



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 08.03.2022
PRONOUNCED ON : 12.04.2022

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CORAM
THE HONOURABLE MS. JUSTICE R.N.MANJULA
A.S. (MD) No. 194 of 2017
and
C.M.P. (MD) No. 11276 of 2017

1. Ramasamy @ Bala Krishnan
2. Maruthambal ... Appellants / Plaintiffs
Vs.
1. Saraswathy
2. Azhagu Malai
3. Ramasamy
4. Suresh
5. Selvi
6. Lakshmi
7. Thirumalaisamy ... Respondents / Defendants

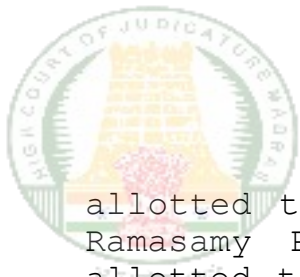
PRAYER: Appeal Suit filed under Section 96 read with Order XLI of Civil Procedure Code, against the judgment and decree dated 13.07.2017 made in O.S. No. 76 of 2014 on the file of the Additional District Judge, (Fast Track) Palani.

For Appellants : Mr.H.Lakshmi Shankar
for Mr.M.V.Venkataseshan
For Respondents : Mr.M.P.Senthil

J U D G M E N T

This appeal has been preferred challenging the judgment and decree of the learned Additional District Judge, (Fast Track) Palani, dated 13.07.2017 made in O.S. No. 76 of 2014.

2.The appellants are the plaintiffs in the suit. The appellants / plaintiffs filed a suit for partition and separate possession and were entitled for ½ share in the suit properties. The case of the plaintiffs is that the plaintiffs are the children of one Karuppana Pillai; Kuppana Pillai is the brother of Karuppana Pillai; partition was entered into between Kuppana Pillai and Karuppana Pillai on 06.12.1961 and in which 'A' schedule properties were



allotted to Kuppana Pillai; Karuppana Pillai had a son, by name, Ramasamy Pillai; in order to conveniently enjoy the properties allotted to the shares of the above brothers, they entered into an exchange deed, dated 01.03.1979; in the said exchange deed, 2 acres 2 cents in Survey No.34/3 was allotted to the plaintiffs' father Karuppana Pillai; apart from that, house site of 10 cents in Survey No.34/3 was also allotted to Karuppana Pillai; Karuppana Pillai died in the year 1985 and his wife also died before him; the plaintiffs have got $\frac{1}{2}$ share in the suit property by way of inheritance and $\frac{1}{2}$ share of their father; so totally, the first plaintiff is entitled to $\frac{3}{4}$ share and his sister Marudhambal is entitled to $\frac{1}{4}$ share in the above property; since the sons of Kuppana Pillai started to disturb the possession of the plaintiffs, a legal notice was sent to them; the son of Kuppana Pillai, namely, one Ramasamy Pillai died leaving his wife, the first defendant and the children, i.e., 2 to 6 defendants are his legal heirs; in the notice sent by the seventh defendant, it is stated that the plaintiffs colluded with the first defendant's husband - Ramasamy in order to defeat the share in the suit property; in fact 20 cents in Survey No.34/3 and the house originally belonged to the father of the first plaintiff; in Survey No.34/7, the plaintiffs are entitled to $\frac{1}{2}$ share; the plaintiffs are entitled to one share in 58 cents in Survey No.34/7; the first defendant's husband - Ramasamy has the remaining $\frac{1}{2}$ share; the properties have not been partitioned and they kept in common; the plaintiffs are in common enjoyment with the defendants; hence, they filed a suit for getting $\frac{1}{2}$ share in the suit properties and for the relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiffs in the suit properties; Kuppana Pillai has purchased the share of Ramasamy Pillai, son of Karuppana Pillai and his shares by virtue of two sale deeds, dated 24.04.1964 and 30.05.1966; in the said sale deed, dated 24.04.1964, the suit items have been shown as 6th schedule; after the demise of Kuppana Pillai, his son Ramasamy Pillai became entitled to 20 cents; after the demise of Ramasamy Pillai, his wife and children have acquired items 1 to 6 and in exclusive enjoyment of the same; the extent of property in Survey No.34/7 is 53 cents and that has been wrongly shown as 58 cents in the plaint; the first plaintiff - Ramasamy has $\frac{1}{8}$ th share in the suit property; the defendants have $\frac{1}{8}$ th share in the suit property; $\frac{1}{8}$ belonged to Balakrishnan was sold to the Ramasamy Pillai; he has demolished the old house therein and built a new house; the exchange deed, dated 01.03.1979 is admitted; as per the exchange deed, dated 01.03.1979, the seventh defendant, who is the predecessor of Ramasamy and Kuppana Pillai were entitled to 1 acre 12 cents in Survey No.34/3; out of this 1 acre 12 cents, 1 acre 4 cents was given to Ramasamy and that has been subdivided in the subdivision; the seventh defendant got 1 acre 4 cents in Survey No.34/3; the defendants did not claim any right in Survey No.34/7; the defendants



are unnecessary parties to the suit; the defendants have been added as parties for a dispute between the plaintiffs and the defendants 1 to 6.

