



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.856 of 2010

WEB COPY

1. Gangadharan Nair

2. Krishna Kumar

3. Suresh

... Appellants / Respondents 1 to 3/
Defendants 1 to 3

Vs.

1. Prasannakumari

2. Prabala Chandran

3. Prathip Kumar

... Respondents / Appellants 2 to 4 /
NIL

4. Sukumaran Nair

... Respondents / 4th Respondent /
4th Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.137 of 2003 dated 18.03.2010 on the file of the District Judge, Kanyakumari at Nagercoil, reversing the Judgment and Decree passed in O.S.No.17 of 1999 dated 24.06.2003 on the file of the Sub Judge, Padmanabhapuram.

For Appellants : Mr.K.N.Thampi

For R-1 to R-3 : Mr.V.M.Balamohan Thampi

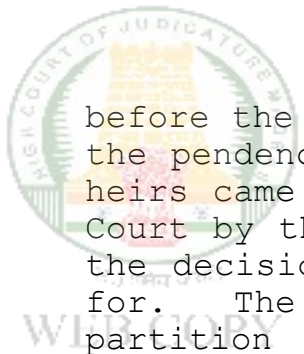
For R-4 : No appearance.

* * *

J U D G M E N T

Defendants 1 to 3 in O.S.No.17 of 1999 on the file of the Sub Court, Padmanabhapuram, are the appellants in this second appeal.

2. One Krishnan Thampi filed the said suit seeking the relief of partition. The appellants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed necessary issues. The plaintiff examined himself as P.W.1. Ex.A.1 to Ex.A.44 were marked. On the side of the defendants, two witnesses were examined. Ex.B.1 to Ex.B.13 were marked. After considering the evidence on record, the trial Court by judgment and decree dated 24.06.2003 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.137 of 2003



before the District Judge, Kanyakumari District at Nagercoil. During the pendency of the appeal, the plaintiff passed away and his legal heirs came on record. After hearing both sides, the first appellate Court by the impugned judgment and decree dated 18.03.2010 reversed the decision of the trial Court and the suit was decreed as prayed for. The fourth defendant was also held entitled to decree of partition of his two cents in the plaint schedule property. Challenging the same, defendants 1 to 3 filed this second appeal.

3. This second appeal was admitted on 19.04.2022 on the following substantial question of law:-

" Whether the suit for partition as framed is maintainable? "

4. 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 restore the decision of the trial Court.

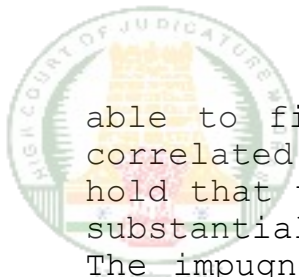
5. Per contra, the learned counsel appearing for respondents 1 to 3 submitted that the impugned judgment and decree do not call for any interference.

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

7. The suit schedule property measures 32 cents comprised in Survey No.343/6 in Thumbacode Village. The corresponding old survey number is 1378. According to the plaintiff, one Narayana Pillai was entitled to 1/3rd share in the suit property. That was settled in favour of his minor son Sudhakaran Nair. The plaintiff purchased the said 1/3rd share from the said Sudhakaran Nair. The said deed was marked as Ex.A.16. In the plaint, quite a few transactions have been catalogued indicating as to how the plaintiff became entitled to 20.666 cents under various documents.

8. After hearing the learned counsel on either side at length, I posed a specific question. It is obvious that the suit for partition will lie only if it can be shown that the plaintiff and the defendants enjoy the suit property in common and their title can be traced to a common source. Unfortunately in the plaint, the common source has not at all been indicated. Of course it is asserted that the suit property is covered in the partition deed Ex.A.1 dated 28.01.1080 (Malabar Era).

9. The learned counsel appearing for the appellants strongly asserted that the suit property is not covered under Ex.A.1. The learned counsel appearing for the legal heirs of the plaintiff demonstrated that the suit property is covered under Ex.A.1. He stated that in Ex.A.1, லக்ஷம் 116 alone has been mentioned. I am not



able to find out from the evidence as to how லக்ஷம் 116 has been correlated to the suit property. Therefore, on these twin grounds, I hold that the suit for partition as framed was not maintainable. The substantial question of law is answered in favour of the appellants. The impugned judgment and decree are set aside. That does not mean that the decision of the trial Court will stand restored. The trial Court had given a finding that defendants 1 to 3 had perfected their possession over the suit property by adverse possession. Since I have held that the suit itself has not been properly framed and that the relief of partition could not have been sought for on twin grounds, the finding of adverse possession against the plaintiff will have to be automatically vacated. In other words, the slate is wiped clean. This second appeal is allowed. Whatever rights the plaintiff and respondents 1 to 3 have, it is always open to them to work them out as per law. No costs.

Sd/-

Assistant Registrar (CS-I)

// 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 District Judge, Kanyakumari at Nagercoil.
 2. The Sub Judge, Padmanabhapuram.
 3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)
- +1 CC to M/s.K.N. THAMPI, Advocate (SR-20205[F] dated 21/04/2022)
- +1 CC to M/s.V.M. BALAMOHAN THAMBI, Advocate (SR-20298[F] dated 21/04/2022)

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