



S.A.No.1072 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.1072 of 2021
and C.M.P.No.20208 of 2021

1. Fathima

2. Kasim

3. Mohammed

... Appellants

Vs.

1. Habib (Died)

2. Nazeer

3. Ayub

4. Shabi @ Saffiullah

5. Ansar

6. Mairun Anwar

7. Makbubasha Sheikbasha

8. Sunera Makboolbasha

9. Vahid

(Respondents 4 to 9 are impleaded as party
respondents vide Court order dated 30.03.2023
in C.M.P.No.19748/2021 in S.A.No.1072 of 2021)

10. Jei Punnisha Abeeb



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11. Shabana Begam
12. Janapakasim Abeeb
13. Sameem Nazeer
14. Mohsin Habib Shaikh
15. Kavish Abeeb

(Respondents 10 to 15 are brought on record as legal heirs of the deceased R1 vide Court order dated 30.03.2023 in C.M.P.No.6567/2023 in S.A.No.1072 of 2021)

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgment and Decree made in A.S.No.28 of 2018 dated 21.11.2020 on the file of the Principal Subordinate Court, Hosur, reversing the Judgement and Decree made in O.S.No.24 of 2008 dated 28.09.2018 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Appellants : Mr.P.Satheesh Kumar
For Respondents : Mr.S.Mukunth, Senior Advocate
for Mr.M.S.Swathish Kumar
for R2 & R3, R10 to R15
M/s.G.Pramila Tamil Selvi
for R4 to R9.



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JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the Principal Subordinate Court, Hosur, in A.S.No.28 of 2018 dated 21.11.2020, reversing the Judgment and Decree passed by the District Munsif cum Judicial Magistrate Court, Denkanikottai, in O.S.No.24 of 2008 dated 28.09.2018.

2. The appellants are the plaintiffs and respondents 1 to 3 are the defendants before the trial Court. The appellants/plaintiffs had filed the Original Suit seeking declaration of title and permanent injunction. The suit was decreed in favour of the appellants/plaintiffs and it was set aside by the first appellate Court. Aggrieved over the same, the appellants/plaintiffs have filed this present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.



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4. The crux of the plaint averments as follows:

(i) Originally the suit properties and other properties belonged to Landge @ Imam Sahib, father-in-law of the 1st plaintiff and the grand father of the 2nd and 3rd plaintiffs. The said Imam Sahib was in possession and enjoyment of the suit properties and other properties by paying necessary taxes to the Government. The above said Landge @ Imam Sahib had passed away 40 years ago, leaving behind his 4 sons namely Haseen Saheb, Janab Kasim Sahib, Kuppugan @ Imam Sahib and Husain Sabib as his legal heirs to succeed him.

(ii) 50 years ago, during the life time of Landge @ Imam Sahib, an oral partition was effected in the presence of the Village elders namely Bakiri Imam Sahib, Rahamed Sahib, G.D.Hussain Sahib and then Ex-village munsif. Based on the oral partition, the suit properties were allotted to the Kuppugan @ Iman Sahib, the husband of the 1st plaintiff and father of the 2nd and 3rd plaintiffs and ever since, the above said Kuppugam Imam Sahib was in possession over the suit properties. The old patta bearing no.185 was issued in the name of Imam Bee, the grandmother of the plaintiffs.



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(iii) The said Imam Bee died 30 years ago. Kuppugan @

Imam Sahib died on 02.03.2001 leaving behind his wife namely Fathima/1st plaintiff and 2 daughters namely, Myroon Bee, Pyari Ma and four sons namely Kasim, Mohammed (2 and 3 plaintiffs), Sufiullah and Ansar. Except the 2nd and 3rd plaintiffs, other two sons and the two daughters had moved to Bombay and they have not made any claim over the suit properties and therefore, they were not impleaded as parties to these suit proceedings.

(iv) Defendants 1 to 3 are the sons of Janab Kasim Sahib, who is the brother of Kuppugan @ Imam Sahib/the husband of the 1st plaintiff and the father of 2nd and 3rd plaintiffs. Defendants 1 to 3 do not have any right or interest over the suit properties. The plaintiffs are hard working people and with great difficulty and by spending huge amount, they have brought the schedule property under cultivation. The plaintiffs have also constructed an asbestos sheeted house and residing with their family and in another portion, one sardar is residing for rent.

(v) While so, defendants 1 to 3 have joined together and made claim over the suit properties with their men and attempted to trespass into the suit properties on 15.01.2008. Their attempt was prevented by the plaintiffs, however, defendants 1 to 3 left the place by proclaiming that they



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would definitely come to the suit properties with force and dispossess the plaintiffs from the suit properties. Hence, the plaintiffs have filed the suit seeking declaration of title and permanent injunction.

