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A.S.No.368 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2023

Pronounced on : 29.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

**A.S.No.368 of 2017
and
C.M.P.No.13865 of 2017**

S.Saminathan

... Appellant

Versus

1.V.Shanthi
2.Mayilsamy Gounder @ Mayilesan
3.P.Moorthy
4.Maheswarai
5.Kalliammal
6.Subramaniam
7.Mayilsamy
8.Soundhararajan
9.Periya Thambi @ Subramaniam
10.Chinna Thambi
11.Eswaran
12.Palanisamy
13.Viswanathan

... Respondents

PRAYER : Appeal is filed under Order 41 Rule (1) read with Section 96 of Civil Procedure Code against the Judgment and Decree dated 08.02.2017 made in O.S.No.16 of 2015 on the file of I Additional District

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cum Sessions Court, Tiruppur.

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For Appellant : Mr.Vishnu Prasad
for M/s.Sarvabhauman Associates

For Respondents : Miss.Abinaya
for Mr.V.Vijayakumar
[for R1 to R8, 10, 12 and 13]

R9 – No Appearance
R11 – Refused.

JUDGMENT

R.KALAIMATHI, J.,

This appeal is preferred by the 1st defendant against the judgment and decree of the learned I Additional District Judge, Tiruppur in O.S.No.16 of 2015 dated 08.02.2017.

2. The suit was laid by the sole plaintiff Tmt.V.Shanthi, daughter of Chenniappan @ Chenniappa Gounder against her only brother S.Saminathan and co-owners in respect of A-schedule properties Defendants 2 to 7 and defendants 9 to 13 are co-owners of D-schedule properties, for the relief of partition and for permanent injunction not to alienate the suit properties. The Trial Court upon hearing the arguments of both sides and on appreciating the oral and documentary evidence, has decreed the suit as prayed for.



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The plaint details in brief:

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3. Sole plaintiff is the sister of 1st defendant. The defendants 2 to 13 are the relatives of the plaintiff and their co-sharers. The suit properties are the ancestral properties of the plaintiff, defendants 1 to 7 and 9 herein and they are in joint possession and enjoyment of the suit properties.

4. A-schedule properties belonged to the plaintiff's maternal grand father Avinashiappa Gounder. He along with one Chinnappan @ Periyanna Gounder jointly entered into a sale agreement with one Venkatrama Ayyer and on 30.05.1942, the said Venkatrama Ayyer executed a sale deed in favour of Avinashi Gounder and Chinnappan @ Periyanna Gounder based on the said sale agreement. Therefore, Avinashi Gounder and Chinnappa @ Periyanna Gounder jointly entitled to half share of the properties as per the sale deed. Avinashiappa Gounder died intestate in the year 1949 leaving behind his father Poraya Gounder, wife Ramathal and daughter Karuppathal. After the death of Avinashiappa Gounder, the said properties devolved on his father Poraya Gounder as he has no surviving male heirs.



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5. The plaintiff's maternal grand father Poraya Gounder executed a settlement deed in respect of 'A' schedule properties in favour of his grand daughter Karuppathal who is the mother of the plaintiff and the 1st defendant vide Doc.No.542 of 1971 dated 22.04.1971. The said Karuppathal was in joint possession and enjoyment of A-schedule properties along with other co-sharers.

6. The plaintiff's mother Karuppathal died intestate on 28.11.2013 leaving behind her son 1st defendant and her daughter plaintiff herein. Both of them are in joint possession and enjoyment of A-schedule properties without any hindrance. Therefore, the plaintiff and the 1st defendant are entitled to half share each in the A-schedule properties.

7. As regards B-schedule properties, it belonged to Karuppathal (mother of plaintiff) and 2nd defendant herein vide patta No.348 issued by the Special Tahsildar, Natham land tax scheme. Therefore, the plaintiff and the 1st defendant are having 1/4th share each in the B-schedule properties. The C-schedule properties initially belonged to the plaintiff's paternal grand father Kolantha Gounder @ Marappa Gounder and his wife Chinna Rassakkal. The said Kolantha Gounder @ Marappa Gounder executed a Will dated 30.01.1982 in respect of certain



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properties in C and D schedule properties to his sons and grand sons including his son Chenniappan @ Chenniappa Gounder who is the father of the plaintiff vide Doc.No.4/1982. The said Chinna Rassakkal who is the paternal grand mother of the plaintiff executed a settlement deed on 25.04.1974 in respect of lands in C-schedule to her sons and grand sons including her son namely Chenniappan @ Chenniappa Gounder vide Doc.No.286/1974.

