



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.860 of 2010

1.R.Chidambaram (Died)

2.K.Kalimuthu

(Second appellant is impleaded vide
order dated 31.08.2021 made in
C.M.P(MD)No. 5275 of 2021 in
S.A(MD)No.860 of 2010)

3.M.Markandan

(Third appellant is impleaded vide
order dated 29.10.2021 made in
C.M.P(MD)No. 7734 of 2021 in
S.A(MD)No.860 of 2010)

... Appellants/Respondents/
1st Defendant/Newly impleaded parties

Vs

1.M.Jeyabharathy

2.C.Natarajan

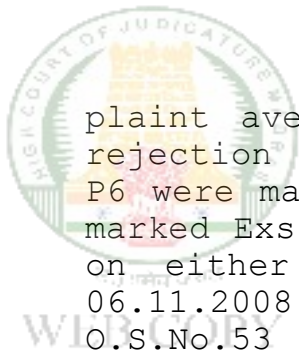
... 1st Respondent/Appellant/Plaintiff
... 2nd Respondent/Respondent/2nd Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 06.01.2010 in A.S.No.11 of 2009 on the file of the learned District Court, Karur, reversing the judgment and decree dated 06.11.2008 in O.S.No.53 of 2007 on the file of the learned Sub Court, Karur.

For Appellants : Mr.M.Manokaran for A2.
Mrs.Chitra Sampath, Senior Counsel,
For Mr.M.P.Senthil for A3.
For Respondents : Mr.S.Parathasarathy for R1
Mr.S.Madhavan for R2

JUDGEMENT

The first respondent in this second appeal filed O.S.No.53 of 2007 on the file of the Sub Court, Karur, seeking the relief of partition. Her case is that following the amendment made to Section 6 of the Hindu Succession Act in the year 2005, she was entitled to exercise her rights as a member of the coparcenary which originally comprised her grandfather/Ramasamy Gounder, father/Chidambaram and brother/Natarajan. The plaintiff asserted that she is entitled to 1/3rd share in the suit properties and sought the relief of partition by metes and bounds. Her father namely, the first defendant/Chidambaram filed written statement controverting the

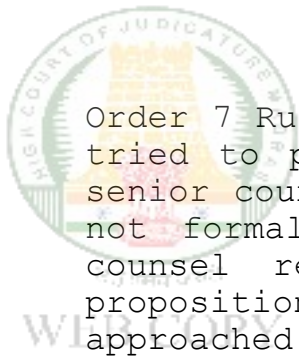


plaint averments. Subsequently, he filed I.A.No.504 of 2007 for rejection of plaint. Enquiry was conducted therein and Exs.P1 and P6 were marked on the side of the first respondent. The plaintiff marked Exs.R1 and R2. After consideration of the materials adduced on either side, the trial Court by judgment and decree dated 06.11.2008 allowed I.A.No.504 of 2007 and rejected the plaint in O.S.No.53 of 2007. Aggrieved by the same, the plaintiff filed A.S.No.11 of 2009 and C.M.A.No.1 of 2009. By the impugned judgment and decree dated 06.01.2010, the decision of the trial Court was set aside and the suit was restored to file. Aggrieved by the same, Chidambaram filed this second appeal.

2.During the pendency of the second appeal, he passed away. In the meanwhile, suit item Nos.1, 2, 3, 5 and 6 and were alienated in favour of one Kalimuthu. The said Kalimuthu filed C.M.P.(MD)No.5275 of 2021 and got himself impleaded as second appellant to prosecute the appeal. One Markadan, who purchased the suit item No.11 filed C.M.P.(MD)No.7734 of 2021 and got himself impleaded in the second appeal proceedings.

3.Heard the learned senior counsel appearing for the petitioner in C.M.P.(MD)No.7734 of 2021, learned counsel appearing for the second appellant, learned counsel appearing for the plaintiff and the learned counsel appearing for the second respondent.