5. Defendants 1 to 3 have filed the written statement contending as under:

5.1. An oral partition has taken place in between the sons of Landge @ Imam Sahib, whereby, the suit properties in Survey No.52/6 C was allotted to the father of defendants namely Janab Kasim Sahib and ever since from the oral partition, he was in possession and enjoyment of the suit properties and after his demise, defendants 1 to 3 are in possession and enjoyment of the suit properties.

5.2. The original Survey Number of the suit property was 52/6 and before UDR survey, it was in the name of Landge @ Imam Sahib and Imam Bee, who are the grand parents of the 2nd and 3rd plaintiffs and defendants 1 to 3. During the UDR survey, the Survey No.52/6C has been allotted to the father of the defendants namely Janab Kasim Sahib and he was in possession of the Survey No.52/6C by putting up wire fencing over the property.



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5.3. The father of defendants 1 to 3, Kasim Sahib died 20 years ago

and due to the family circumstances, defendants 1 to 3 had left the place for their livelihood, however, they used to visit the suit properties often and they were doing agricultural activities in the suit properties. While so, the paternal uncle of the defendants namely Kuppagam @ Imam Sahib, had influenced the revenue officials and got patta in his name for the 1st schedule property. After coming to know about the same, defendants 1 to 3 filed a petition before the District Revenue Officer, Krishnagiri for the correction in the revenue records in the year 2007 and the said Application was sent to the Tashildar, Denkanikottai for enquiry and after enquiry, a Report was sent to the District Revenue Officer. Thereafter, the District Revenue Officer had passed an order on 22.02.2008 to delete the names of the legal heirs of Kuppugan @ Imam Sahib in Patta No.39 and to include the name of the legal heirs of Janab Kasim Sahib. As per the order of the District Revenue Officer, the patta has been granted to the defendants for the lands in Survey No.56/6c and that the plaintiffs have not preferred any Appeal against the order passed by the District Revenue Officer and that the order became final. The plaintiffs have suppressed the real facts and filed the present suit and thereby, there is no cause of action to file the suit.



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6. Defendants 1 to 3 have also filed the additional written statement on 11.08.2010 alleging that during the pendency of the suit, the plaintiffs have sold the lands in survey no.52/6C and 52/7C to the third parties and the subsequent purchasers of the above said properties are necessary parties to the suit, whereas, the plaintiffs have not impleaded the subsequent purchasers in the suit. Hence, the suit is bad for non joinder for necessary parties. Further, the plaintiffs have not stated the details of properties allotted in the oral partition that has been effected in between the sons of the Landge @ Imam Sahib.

7. Defendants 1 to 3 have also filed the additional written statement on 17.07.2013 stating that the suit 1st schedule property viz., the land in Survey No.52/6C absolutely belongs to the defendants by virtue of oral partition and the defendants are in actual possession and enjoyment of the suit properties. Further, they contended that a house was in existence in the suit property from quite long time and the same has been brought to the notice of the plaintiffs only during the cross-examination of PW2 and that the house bearing No.6/386 also absolutely belongs to the defendants and that the valuation of suit and court fee paid by the plaintiffs are not correct. They



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further contended that the trial Court has no jurisdiction to try the suit and thereby, sought for dismissal of the suit.

8. The trial Court framed the following issues.

1. Whether the plaintiffs are entitled to get declaration of title and permanent injunction as prayed for?
2. It is true that the patta relates to the suit 1 schedule property stands in the name of the defendants?
3. Whether the defendants are in possession and enjoyment over the suit properties?
4. Whether the plaintiffs are entitled to get the relief as prayed for?

9. During trial, on the side of the plaintiffs, PW1 to PW6 were examined and Ex.A1 to Ex.A11 were marked. On the side of the defendants, DW1 to DW4 were examined, Ex.B1 to B4 were marked and through DW3, the Junior Assistant of District Collector, Krishnagiri, Ex.Y1 to Ex.Y5 were marked.

10. On consideration of the pleadings, oral and documentary evidence and after hearing both sides, the trial Court decreed the suit by



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judgment and decree dated 28.09.2018. Aggrieved over the same, defendants 1 to 3 preferred appeal in A.S.No.28 of 2018, before the Principal Subordinate Court, Hosur.

11. The defendants have filed the appeal contending that the decree and judgment passed by the trial Court is contrary to law, weight of evidence and probabilities of the case, that the trial Court has not framed correct and proper issues arising on pleadings and that the trial Court has erred in its finding on all issues framed in the case.

