



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.841 of 2010

and

MP (MD)No.1 of 2014

WEB COPY

Alagarsamy ... Appellant / 1st Appellant / 1st Defendant
Vs.

1. Karupayee (Died)
2. Easwari (Died)
3. Malliga (Died)

4. Ponram ... Respondents 1 to 4 / Respondents 1 to 4 /
Plaintiffs 1 to 4

5. Subramani ... Respondent No.5 / 2nd Appellant /
2nd Defendant

6. Pappathi
7. Kaliammal
8. Vijayalakshmi

9. Murugammal (Died)
- Vellaiammal (Died)
- Perumal Gounder (Died)

10. Bommana Gounder
11. Bommanasamy
12. Palaniappan

... R6, R10 & R12 - dismissed vide Court
order dated 03.09.2015

13. Muthu Lakshmi ... Respondents / Respondents 5 to 12/
Defendants 3 to 12

14. Suresh

15. Minor Jaganathan

16. Minor Thangammal

(R-15 & R-16 minors are rep. through his father and
guardian R-17 Dharmaraj)

17. Dharmaraj

(R-14 to R-17 are brought on record as LRs. of the deceased
R-3 vide order dated 09.04.2014 in M.P.(MD)Nos.1 to 3 of
2012)



(R-2, R-4 & R-14 to R-17 were recorded as LR's. of the deceased 1st respondent vide Order dated 23.09.2015)

18. Murugan

19. Lakshmi

(Respondents 18 & 19 were *suo motu* brought on record as LR's. of the deceased 2nd respondent vide Order dated 14.03.2022)

20. Solamalai

21. Muthulakshmi

22. Chitra

23. Muthusamy

(R-20 to R-23 were *suo motu* brought on record as LR's. of the deceased 9th respondent vide Order dated 14.03.2022)

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.3.2010 in A.S.No.274 of 2005 on the file of the Additional Sub Court, Dindigul, confirming the Judgment and Decree dated 22.07.2005 in O.S.No.23 of 2004 on the file of the District Munsif cum Judicial Magistrate, Vedasanthur.

For Appellant : Mr.A.Arumugam,
for M/s.Ajmal Associates.
For R-4 : Mr.S.Anand Chandrasekar

* * *

J U D G M E N T

The first defendant in O.S.No.23 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Vedasanthur, is the appellant in this second appeal.

2. The suit was for partition. The case of the plaintiffs is that the suit items 1 and 2 originally belonged to one Nalla Boyan and that out of the income generated from the said two items, remaining four items were purchased in the name of Kali Boyan, elder son of Nalla Boyan. Nalla Boyan had another son by name Ramasamy Boyan. The plaintiffs claimed to be the legal heirs of Ramasamy Boyan and demanded half share in the suit properties. Defendants 1 to 6 are none other than the legal heirs of Kali Boyan. Defendants filed written statement controverting the plaint averments. According to them, the suit items 3 to 6 are the self-acquired properties of Kali Boyan and that while conceding suit items 1 and 2 belonged to Nalla Boyan, they claimed that there was an oral partition between Kali Boyan and Ramasamy Boyan some time in the



year 1958. Suit items 1 and 2 were allotted to Kali Boyan in the said oral partition. They also contended that Kali Boyan dealt with suit items 1 and 2 as his exclusive properties by mortgaging them. The said items were brought to sale through Court process. Kali Boyan paid the decretal amount and got the properties released. If really, suit items 1 and 2 were also joint family properties of Kali Boyan and Ramasamy Boyan, certainly Ramasamy Boyan would also have stepped in. That he did not do so and remained quiet indicates that suit items 1 and 2 were allotted to Kali Boyan in the oral partition. The defendants also raised few other contentions. Based on the divergent pleadings, the trial Court framed necessary issues. The first plaintiff examined herself as P.W.1 and one Ramasamy was examined as P.W.2. Ex.A.1 to Ex.A.12 were marked. On the side of the defendants, three witnesses were examined. Ex.B.1 to Ex.B.34 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 22.07.2005 rejected the claim of the plaintiffs as regards suit items 3 to 6 and passed preliminary decree granting half share in suit items 1 and 2. Aggrieved by the same, while the plaintiffs filed A.S.No.273 of 2005 before the Additional Sub Court, Dindigul, the defendants filed A.S. No.274 of 2005 before the very same Court. The first appellate Court dismissed both the appeals and confirmed the decision of the trial Court. Questioning the same, this second appeal came to be filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. He pointed out that Nalla Boyan had two daughters apart from two sons. Since this is for a suit for partition, the daughters also ought to have been impleaded. The fact that they have not done so is fatal. He also would point out that from Ex.B.27, one can easily come to the conclusion that the properties comprised in Survey No.1079/2, Survey No.1128/4 and Survey No.1135/1 in Vedasanthur stood in the name of Nalla Boyan, Azhagiri Boyan and Solai Boyan. Azhagiri Boyan is none other than the father of Nalla Boyan. Regarding Solai Boyan, the learned counsel on either side are unable to shed any light. Ex.B.28 indicates that the portions of the said survey numbers were mutated in the name of the first plaintiff Karuppayi. Ex.B.29 also indicates that 15 ares out of Survey No.1079/2A was mutated in the name of the third plaintiff and the fourth plaintiff. Ex.B.30 is also on the same lines. However, in the suit schedule, these items have not been found. A person who seeking partition is obliged to include all the joint family properties. In this case, that has not been done. The learned counsel appearing for the appellant also submitted that the Courts below erred in rejecting the theory of oral partition. In as much as the Courts below concurrently held that the oral partition was not proved as regards suit items 1 and 2, I am not inclined to interfere with the said finding. But I find force in the other two contentions, namely, non-joinder of legal heirs of the daughters of Nalla Boyan and non-inclusion of the items set out in Ex.B.27. On the last occasion the substantial question of law as to whether the impugned judgment and decree are liable to be interfered with on the



ground of non-joinder of necessary parties covered under Ex.B.2 was formulated. I answer the substantial question of law in favour of the appellant and set aside the impugned judgment and decree in so far as the suit items 1 and 2 are concerned.

4. This second appeal is allowed and the matter is remanded to the file of the trial Court. The parties shall appear before the trial Court on 29.04.2022. The plaintiffs are directed to file an application for including the properties covered under Ex.B.27 and also impleading the legal heirs of the daughters of Nalla Boyan. If the plaintiffs fail to carry out the amendment within a reasonable period, they will be non-suited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Additional Sub Judge,
Dindigul.
- 2.The District Munsif cum Judicial Magistrate,
Vedasanthur.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to M/S.SARAVABHAUMAN ASSOCIATES, Advocate, SR.No.17105
DATED:07.04.2022

+1cc to M/S.AJMAL ASSOCIATES, Advocate, SR.No.17425 DATED:08.04.2022
S.A. (MD)No.841 of 2010
07.04.2022

SS(CO)GC(22.04.2022) 4P 7C

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