



S.A.(MD) No.251 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.251 of 2014

and

M.P.(MD) No.1 of 2014

1.Maruthai (Died)

2.M.Kannan

... Appellants/Appellants/
Defendants 1 and 8

Vs

1.Visalakshi Ammal

... 1st Respondent/Respondent/
Plaintiff

2.T.Kesavaraj

3.V.Soma Sundaram

4.G.Rengarajan

5.S.Sridharan

... Respondents 2 to 5

6.S.Mohan

7.G.Shanthi

8.G.Venkatesan

9.Sasikala

10.G.Krishnan

11.S.Savithiri

12.G.Lakshmi

13.R.Mallika

*[R2 to R5 – impleaded vide order dated 01.06.2017 made in
C.M.P.(MD) No.3587 of 2017 in S.A.(MD) No.251 of 2014]*

*[R6 is impleaded vide order dated 23.09.2022 made in
C.M.P(MD).No.10087 of 2021 in S.A(MD).No.251 of 2014]*



S.A.(MD) No.251 of 2014

[R7 to R13 are impleaded vide order dated 31.10.2022 made in C.M.P(MD).Nos.7579 of 2022 in S.A(MD).No.251 of 2014]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 18.12.2013 made in A.S.No.28 of 2012 on the file of the II-Additional District Court, Thiruchirappalli confirming the judgment and final decree dated 25.02.2003 made in O.S.No.775 of 1997 on the file of the Principal District Munsif Court, Thiruchirappalli.

For Appellant : Mr.Raguvaran Gopalan

For Respondents : Mr.S.Vithya Shankar for R2 to R5

J U D G M E N T

This second appeal arises out of a final decree proceedings in a partition suit. The parties are referred to by their rank before the trial Court.

2. The brief facts led to the present state of affairs may be bullet pointed as below:

- Certain Balakrishnan Maniyakkarar and Valliammal owned Item-2 and Item-1 of the suit properties respectively. They had three sons viz., Maruthai Pillai, the first defendant in the suit (who is since dead



S.A.(MD) No.251 of 2014

WEB COPY

and the 8th defendant is his son), Ramu Pillai (whose daughter is the plaintiff) and Govindam Pillai (under whom defendants 2 to 7 claim.)

The suit was initially laid before the Principal Sub Court, Tiruchirapalli as O.S.No.388 of 1983 by the plaintiff seeking her 1/3rd share in both the items of suit properties. The suit was decreed as prayed for vide decree of the trial Court dated 31.10.1989. This was challenged by defendants 1 and 8 in A.S.No.23 of 1990. The contest before the first appellate Court was essentially limited to Item-1. Vide its judgment dated 31.08.1990, the first appellate Court remanded the matter back to the trial Court granting liberty to the parties to lead in evidence as regards the dispute pertaining to Item-1.

- Post remand, on 29.07.1991, the learned counsel for the plaintiff and the learned counsel for defendants 1 and 8 had made a joint endorsement to the fact that the plaintiff's 1/3rd share be declared as against the properties allotted to defendants 2 to 7 and that this will exclude the property allotted to the first defendant in Ext.B.4-partition deed dated 30.08.1979. Ext.B.4 partition taken place between the first defendant on the one side, and defendants 2 and 3



S.A.(MD) No.251 of 2014

WEB COPY

representing the branch of Govindam Pillai on the other side. In this partition, the western one-half equivalent to 36.5 cents was allotted to the first defendant and the eastern one-half was allotted to defendants 2 and 3. The plaintiff's father, Ramu Pillai was not a party to this partition. However, referring to this endorsement, the trial Court passed a preliminary decree on 31.07.1991, which in essence reflects the tone and tenor of the endorsement of the counsel dated 29.07.1991.

- Thereafter, the plaintiff had taken out an application in I.A.No.719 of 1997 for passing a final decree in terms of the preliminary decree. Commissioner too had been appointed, who had made his report accompanied by necessary plans before the trial Court. They came to be marked as Ext.C.1 and Ext.C.2. In this, the eastern most 14 cents was allotted to the plaintiff. The next adjacent 22.5 cents was set apart towards the share of defendants 2 to 7 and the next 10 cents was allotted again to the plaintiff and the western most 26.5 cents was allotted to defendants 1 and 8.



S.A.(MD) No.251 of 2014

3. Aggrieved by the same, the defendants 1 and 8 are before this Court with this appeal.

4. This appeal was admitted for considering the following substantial question of law:-

a) Whether the Lower Appellate Court is right in holding that the appeal is bad for non-joinder of necessary parties?

b) Whether the Courts below can pass a final decree as against the preliminary decree for partition?

c) Whether the trial Court is right in allotting the 1/3rd share to the plaintiff contra to the joint memo of compromise filed by the parties in the final decree?

d) Whether the plaintiff is entitled to sell her 1/3 undivided share pending appeal after the final decree?