12. Based on the grounds of Appeal, the first appellate Court framed the following points for determination.

1. Whether the trial Court's finding that the plaintiffs had proved their title and possession over the suit properties is justiciable?
2. Whether the trial Court is right in granting a decree as prayed by the plaintiffs?
3. Whether the judgment of the trial Court warrants any interference?

13. The first appellate Court, after perusing the materials available



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on record viz., Ex.A2(UDR patta), Ex.A4 (Kist receipts), admission of DW1 in his cross examination and the recitals found in the Ex.A6 (partition deed), found that the plaintiffs established that the suit property was allotted to Kuppugan @ Imam Sahib, husband of the 1st plaintiff and father of the 2nd and 3rd plaintiffs, in the oral partition that took place 50 years ago and also found that ever since the partition, the said Kuppugan @ Imam Sahib and the plaintiffs are in continuous possession and enjoyment of the suit property. The first appellate Court, however, while holding that as per Ex.A3 (legal heirs certificate), there are 7 legal heirs to Kuppugan @ Imam Sahib, finding that 3 legal heirs of Kuppugan @ Imam Sahib alone filed the suit and the other legal heirs were not impleaded while claiming that the entire property belongs to them, had held that the suit filed by the plaintiffs is not maintainable and had allowed the appeal and set aside the judgment and decree passed by the trial Court.

14. The first appellate Court held that as per Section 34 of Specific Relief Act, 1963, when a declaratory relief is sought for by any person who is entitled to any legal character or to any right as to any property, he shall file a suit as against a person denying, or interested to deny his title to such



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character or right, a discretion has been vested with the Court to grant such a relief of declaration, while affirming the findings of the trial Court with regard to the right of the plaintiffs over the suit property based on the evidence available on record, that they are the legal heirs of Kuppugan @ Imam Sahib, held that the plaintiffs are not entitled to get a declaratory relief of title over the suit property for non impleading of the other legal heirs of Kuppugan @ Imam Sahib mentioned in the Ex.A3 (legal heir certificate). The first appellate Court, though found that the legal heirs of Kuppugan @ Imam Sahib were in possession of the property, refused to give declaratory relief for non impleading of the remaining legal heirs. Aggrieved over the findings of the first appellate Court, the present Second Appeal has been filed.

15. The Second Appeal has been admitted on 08.12.2021 on the following substantial question of law:-

“Whether the first Appellate Court was right in reversing the judgment of the trial Court on the ground that all the legal representatives of Kuppugan @ Imam Sahib are not impleaded as parties in the suit, especially when appellants represent the estate of the deceased.”



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16. Mr.Satheeshkumar, learned counsel for the appellants/plaintiffs submitted that the trial Court, finding that the suit schedule property was allotted to Kuppugan @ Imam Sahib, predecessor of the appellants/plaintiffs, during the oral partition and after the demise of Kuppugan @ Imam Sahib, his legal heirs were in continuous possession of the suit property, had decreed the suit in favour of the plaintiffs, whereas, the first appellate Court, without there being any objection raised by the defendants with regard to non impleading of the other legal heirs of Kuppugan @ Imam Sahib, had, *suo motu*, taken up the ground of non impleadment of other legal heirs while affirming the order of the trial Court with regard to declaration and possession, had allowed the Appeal Suit on technical grounds and had denied declaratory relief. He further submitted that the plaintiffs represent the estate of their father Kuppugan @ Imam Sahib and the persons who could object for non impleadment could be none other than the other legal heirs of the Kuppugan @ Imam Sahib and not the contesting defendants and when such being the case, the first appellate Court ought not to have allowed the Appeal Suit on technicality, when such a plea was not raised by the defendants either during trial or appeal. He also submitted that the non impleadment could be only a curable defect and before this Court, the plaintiffs have impleaded the



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other legal heirs also and they have no objection. The plaintiffs have also filed C.M.P.No.19748 of 2021 for impleading the other legal heirs and this Court had also allowed the same and pursuant to which, all the other legal heirs have been impleaded and they have engaged a counsel and they have also filed a joint affidavit stating that they do not claim right over the suit property and they have no objection for the grant of declaration of title to the suit property and other relief in favour of the appellants/plaintiffs. He further submitted that when the trial Court confirmed that the appellants/plaintiffs are in continuous possession, it ought not to have allowed the Appeal Suit. He further submitted that when the defect of non-impleading of the necessary parties has been condoned and the necessary parties are brought on record and when they have expressed no objection for declaration being granted in favour of the appellants/plaintiffs, the judgment of the appellate Court ought to be set aside and the Judgment and Decree of the trial Court has to be confirmed. In support of the above contention, he relied upon the judgment of the Hon'ble Apex Court in the case of ***Dolai maliko (Died) and others vs. Krushna Chandra Patnaik and others*** reported in ***(1966) Supp SCR 22 : AIR 1967 SC 49***, to insist the point that even at the appellate stage, the necessary parties can be impleaded.