4.The learned senior counsel as well as the learned counsel appearing for the appellants submitted that the plaintiff did not have any cause of action for maintaining the suit. They took me through the contents of the plaint. Even according to the plaintiff, it was only the amendment made by the Central Act to Section 6 of the Hind Succession Act in the year 2005 that furnished the cause of action for her to seek partition. But the very same statutory amendment clearly stated that any disposition or alienation or partition that had taken place prior thereto would not be affected. In the case on hand, the suit properties had already been divided between the first and second defendants under a registered deed dated 07.02.1971. The said document was marked as Ex.P1 in the enquiry. In fact, when the first defendant in his written statement pointed this out and contended that the suit is not maintainable, the plaintiff filed a reply statement coming out with a different version. According to her, the 1971 document was sham and nominal document and was not acted upon. The learned senior counsel as well as the learned counsel for the appellants would state that from this averment in the reply statement, one can very easily come to the conclusion that the plaintiff was clearly aware that the properties had already been divided between her father and her brother. In fact, in the plaint itself, the documents filed by her would show that some of the items stood in the name of the father and some stood in the name of the brother. This itself clearly shows that 1971 document was duly acted upon. The learned senior counsel relied upon a catena of judgments to show that

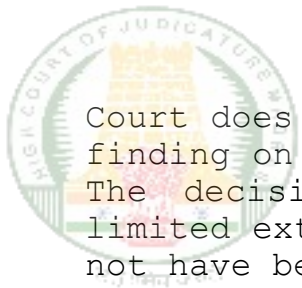


Order 7 Rule 11 of CPC will have to be invoked, where the plaintiff tried to pull the wool over the eyes of the Court. The learned senior counsel also stated that the plaint must be meaningfully and not formally read. The learned senior counsel and the learned counsel relied on a catena of decisions in support of this proposition. They submitted that the trial Court had correctly approached the issue and rightly non-suited the plaintiff at the threshold. The first appellate Court had gone on a tangent. They would point out that the decision of the first appellate Court runs counter to the judgment of the Hon'ble Full Bench Madras High Court reported in **AIR 1979 Mad 1 (The Additional Commissioner of Income Tax V. P.L.Karuppan Chettiar)**. They called upon this Court to formally admit the second appeal after framing substantial questions of law and dispose of the matter on merits after putting the respondents on notice.

5.Per contra, the learned counsel for the plaintiff/contesting respondent submitted that the impugned judgment and decree do not warrant any interference.

6.I carefully considered the rival contentions and went through the materials on record. The case of the plaintiff is that she is a member of coparcenary which earlier comprised her grandfather, father and brother. The plaintiff sought 1/3rd share in the suit properties. Her case was opposed by her father, who contended that the properties had already been divided and that the partition was duly reduced into writing and the said document was also registered. The registered document was also marked as Ex.P1. In response to the said document taken in the written statement, the plaintiff would submit that the said document was only a sham and nominal transaction. She stated that during the year 1971, her brother/Natarajan was applying for the post of village karnam and since for getting the said employment, properties have to be shown in the name of her brother, such a document was entered into and she also would point out that Chidambaram himself had claimed in O.S.No.493 of 2003 that the said partition was not acted upon.

7.I therefore come to a conclusion that a triable issue has been raised by the plaintiff. Order 7 Rule 11 of CPC of course will have to be invoked to show the door to unscrupulous litigant. But in the case on hand, a daughter who has been conferred with property right by the parliamentary amendment has come to the Court. Her contention is that the partition propounded by her father was only sham and nominal. In fact her stand in the reply statement is duly backed by Ex.R1, which is a copy of the deposition of her father itself. In my view, whether the suit has to be dismissed in view of the prior partition is a question that has to be necessarily gone into by the Court after a proper trial. The subsequent purchaser virtually wants this Court to hold a trial before trial. I therefore hold that the reversing decision of the first appellate



Court does not warrant interference. I make it clear that any other finding on merits given by the first appellate Court stands vacated. The decision of the first appellate Court is confirmed to the limited extent that in the case on hand Order 7 Rule 11 of CPC could not have been invoked.

8. With this clarification and observation, I hold that no substantial question of law arises for determination in this second appeal and the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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, Karur.
2. The Subordinate Judge, Karur.

Copy to:

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

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-33461[F] dated 01/11/2021)

S.A. (MD) No. 860 of 2010
29.10.2021

RS (28.02.2022) 4P-6C