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S.A.No.105 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.105 of 2017
and
CMP.No.26036 of 2019

Kunchitapadam

...Appellant

Vs.

1.Thillai Govindan

Kaliyaperumal (Deceased)

2.Arumugham
3.Pandurangam
4.Raju

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed on 02.12.2015 in A.S.No.18 of 2015 on the file of the Additional Sub-Judge, Vridhachalam, to reverse the judgment and decree passed on 27.03.2015 in O.S.No.520 of 2004 on the file of the Principal District Munsif, Vridhachalam.



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For Appellants : Mr.S.Pramod Narayan
for Ms.R.Lakshmi Narayanan

For Respondents : Mr.G.Surya Narayanan for R1 to R4

JUDGMENT

The unsuccessful plaintiff in the suit is the appellant. He filed a suit seeking 1/6th share in the suit property. The suit as well as First Appeal were dismissed. Aggrieved by the concurrent findings against him, he is before this Court.

2. According to the appellant/plaintiff, the suit property was allotted to the share of his father-in-law Thiruvengkada Chettiar in the family partition between Thiruvengada Chettiar and his brother on 26.08.1975 and the respondents are the sons of Thiruvengada Chettiar. The suit was originally filed by the appellant against the respondents, who are the sons of Thiruvengada Chettiar and subsequently the defendants 6 to 8 namely children of appellant were added as defendants 6 to 8. Pending suit, the second defendant Kaliyaperumal died. Therefore, his legal representatives were added as defendants 9 to 11.



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3. It was claimed by the appellant that the present suit property was allotted to the share of Thiruvengada Chettiar in the family partition dated 26.08.1975 and taking advantage of poor health of Thiruvengada Chettiar the respondents herein attempted to get a document executed in their favour. Therefore, a pre-suit notice was issued by the appellant to the respondents. The respondents came up with a reply making false allegations. Subsequently, the wife of the appellant and daughter of Thiruvengada Chettiar namely Sivagami died. After two months, the said Thiruvengada Chettiar also died. In these circumstances, the appellant claimed that he and his children namely defendants 6 to 8 were entitled to 1/6th share in the suit property. The suit was resisted by the respondents on the ground that there was a partition between Thiruvengada Chettiar and sons namely the respondents on 30.07.2001 and the suit properties were allotted to the share of fifth defendant namely Raju. Therefore, it was the specific case of the respondents that the suit property belonged to fourth respondent/fifth defendant and the present suit filed by the appellant was not maintainable. The suit was resisted on the ground of non joinder of necessary parties also since the appellant failed to implead the four other daughters of Thiruvengada Chettiar.



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4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit for partition filed by the appellant is bad for non joinder of necessary parties, namely other daughters of Thiruvengada Chettiar. The trial Court also came to the conclusion that the appellant as PW1 admitted above partition in the year 2001 between Thiruvengada Chettiar and his brother allotting the suit property to the fifth defendant. Therefore, the trial Court came to the conclusion that the appellant was not entitled to any share in the suit property and dismissed the same. Aggrieved by the same, the appellant preferred an appeal in A.S.No.18 of 2015 on the file of the Additional Sub-Judge, Vridhachalam. The first Appellate Court also concurred with the findings of the Trial Court. Aggrieved by the same, the appellant is before this Court.

5. At the time of admission, this Court formulated the following substantial questions of law:

“ 1. Whether the Courts below are correct in dismissing the suit and appeal on the ground of non-joinder of parties against the provisions of Order 1 Rule 9 C.P.C.”



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2. Whether the Courts below are correct in dismissing the plea of the plaintiff on account of non-joinder of parties when the plaintiff can obtain complete and effective relief from Courts in respect of the dispute?”

6. The learned counsel for the appellant submitted that the Courts below ought not to have dismissed the suit on the ground of non joinder of necessary parties in view of Order 1 Rule 9 of CPC. The learned counsel for the appellant further submitted that the Courts below ought to have offered opportunity to the appellant to implead the sharers and therefore, the dismissal of the suit on the ground of non joinder of necessary parties is liable to be set aside.

7. The learned counsel for the respondents submitted that in the suit for partition, sharers are necessary parties. In case the appellant disputes the partition that had taken place in the year 2001, the appellant has to implead all the daughters of Thiruvengada Chettiar and seek partition. Therefore, the Courts below is correct in dismissing the suit on the ground of non-joinder of the necessary parties.



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8. When the appellant was examined as PW1 he clearly admitted that Thiruvengada Chettiar had five sons and five daughters. The appellant herein seeks partition in the suit property through his wife Sivagami daughter of Thiruvengada Chettiar. It is his specific case that the suit properties are the ancestral properties allotted to the share of Thiruvengada Chettiar and after the death of Thiruvengada Chettiar, his wife Sivagami also entitled to equal share. In that case the suit filed by the appellant without impleading the other four daughters is bad for non-joinder of necessary parties. The proviso to Order 1 Rule 9 of CPC makes it very clear that the said Rule is not applicable to the non-joinder of necessary parties. In a suit for partition, in the absence of impleadment of all sharers, there cannot be an adjudication on the share of respective parties. Therefore, the Courts below rightly came to the conclusion that the suit was bad for non-joinder of necessary parties. The findings of the Courts below requires no interference by this Court.

9. It is pertinent to note that regarding non-joinder of necessary parties, the respondents raised a plea in the written statement, in spite of the same the appellant had not chosen to implead the sharers. Therefore, both the substantial questions of law framed at the time of admission are answered



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against the appellant and in favour of the respondents, accordingly, this Second Appeal is dismissed.

10. The dismissal of the present suit on the ground of non-joinder of necessary parties will not prevent the appellant from filing a fresh suit seeking partition by impleading all the sharers. In such case, the respondents are entitled to raise all the defence which they are entitled to raise as per law.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
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S.SOUNTHAR, J.

dna

To

- 1.The Additional Sub-Judge, Vridhachalam.
- 2.The Principal District Munsif, Vridhachalam.

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