8. The plaintiff's father Chenniappan @ Chenniappa Gounder was in joint possession and enjoyment of C-schedule properties along with other co-sharers. On 10.10.2007, he along with his daughter who is the plaintiff herein and his son, the 1st defendant exchanged their properties with the other co-sharers by way registered exchange deed vide Doc.No.5089/2007. The said Chenniappan @ Chenniappa Gounder died intestate on 08.11.2013 leaving behind his daughter plaintiff and son 1st defendant herein. Both of them are in joint possession and enjoyment of C-schedule properties. Both the plaintiff and the 1st defendant have half share each in the C-schedule properties.

9. The D-schedule properties originally belonged to Chenniappan @ Chenniappa Gounder as per the Will 30.01.1982 vide 5/15



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Doc.No.4/1982. As per the Will, the legal heirs of Murugasamy Gounder, Marappa Gounder, Kalliannan, Chenniappan @ Chenniappa Gounder each are having 1/4th share in the 'D' shcedule properties. Therefore, the plaintiff and the 1st defendant have got 1/8 shares in the properties mentioned in the Will.

10. Though the plaintiff demanded to effect partition, on several occasions, as the defendants were postponing to effect partitioning the suit properties, this suit came to be filed.

11. On behalf of the 1st defendant, it is averred that relationship between the plaintiff and 1st defendant is admitted. The plaint details in respect of all four schedules have been admitted. But, in respect of the shares demanded by the plaintiff is denied. The plaintiff herein has relinquished her rights in the properties orally, therefore, at present the plaintiff does not have the right or title in the said properties. As she was given in marriage by presenting 45 sovereigns of gold jewels and the amount of Rs.5,00,000/- was spent from the family fund for performing the marriage of the plaintiff herein. In the year 2004, 25 cents of land situate at Iyampalayam was purchased in the name of the plaintiff's husband at the instance of the plaintiff. As per the family arrangement,

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the 1st defendant has been in possession and enjoyment of the suit properties. The suit is bad for non-joinder of necessary parties. In respect of C-schedule properties, and the persons to be added as defendants 1 to 15 are given in the written statement.

12. Whereas on behalf of the 9th defendant, it is pleaded that 9th defendant is the co-sharer in the 'C' and 'D' schedule properties. The other co-sharers in respect of 'C' and 'D' schedule properties are necessary parties.

13. Learned counsel for the Appellant/1st defendant, it was contended that the suit is bad for non-joinder of necessary parties, which was not appreciated by the Trial Court.

14. Per contra, learned counsel appearing for the respondents 1 to 8, 10, 11 to 13, it was argued that apart from brother and sister, other necessary parties have also been arrayed as defendants. The Trial Court has properly appreciated oral and documentary evidence let in by both sides and the judgment rendered is perfectly in order. It is further contended that absolutely there is no necessity to interfere with the judgment of the Trial Court.

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15. To substantiate the case of the plaintiff, the plaintiff has examined herself as PW1 and one R.Govindasamy and one Viswanathan have been examined as PW2 and PW3 respectively. Exs.A1 to A25 have been marked. Whereas on the defendants side, 1st defendant has examined himself as DW1 and one Murali (Tahsildar of Uthukuli Taluk) and one Subramaniam were examined as DW2 and DW3 respectively and Exs.B1 to B3 have been marked.

16. On a careful perusal of the grounds of appeal, it could be inferred that the main ground canvassed is non-joinder of necessary parties.

17. In the plaint, there are as many as four schedule of properties namely "A, B, C and D" are mentioned. I took pains to get to know, the plea of non-joinder of necessary parties relates to which schedule of property. Having thoroughly gone through the pleadings of the defendants No.1 and 9, found in their respective written statements, it pertains to only C-schedule properties.



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18. The relevant documents in respect of C-schedule property are

Ex.A10 certified copy of the Will dated 30.01.1982 and Ex.A11 certified copy of the settlement deed dated 25.04.1978. Nothing is elicited from PW1 based on the above said two documents in respect of C-schedule properties.

19. Order 1 Rule 9 CPC deals with mis-joinder and non-joinder of which is extracted below :

"Order 1 Rule 9 CPC: Misjoinder and non-joinder.- No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

[Provided that nothing in this rule shall apply to non-joinder of a necessary party]."

