



SA(MD)No.768 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

SA(MD)No.768 of 2022

Karuppi
Rep. through her Power Agent
Arumugam

... Appellant

versus

1. Shanmugathammal
2. Kasibai
3. Thillaivanam
4. Babu Johnson
5. Shanthi
6. S.Ramachandran
7. Chandran
8. Ramakrishnan
9. Ramamoorthy
10. Villayutham
Irulayee (died)
11. Namburajan
12. Nagasundaram
13. Kamala
14. Krishnan
15. Panjulakshmi
16. Nagavalli
17. Lakshmi Priya



SA(MD)No.768 of 2022

18. Parvathi
19. Murugan
20. Lakshmi
21. Pitchaiyammal
22. Ponraj
23. Ponnusamy
24. Ponpantchasaram

... Respondents

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 30.11.2021 made in A.S.No.22 of 2021 on the file of the learned Principal District Judge, Ramanathapuram, confirming the Judgment and Decree dated 05.12.2019 made in O.S.No.33 of 2009 on the file of the learned Subordinate Judge, Ramanathapuram.

For Appellant : Mr.P.S.Sundaram

JUDGMENT

The appellant is the 18th defendant in O.S.No.33 of 2009 on the file of the Sub Court, Ramanathapuram and she filed the present Second Appeal against the current findings of the Courts below in O.S.No.33 of 2009 and A.S.No.22 of 2021.



SA(MD)No.768 of 2022

WEB COPY

2. The respondents 1 and 2 claiming to be the daughters of one Samya Konar filed the above suit in O.S.No.33 of 2009 for a decree of partition that they are entitled for 2/3rd shares over the plaint schedule property. The appellant herein is the 18th defendant in the said suit and she has taken a specific stand along with 7th defendant that the plaint schedule property belonged to their grandfather Vedappa Mukanthan through a registered Sale Deed dated 13.07.1900 and the property is an extent of 2 acres 40 cents, out of which, 1 acre 30 cents are in joint possession of 7th defendant and his co-sharers and during the settlement survey, wrong entries have been made in the name of Samaya Konar S/o.Thangamani Konar and Nagalinga Konar, S/o. Vedappa Konar. Based on the written statement filed by the appellant herein, an additional issue was framed that whether the suit is bad for non-joinder of necessary parties.



SA(MD)No.768 of 2022

3. The plaintiffs claim partition in the property based on the earlier suit in O.S.No.139 of 1982. The said suit was filed by one Ramukonar, Paramakonar, Velu and Ramachandran and Ganesan, who are sons and grandsons of Nagalinga Konar. The 7th defendant Ramachandran is one of the plaintiffs in O.S.No.139 of 1982 and the appellant herein, namely, Karuppi, is the sister of Velu, Ramachandran and Ganesan, who are plaintiffs 3, 4 and 5 in O.S.No.139 of 1982. The 7th defendant, his brothers and his uncles (father's brothers) had filed the above suit seeking the relief of partition, with regard to the same suit schedule property as against Samaya Konar, Muthiah Konar, Velu Konar and Karuppiah Konar, Chitrammal and one Irulandi Konar. By Judgment and decree dated 04.04.1986, the said suit was dismissed holding that their father is not having any right in the plaint schedule property. The First Appeal preferred by the plaintiffs in the earlier suit before the Principal District Court, Ramanathapuram, in A.S.No.153 of 1986 was also dismissed and the Second Appeal filed by them in S.A.No.1754 of 1990 was also dismissed by this Court by its Judgment



SA(MD)No.768 of 2022

and Decree dated 28.11.2008. The Judgment in O.S.No.139 of 1982 dated 04.04.1986 is marked as Ex.A1 and the Judgment and Decree in A.S.No.153 of 1986 were marked as Exs.A2 and A3 and the Judgment passed by this Court in S.A.No.1754 of 1990 is marked as Ex.A4. Since the issue has already been decided in the earlier suit which has also been confirmed by this Court, the trial Court rejected the case of the defendants and granted the decree of partition in favour of the plaintiffs in the present suit. The First Appeal preferred by the appellant/18th defendant before the Principal District Court, Ramanathapuram in A.S.No.22 of 2021 was also dismissed by Judgment and Decree dated 30.11.2021. As against the concurrent findings of the Courts below, the present Second Appeal is filed on the following substantial questions of law.