5. The grievance of defendants 1 and 8 is that while they are entitled to the entire western one-half of Item-1, they have been given a final decree only for the western 26.5 cents. Secondly, while in terms of the preliminary decree, the plaintiff would be entitled to only 1/3rd in the eastern half, she has been granted about 24 cents in two plots of 14 cents + 10 cents, which



S.A.(MD) No.251 of 2014

WEB COPY

are separated by a plot set apart for defendants 2 to 7. While the preliminary decree limits the plaintiff's claim to 1/3rd in the eastern half, in the final decree, the plaintiff has been given almost 1/3rd in the entire property and they were unsuccessful before the first appellate Court too. The parties before the Court are the first defendant (by now the first defendant has passed away) and the purchaser from the plaintiff. They have been impleaded in this second appeal as respondents 2 to 5. The western most 26.5 cents was sold by the eighth defendant to a third party for impleading whom, respondents 1 to 5 have taken out an application in C.M.P.(MD) No.10087 of 2021.

6. Narrating the facts that led up to filing of this appeal, the learned counsel appearing for the appellants halted much on the joint memo of the counsel dated 29.07.1991 and submitted that in terms of joint memo signed both by the 8th defendant/second appellant and the plaintiff/first respondent and the respective counsels, the plaintiff/first respondent is entitled to work out her undivided 1/3rd share only in the eastern half of the property and not in the western 36.5 cents which are already allotted to the 8th defendant under



S.A.(MD) No.251 of 2014

Ext.B4. However, the Courts below have granted a final decree giving the plaintiff some 14 cents in the eastern extreme and another 10 cents in the eastern extremity of the western half allotted to the 8th defendant under Ext.B4. This is against the tenor of the joint memo filed by both the parties in I.A.No.719 of 1997 and also goes against the tenor of the endorsement made by the parties and the counsel prior to passing of preliminary decree.

7. Per contra, the learned counsel appearing for the plaintiff submitted that the intention is to grant the plaintiff her 1/3rd share sought in the suit. Here even though the endorsement was made in the plaint, this extent is simply not available for being granted to the plaintiff, in the absence of the defendants 2 to 7 not joining the endorsement. After all, the defendants 2 to 7, even though they did not participate in the suit, are still entitled to 1/3rd share in the property and it is not for the 8th defendant to direct the plaintiff to go and work out the remedy in the eastern half in the absence of the defendants 2 to 7 joining the endorsement. This has got the wicked situation and if it has to be resolved, it could be resolved only in the manner in which the final decree in this case has been passed. He added that the defendants 2



S.A.(MD) No.251 of 2014

to 7 have already sold their 22 ½ cents vide Ext.A10 to Ext.A14 which came to be marked after the suit was remanded. Both the preliminary decree and final decree came to be passed on the dominant intent of granting the plaintiff the share she is entitled to and on which, she did not compromise.

8. After carefully weighing the rival submissions, this Court does not find any reason to interfere with the final decree passed in this case and the reasons are:-

- a) the 8th defendant/second appellant herein though resisted the plaintiff's claim of partition based on Ext.B.3-Will, he did not wait to invite the finding of the trial Court on the same even though the matter has been remanded to the trial Court to give him an opportunity to decide the same. Instead, he chose to concede the plaintiff's 1/3rd share.
- b) If the plaintiff has to be given 1/3rd share in the eastern half, as rightly contended by the learned counsel appearing for the appellants, this has to be worked out and could be worked out only in the presence of



S.A.(MD) No.251 of 2014

WEB COPY

the defendants 2 to 7. After all, in law, the defendants 2 to 7 together are entitled to 24 cents. Both the plaintiff and the 8th defendant cannot enter into an agreement to snatch some undivided extent which rightfully belonged to the defendants 2 to 7. Therefore, the second part of the memo is plainly unworkable as it does not involve the defendants 2 to 7.

- c) This implies that the plaintiff's share has to be worked out without disturbing the shares of any of the parties. Today, the defendants had sold the portions marked as E, F, G and H in the plan attached to the final decree. Therefore, the plaintiff could be given only B, A, C and D. The balance 10 cents due to the plaintiff necessarily had to be worked out not in the east but only to the west of EH line. This is given by the Courts below.

9. To conclude, this Court reiterates the dominant intent of the parties prevailing over their presumed impression as to the location where it had to be worked out since all the parties are not parties to the endorsement made prior to passing of the preliminary decree or to the compromise memo filed



S.A.(MD) No.251 of 2014

in I.A.No.719 of 1997.

10. The 8th defendant had since sold the property to the west of FG line in the Commissioner's plan, it measures 26 ½ cents to the property of the sixth respondent in this appeal. The final decree passed and herein confirmed will not affect the rights of the sixth respondent.

11. In fine, this Second Appeal is dismissed. The judgment and decree dated 18.12.2013 made in A.S.No.28 of 2012 on the file of the II-Additional District Court, Thiruchirappalli confirming the judgment and final decree dated 25.02.2003 made in O.S.No.775 of 1997 on the file of the Principal District Munsif Court, Thiruchirappalli is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

abr/ssb

16.11.2022



WEB COPY



S.A.(MD) No.251 of 2014

To

- 1.The II-Additional District Court, Thiruchirappalli
- 2.The Principal District Munsif Court, Thiruchirappalli.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court.



WEB COPY



S.A.(MD) No.251 of 2014

N.SESHASAYEE, J.

ssb

S.A.(MD) No.251 of 2014

16.11.2022