3. On the basis of the above pleadings, the learned trial Judge framed the following issues:

- 1.வாதிகள் கோரியுள்ளவாறு பாகப்பிரிவினை மற்றும் தனித்த சுவாதீனப் பரிகாரம் பெறுவதற்கு அருகதையுடையவர்களா?
- 2.வாதிகள் கோரியுள்ளவாறு நிரந்தர உறுத்துக் கட்டளைப் பரிகாரம் பெறுவதற்கு அருகதையுடையவர்களா?
- 3.வேறு என்ன பரிகாரம்?

4. During the course of trial, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and Exs.A1 to A6 were marked. On the side of the defendants, one witness was examined as DW1 and Ex.B1 was marked. On conclusion of the trial, the learned Judge dismissed the suit. Aggrieved over the same, the plaintiffs have filed the appeal.

5. The learned counsel for the appellants submitted that the trial court has not considered the description of properties in Ex.A1 and Ex.B1 which are related to the suit properties, the learned Judge has failed to see that out of 10 cents in Survey No.34/3, only 5 cents were sold by the plaintiffs' brother as per Ex.B1. Hence, the plaintiffs are entitled to remaining 5 cents. In respect of the 2nd item of the suit property, 4.75 cents out of 12 cents have been allotted to the plaintiffs' family as per Ex.A1 - partition deed. As per Ex.B1 - sale deed, 1/8th share by way of exchange deed (Ex.A2), another 1/8th share was transferred to the defendants, which is totally 2/8=1/4=3/12. The balance 1.75 cents out of 12 cents remains with the plaintiffs and that share has to be partitioned. The trial Court, without noticing the above facts had wrongly dismissed the suit in toto.

6. The learned counsel for the respondents submitted that the trial Judge has rightly worked out the shares of the respective parties and dismissed the suit and it does not require any interference.

7. On the basis of the rival submissions made by both side counsel, I feel that the following points for consideration are essential in this Appeal Suit:

Whether the judgement and decree of the trial Court in dismissing the suit for partition is fair and proper?

8. The fact that the suit properties were ancestral properties of the
<https://hcservices.ecourts.gov.in/hcservices/>



original ancestor - Ramasamy Pillai is not denied. Ramasamy Pillai had two sons, i.e., Karuppana Pillai and Kuppana Pillai. The appellants/plaintiffs are the legal heirs of Karuppana Pillai and children born through his 2nd wife. Karuppana Pillai had another son, by name, Ramasamy Pillai, who was born through his 1st wife. In the year 1961 itself, there was a family partition between Karuppana Pillai and Kuppana Pillai. The partition deed, dated 06.12.1961, is available as Ex.A1. In the said partition, Karuppana Pillai was allotted with 9th item under 'A' schedule and Kuppana Pillai and his son were allotted with 8th item under 'B' schedule. The 7th item of 'A' schedule and 7th item of 'B' schedule are house properties with 10 cents of site each. The above said property is described as 1st item of the suit property. The relief of partition and permanent injunction is mainly with regard to the 1st item of the suit schedule properties. The said item is situated in Survey No.34/3.

9.The 2nd item of the suit property is situated in Survey No.34/7. The above properties is shown as 8th item under 'A' schedule property and it measures an extent of 53 cents. There is a Will, in which, Karuppana Pillai branch was given with 4.75/12 and Kuppana Pillai was given with another 4.75/12 under 9th item of 'B' schedule. The appellants would submit that despite item No.1 is shown as divided for both Karuppana Pillai and Kuppana Pillai in Ex.A1-partition deed under 7th item of 'A' schedule and 7th item of 'B' schedule respectively, actual division has not been taken place in respect of the same.

10.Despite the same, the extent of entitlement for each branch is not in dispute. The written statement filed by the defendants 3 and 7 did not deny the above facts. Ramasamy Pillai, who is the son of Karuppana Pillai born through his 1st wife is said to have sold 5 cents in the 7th item of 'A' schedule in the partition deed in favour of Kuppana Pillai under sale deed, dated 24.04.1964 and the same is marked as Ex.B1. The learned Judge has dismissed the suit on the ground that Ramasamy Pillai has already sold the suit items in favour of Karuppana Pillai and hence, there is nothing available for partition for the plaintiffs. Ex.B1-sale deed contains several items, among which, 6th item is the house plot measuring an extent of 5 cents; the above said item is a portion of item No.1 of the suit schedule.

11.As stated already, in Item No.1 of the suit schedule, each branch has got 10 cents and each is allotted to their respective shares under 7th item of 'A' schedule and 7th item of 'B' schedule of Ex.A1-partition deed. Since Ramasamy Pillai, son of Karuppana Pillai has transferred only 5 cents out of 10 cents in favour of Kuppana Pillai, there would be remaining 5 cents. Since Karuppana Pillai had two children through his 2nd wife and Ramasamy Pillai was the son



born through his 1st wife, all the three ought to have got equal share in 10 cents.