(i) Whether the lower Courts erred in entertaining a second partition suit over the same schedule property in the absence of leave under Order 2 Rule 2 C.P.C. and in the absence of a counter claim by the respective sharers in the earlier partition suit?



SA(MD)No.768 of 2022

WEB COPY

(ii) Whether the lower Courts erred in not considering the fact that the second partition suit is not maintainable and only a supplementary final decree is to be filed in the earlier partition suit?

(iii) Whether the lower Courts failed to consider that in the earlier case in O.S.No.139 of 1982, the Will executed by Muthanna Konar was not produced or proved but yet the suit is decreed in favour of the defendants Samaya Konar and Muthiah Konar which is nothing but a fraud committed on the court?

(iv) Whether the lower Courts failed to consider that Ramu Konar is said to have sold 1/3rd share to Samaya Konar and the sale deed is not produced in the earlier suit in O.S.No.139 of 1982 which is yet another fraud?

(v) Whether the lower Courts failed to note that Eswara Vadyar, Ananthakrishna Velu Iyer, Pitchu Iyer and Vairava Iyer have sold the property to Muthanna Konar. The area sold is only 50 CC feet x 60 CC feet. One Carpenter feet will equal to 2.75 feet. Area 22687.5 square feet which comes to 52 cents alone but the Court has held that the entire 52 cents belongs to Samaya



WEB COPY



SA(MD)No.768 of 2022

Konar and Muthiah Konar but Muthanna Konar has purchased only 34 ¼ cents namely 2 shares out of 3 shares from the Brahmins and 1/3rd share is allotted to Thatti Seenimuthu, 3rd party?

(vi) Whether the lower Courts failed to consider that the earlier litigation O.S.No.139/1982 and A.S.No. 153/1986 and S.A.No.1740/1990 are vitiated by fraud?

(vii) Whether the lower Courts failed to note that the extent of purchase by Muthanna Mukandhar is only 52 cents which varies with the sale deed of Vedappa Mukundhar. The boundaries of Muthanna Mukandhar and Vedappa Mukandhar are different and the property itself is different?

(viii) Whether the Judgment and Decree of the Courts below is vitiated for non consideration of the oral and documentary evidence in proper perspective?

4. The learned counsel appearing for the appellant submits that the plaint schedule property was in possession of their ancestors and the appellant's ancestor Vedappa Mukundhar has purchased the property on 13.07.1900 and purchased a part of the property to an extent of 45



SA(MD)No.768 of 2022

cents from one Karupppannan, son of Sankaran, through Ex.B16 and he was in possession of ancestral property to an extent of 90 cents.

5. This Court considered the submission made by the learned counsel for the appellant and also perused the materials placed on record.

6. The previous suit in O.S.No.139 of 1982 was filed by the 7th defendant in the present suit along with his brothers and his uncles. The appellant is the 18th defendant in O.S.No.33 of 2009 and sister of the plaintiffs 3, 4 and 5 in the earlier suit. In the earlier suit in O.S.No. 138 of 1972, Issue No.5 was framed by the trial Court regarding the title of Samaya Konar and Muthiah Konar and was answered that the plaint schedule property belonged to Samaya Konar and Muthiah Konar. The claim of the appellant's brothers in the earlier suit that the property belongs to their grandfather Vedappa Mukundar was also framed as Issue No.1 and it was negatived that they are not entitled for



SA(MD)No.768 of 2022

the suit property, which was confirmed by the First Appellate Court and also by this Court in S.A.No.1754 of 1990 and thereby, it becomes final. Therefore, the findings in O.S.No.139 of 1982 binds the appellant herein.

7. The appellant was substantially represented in the earlier suit and as per the doctrine of representation by estate, the appellant is not entitled for any relief in the present suit. Therefore, this Court is not inclined to admit the Second Appeal on the above substantial questions of law raised by the appellant.

8. Accordingly, the Second Appeal is dismissed. No costs.

19.12.2022

ogy



WEB COPY



SA(MD)No.768 of 2022

B.PUGALENDHI, J.

ogy

To

1. The Principal District Court,
Ramanathapuram.
2. The Sub Court,
Ramanathapuram.

SA(MD)No.768 of 2022

19.12.2022