal and her two sons Veluchamy and Subbaraj, vide partition deed dated 26.10.1959. These parties entered into a partition deed and the suit property came to be allotted to the share of Veluchamy. On the same day, Veluchamy executed a settlement deed in favour of his to be wife Krishnammal (whom he has married subsequently). Veluchamy's wife Krishnammal and her children are the plaintiffs before this Court.



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3. Be that as it may, Veluchamy's brother Subbaraj had sold the share allotted to him in the aforesaid partition deed to a certain Avudaiammal. Thereafter, he some time in 2006, proceeded to sell the property allotted to the share of Veluchamy to the 2nd defendant. Interestingly enough, in both the sale deeds, Subbaraj refers to the partition deed dated 26.10.1959. When the sale in favour of the 2nd defendant threatened the plaintiffs' title over the property allotted to them in the partition deed, they preferred the suit. The suit came to be rejected because both the Courts below went on an expedition to ascertain title even before the suit was taken on record. In other words, the Courts below did not wait for the defendants to enter appearance to putforth their case, but rather stepped into the shoes of the defendants to oppose the plaintiffs. This approach is not approved in procedure. This Court had an occasion to elaborately deal with the aspects which the Court should reckon when the plaint is presented in its judgment in *Selvaraj and Others vs. Koodankulam Nuclear Power Plant India Limited, Rep., through its Project Director reported in (2021) 4 CTC 539 :*



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(2021) 5 Mad LJ 467 : (2021) 3 MWN (Civil) 73: (2021) 3 LW 677. The

notice sought to be served on the 1st respondent was returned and others served. This Court is informed that the 1st respondent/1st defendant is no more and he has no issues. Since the suit has been rejected even before it was taken on record, the defendant does not have any right of hearing. This Court, therefore, allows this appeal, directs that the plaint be taken on record and further directs the litigation to be proceeded with in accordance with law. No costs.

17.06.2022

Internet:Yes
Index:Yes/No

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To

1.The Subordinate Court, Sivakasi

2.The District Munsif, Sattur.



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N.SESHASAYEE, J.

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