12. However, Ramasamy has sold 5 cents which is more than his $1/3^{\text{rd}}$ share in 10 cents. Since the sale was effected in the year 1964 itself and the plaintiffs did not raise an objection for the sale, the remaining extent available for partition, in the hands of the plaintiffs can be only 5 cents and $1/2$ share in the house situated therein. But, the learned trial Judge has not considered the remaining extent of 5 cents and half share of the house available for partition and had chosen to dismiss the suit in entirety on the basis of Ex.B1-sale deed. Admittedly, by virtue of Ex.B1-sale deed, Ramasamy did not sell the entire 10 cents allotted to his father under 7th item of 'A' schedule of Ex.A1-partition deed.

13. Since the suit property in Item No.1 comprises 20 cents which is inclusive of both 'A' schedule 7th item -10 cents and 'B' schedule 7th item -10 cents and the house, the plaintiffs are entitled to get the remaining 5 cents out of 10 cents in Survey No.34/3 and allotted as 7th item under the 'A' schedule of Ex.A1-partition deed. This would work out to $1/4$ share in the suit 1st item. **So the plaintiffs are entitled to get $1/4$ share in suit Item No.1.**

14. By virtue of sale made by Ramasamy Pillai, he had sold $1/8$ share in item No.2 which is more than his $1/3$ share. So the remaining extent in Item No.2 would be available to the share of the plaintiffs. Out of 4.75/12 in Item No.2 allotted to the share to Karuppana Pillai through partition deed, $1/8$ share was exchanged in favour of Kuppana Pillai. So the remaining share would be 3.75/12. Since Kuppana Pillai has three children born through his second wife and they are entitled to $1/3$ share each, each of their share would come to 1.25/12.

15. Since the suit Item No.1 is a house property and it is in the joint possession and enjoyment of the plaintiffs also, the other co-owners cannot disturb their joint possession. Hence, the plaintiffs are entitled to get the consequential relief of permanent injunction also.

16. In respect of the 2nd item of suit properties, which is in Survey No.34/7, it is already seen that Karuppana Pillai branch was given with 4.75/12 share in the Will and the land measures 53 cents. The same is shown as 8th item of 'A' schedule in Ex-A1-partition deed and by virtue of the sale deed executed by Ramasamy Pillai in favour of Karuppana Pillai on 24.04.1964 (Ex.B1), he has alienated $1/8^{\text{th}}$ share in the land and the Will. Since the plaintiffs' father Karuppana Pillai was given with 4.75/12 share in Item No.2 excluding $1/8^{\text{th}}$ share sold by the Ramasamy Pillai, the rest of the shares will be



available for partition. Apart from the above sale deed, for the purpose of convenient enjoyment of the properties, Karuppana Pillai and his legal heirs and Kuppana Pillai and his legal heirs have entered into an exchange deed on 01.03.1979. By virtue of the exchange deed, 2 acres 2 cents in Survey No.34/3 was left to the share of Karuppana Pillai. However, the exchange did not impact house plots and the house which is described in Item No.1 of the suit property. But in the above exchange deed, $1/8^{\text{th}}$ share in the well and its appurtenants in Survey No.34/7 was given to Kuppana Pillai. Hence, $1/8^{\text{th}}$ share so exchanged in favour of Kuppana Pillai also should be subtracted from the total share of $4.75/12$ along with $1/8$ share sold by Ramasamy Pillai. So the remaining extent of properties in the hands of the plaintiffs would be $4.75/12$ $(-)$ $[1/8+1/8]$. This would be equivalent to $4.75/12$ $(-)$ $2/8$. This in turn is $\frac{4.75}{12} (-) \frac{1}{4} = \frac{4.75}{12} (-) \frac{3}{12} = \frac{1.75}{12}$. So, the remaining extent of share in Item No.2 available in the hands of the plaintiffs for partition would be $1.75/12$. But, the learned trial Judge has omitted to appreciate the cumulative effect of Ex.A1-partition deed, Ex.A2-exchange deed and Ex.B1-sale deed and arrived at a wrong conclusion that Ramasamy Pillai had sold the entire extent in suit items 1 and 2 and dismissed the suit in entirety. Since the trial Judge has not properly evaluated the evidence available on record, it calls for interference. **Thus the point is answered in favour of the appellants.**

In the result, this Appeal Suit is allowed and the judgment and decree in O.S.No.76 of 2014 on the file of Additional District Court (Fast Track), Palani, is set aside and the suit is decreed and the preliminary decree for partition and separate possession passed in respect of $\frac{1}{4}$ share in Item No.1 and $1.75/12$ in respect of Item No.2 of the suit scheduled properties in favour of the plaintiffs. The suit is also decreed in respect of relief of permanent injunction in respect of the undivided share of the plaintiffs in house which is under the joint possession and enjoyment. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1. The learned Additional District Judge, (Fast Track)
Palani.

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2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-18504[F] dated
13/04/2022)

A.S. (MD) No. 194 of 2017

and

C.M.P. (MD) No. 11276 of 2017

12.04.2022

SP (CO)

KB(28.04.2022) 7P 5C