



A.S.No.440 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

A.S.No.440 of 2011
and M.P.Nos.1 & 2 of 2012

K.Sampath Udayar

...Appellant/2nd defendant

Vs.

1.V.Pushpa Rani

2.R.Pageeratha

3.K.Krishnaraj Udayar

...Respondents/Plaintiffs

...Respondents/1st defendant

Prayer : Appeal Suit filed under Order 41 Rule 1 of C.P.C. r/w Section 96 of Code of Civil Procedure against the judgment and decree dated 21.06.2011 in O.S.No.16 of 2007 on the file of the learned 2nd Additional District Judge, Pondicherry.

For Appellant	:	Mr.R.Karunakaran
For R1 & R2	:	No appearance
For R3	:	No appearance



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A.S.No.440 of 2011

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The 2nd defendant in the suit in O.S.No.16 of 2007 on the file of the learned 2nd Additional District Judge, Pondicherry is the appellant in the above appeal.

2.Respondents 1 and 2 filed the suit in O.S.No.16 of 2007 for partition and for separate possession of their respective 1/4th share in all the suit properties and for other consequential reliefs.

3.The suit properties consist of 'A' and 'B' schedule. 'A' schedule properties consist of four items and 'B' schedule properties consist of 31 items. The suit properties are described with reference to the extent in different survey fields and they are situated either in Thethampakkam Village, Mannadipet Commune, Puducherry or in Suthukeni Village, within Villianur SR District.



A.S.No.440 of 2011

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4.The relationship between the parties is not in dispute. It is admitted that the suit properties belonged to late Thiru.Kuppusamy Udayar. He has three sons and one daughter through his wife, Tmt.Sakkubai Ammal. The 1st plaintiff is the daughter, and defendants 1 and 2 are the sons of Thiru.Kuppusamy Udayar. The 2nd plaintiff is the wife of one Thiru.Radhakrishnan who is the first son of the said Thiru.Kuppusamy Udayar. Since the father died intestate, this Court finds no issue regarding 1/4th share each in all the properties of father. Since the Trial Court found that the suit 'A' and 'B' schedule properties were allotted to father of appellant in a family partition under Ex.A3 and hence granted a decree as prayed for. The respondents are held entitled to mesne profits.

5.The learned counsel appearing for the appellant pointed out that the suit properties have not been described with reference to boundaries and expressed his objection regarding the identity of the suit properties and the availability of some of the suit properties for partition. The learned counsel then submitted that the father himself has alienated a few items of the suit properties. It is further submitted that some of the suit properties had been



A.S.No.440 of 2011

WEB COPY

acquired by the Government for public purposes. The learned counsel appearing for the appellant submitted that the appellant/2nd defendant has no objection to give an equal share to the plaintiffs in all the suit properties which are available, and this Court may only record that decree confined to the suit properties which are available for partition. However no such defence is taken and no document is filed. This Court cannot entertain the request as the appellant have not produced this Court any material showing alienations or acquisition.

6.The learned counsel appearing for the appellant fairly admitted that the appellant had earlier issued a notice for the purpose of partition, specifying the suit properties as available for partition. If any of the properties had already been sold by Thiru.Kuppusamy Udayar during his life time, the suit properties would not be referred to as a property available for partition. Similarly, the suit properties acquired by the Government cannot be included in the partition. However, this Court is unable to find any material produced before this Court either regarding the acquisition or disbursement of compensation paid for the lands acquired from late



A.S.No.440 of 2011

Thiru.Kuppusamy Udayar.

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7.The 3rd respondent died, leaving behind respondents 4 to 6. The appellant/2nd defendant filed applications in C.M.P.Nos.20647, 20649 and 20651 of 2022 to condone the delay of 119 days in filing the petition; to set aside the abatement caused by the death of 3rd respondent in the appeal; and to bring on record the proposed respondents as respondents 4 to 6 in A.S.No.440 of 2011.

8.Though, this Court has given sufficient opportunity to the appellant to pay Batta and serve notice on the proposed legal heirs the appellant has failed to pay Batta. Therefore, C.M.P.Nos.20647, 20649 and 20651 of 2022 were dismissed for non prosecution as against the 3rd respondent by this Court by order dated 23.12.2022.

9.Having regard to the peculiar facts and circumstances of this case, this Court instead of dismissing the appeal as against other respondents, finds it appropriate that the appellant should be given an opportunity to



A.S.No.440 of 2011

WEB COPY

raise his objections in respect of the suit properties.

10.As a result, this appeal suit stands dismissed and the judgment and decree of the Trial Court dated 21.06.2011 in O.S.No.16 of 2007 is confirmed. However, the appellant may raise his objection as to the availability of some of the suit properties by demonstrating that the suit properties were already disposed of during the life time of late Thiru. Kuppusamy Udayar and that some of the lands were acquired by the Government. If the acquisition is admitted or proved, the plaintiffs are entitled to claim an equal share of the compensation that is available or disbursed to anyone after the filing of the suit. However we are not inclined to express our opinion on merits. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (P.B.B., J.)
13.02.2023

cda
Internet : Yes
Index : Yes / No



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A.S.No.440 of 2011

To

- 1.The 2nd Additional District Judge, Pondicherry.
- 2.The Section Officer,
VR Section, High Court,
Chennai.



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A.S.No.440 of 2011

S.S.SUNDAR, J.,
and
P.B.BALAJI, J.,

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A.S.No.440 of 2011

13.02.2023