20. The said rule is a rule of procedure. Of course, in a suit for partition, all the co-sharers are necessary parties. The Court is expected to deal with each case with reference to the particular facts on hand.



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21. It is relevant to extract the observation made by the Hon'ble Supreme Court in **Kanaka Rathanammal vs. Loganatha** reported in AIR 1965 SC 271, wherein it is held that in a suit for partition, all the sharers are necessary parties and also for the proposition that the suit is liable to be dismissed for non-joinder of necessary parties. In the said case, one of the legal heirs of the mother namely daughter did not choose to implead her two brothers and hence the suit was dismissed.

22. In **A.Ramachandra Pillai v. Valliammal (died)** reported in 1987 (100) LW 486, this Court has observed hereunder:

"... it is true that under Order 1. Rule 9 of the Code of Civil Procedure no Suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are, not only proper but also necessary parties to it, the infirmity in the Suit is bound to be fatal."

23. In **Kuppammal and another vs. Palaniswamy and others**, reported in 2020 (1) TLNJ 521, this Court has held that the suit for partition cannot be dismissed on the sole ground of non-joinder of necessary parties. If the Court is of the view that there are other parties who are to be heard, other than the persons arrayed as defendants, a direction should have been issued to the plaintiffs to implead them..."

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24. This issue was dealt with by the Trial Court as issue No.1.

25. In this regard, the written statement of the 1st defendant reads that the total extent of C-shcedule property is Acre 18.30 cents (S.No.196). In the plaint, it has been mentioned as Acre 4.40 cents and it has been further averred that the whole extent of Acre 18.30 cents is not divided so far. The plaintiff having hidden the said facts and only for Acre 3.30 cents she has filed the suit, is not maintainable and for the whole extent as mentioned supra (Acre 18.30 cents) (with regard to C-schedule property) 15 sharers to be added as parties to the suit.

26. But, the trial Court has concluded that the defendants No.1 and 9 have not proved that the above said 15 persons (mentioned in paragraph No.15 of the written statement of the 1st defendant) are co-sharers of the suit property. Hence, the contention of the defendants 1 and 9 were negated by the Trial Court.

27. It is also admitted by the 1st defendant side that only a portion of S.No.195/4 is shown as "C-schedule" property. Though on behalf of the appellant/1st defendant, it is contended that in respect of C-schedule

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properties, 15 persons as enumerated in the written statement, should have been added as parties, in what way, they are connected is supposed to have been stated, which is not done.

28. On a careful perusal of the plaint, it is evident that in 'C' schedule, in respect of S.No.196 in Vattalapa Village in Uthukuli Taluk an extent of Acre 3.30 cents is shown with specific boundaries. It is not in dispute that Chenniappan @ Chenniappa Gounder died intestate on 08.11.2013 leaving behind his daughter plaintiff (Shanthi) and son, the 1st defendant (S.Saminathan). When that be the case, when the legal heirs of Chenniappan @ Chenniappa Gounder have duly been arrayed as parties, the contention of the 1st defendant to the effect that the total extent in S.No.196 in Vattalapathy Village in Uthukuli Taluk which is Acre 18.30 cents and the sharers concerned, 15 sharers shown in the written statement of the 1st defendant to be added as parties to the suit is wholly untenable and misleading. It is to be taken note of that the plaintiff had filed the suit for an extent of Acre 3.30 cents in respect of C-schedule property as mentioned supra. As the legal heirs of Chenniappan @ Chenniappa Gounder have duly been arrayed as parties to the suit, the contention of the defendants 1 and 9 to the effect that the other co-owners connected with S.No.196 of Vattalapathy

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Village in Uthukuli Taluk are necessary parties to the suit is not acceptable and is untenable in law.

29. For the foregoing reasons, the trial Court has rightly concluded that the suit is not bad for non-joinder of necessary parties.

30. In the result, this Appeal Suit is dismissed and the Judgment and Decree dated 08.02.2017 made in O.S.No.16 of 2015 on the file of I Additional District cum Sessions Court, Tiruppur is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.,) (R.K.M.J.,)
29.03.2023

Index:Yes/No
Speaking/Non-Speaking Order
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To

The I Additional District cum Sessions Court,
Tiruppur.

S.VAIDYANATHAN, J.,
and
R.KALAIMATHI, J.,

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Pre-Delivery Judgment in
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and
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