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17. Mr.S.Mukunth, learned Senior Counsel appearing for respondents 2, 3 & 10 to 15 would contend that the appellants/plaintiffs ought to have impleaded the other legal heirs at the earlier stage, at the time of filing the suit and the appellate Court finding the defect had rightly holding that discretionary relief of declaration cannot be granted on account of non impleadment of necessary parties, had rightly set aside the order of the trial Court and the same cannot be cured. He also submitted that the matter has to be remanded to the trial Court to bring the other legal heirs on record on record and fresh trial has to be conducted.

18. Learned counsel appearing for the newly impleaded respondents 4 to 9 submitted that respondents 4 to 9 are the children, grand children and legal heirs of Kuppugan @ Imam Sahib and they have no objection for the Suit being decreed in favour of the appellants/plaintiffs and that they have not been prejudiced by their non-impleadment in the suit.

19. Heard both sides and perused the materials available on record.



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20. The suit has been filed seeking for declaration of title and permanent injunction. The trial Court, after taking into consideration the material evidence available on record, decreed the suit in favour of the plaintiffs. The first appellate Court, while holding that the appellants were in possession, had dismissed the suit for want of impleadment of the necessary parties. Now, the necessary parties have been impleaded, pursuant to the order passed by this Court in C.M.P.No.19748 of 2021 dated 30.03.2023 and that they have also expressed no objection for the suit being decreed in favour of the appellants, who are the plaintiffs.

21. The suit is one for declaration of title and permanent injunction against defendants 1 to 3, who are the contesting parties. In plaint itself, the plaintiffs have contended that one Kuppugan @ Imam Sahib died on 2.3.2001 leaving behind him, his wife, four sons and two daughters and the first plaintiff being the wife of Kuppugan two sons alone have come up in the suit as plaintiffs 2 and 3 and the other sons and daughters of the said Kuppugan had moved to Bombay and they have not made any claim over the suit properties and thereby, they were not shown as parties to the suit. The suit came to be decreed by the trial Court. The Appellate Court, though



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concurrent with the findings of the Trial Court on merits, allowed the Appeal and set aside the judgment and decree of the Trial Court on mere technicalities that the other legal heirs of the predecessor in title had not been impleaded as parties to the suit.

22. The predominant aspect to be noted is that no claim has been made by the plaintiffs as against the parties intended to be impleaded and such parties, who sail on the same boat with the plaintiffs, have also filed their Affidavits expressing no objection for grant of relief in favour of the plaintiffs. Further, the defendants have at no point raised any objection either before the trial Court or the appellate Court with regard to non impleading of other legal heirs. While so, the first appellate Court had *suo mottu* taken the ground and had set aside the order of the trial Court on technicalities. The plaintiffs represent the estate of Kuppugan @ Imam sahib.

23. In ***Dolai Molliko & Others vs. Krushna Chandra Patnaik & Others*** referred supra, the Hon'ble Apex Court has been held that



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“ The estate of the deceased was fully represented by the heirs who had been brought on the record and these heirs represented the absent heirs also, who would be equally bound by the result.”

It was further observed that :

“ Even where the plaintiff or the appellant has died and all his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal, as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceedings.”

24. The appellants are the legal heirs of Kuppugan @ Imam sahib.

The non impleaded plaintiffs are also the legal heirs of Kuppugan @ Imam



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sahib. The appellants represent the estate of Kuppugan @ Imam sahib and they have not suppressed anything and the non-impleading of the other legal heirs has been explained in the plaint and there is absolutely no averment of collusion or fraud and thus the substantial question is answered accordingly. Further, the scope of Order 1 Rule 10 CPC is to avoid multiplicity of proceedings by permitting any party to be impleaded at any stage of the proceedings to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit and thereby, there is no need to remand the matter back to the trial Court. Therefore, this court is of the view that the Second Appeal has to be allowed and the judgment and decree of the Trial Court has to be restored by setting aside the judgment and decree of the appellate court.

25. In view of the above, the second appeal stands allowed and the judgment and decree passed by the Principal Subordinate Court, Hosur, in A.S.No.28 of 2018 dated 21.11.2020 is set aside and the judgment and decree passed by the learned District Munsif cum Judicial Magistrate, Denkanikottai, in O.S.No.24 of 2008 dated 28.09.2018 is restored. No costs. Consequently, the connected Miscellaneous Petition is closed.



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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The Principal Subordinate Court, Hosur.
2. The District Munsif cum Judicial Magistrate Court, Denkanikottai,
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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