



A.S.(MD).No.125 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD).No.125 of 2019
and
C.M.P.(MD).Nos.6508 and 6664 of 2019

1.Vasantha
2.Vellaisamy

... Appellants

-Vs-

1.K.R.Bose
2.K.R.Subramanian
3.S.Palanisamy
4.Janaki (died)
5.Meenakshi
6.S.Rajendharan
7.S.Mukthukumar
8.V.Kamalam
9.S.Thillai Devi

Respondents 6 to 9 are brought on record as LR's of the deceased fourth respondent vide Court order dated 04.01.2022 made in C.M.P.(MD).Nos.6478, 6481 and 6482 of 2021 in A.S.(MD).No.125 of 2019.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 15.02.2019 made in O.S.No.50 of 2015 on the file of the Additional District Court, Pudukottai.



A.S.(MD).No.125 of 2019

WEB COPY

For Appellants : Mr.S.A.Ajmalkhan
For R1 to R3 : Mr.R.Suriyanarayanan
For R5 : Mr.R.Ponkarthikeyan
For R6 & R8 : No appearance

J U D G M E N T

Aggrieved over the judgment and decree granting preliminary decree for dividing the suit property to the plaintiffs, the present appeal came to be filed by the defendants 1 and 2.

2. During the pendency of the appeal, an application in C.M.P.(MD).No. 6508 of 2023 has been filed to file additional documents viz., the sale deed of the year 1948 and 1974 and other connected documents to show that the property has been sold in the year 1948 and subsequent years by one Alagu Servai.

3. The brief facts leading to the filing of this appeal are as follows:

The case of the plaintiffs is that the suit property originally belonged to one Muthukaruppan Servai. He had three sons viz., Karuppiyah Servai, Subbiah Servai and Alagu Servai. The plaintiffs 1 and 2 are the sons of Meeakshi, who is



A.S.(MD).No.125 of 2019

WEB COPY

the daughter of Karuppiah Servai and the third plaintiff is the adopted son of Subbiah Servai. The first defendant is the daughter of Meenakshi, who is the daughter of Alagu Servai.

4. It is the case of the plaintiffs that Karuppiah Servai and Subbiah Servai were residing in Barma for certain period. At that time, the property was looked after by their brother Alaguservai and he has also mutated his name in the revenue records. The said Alaguservai has also sold the property to an extent of 21 cents to one Muthiah and the defendants 1 and 2 have also created certain documents. Hence, the suit has been filed claiming share in the property on the ground that it is a joint family property.

5. It is the case of the second defendant that the property is the absolute property of Alagu Servai. The said Alagu Servai has sold the property to an extent of 21 cents in the year 1948 in favour of Muthiah Servai. The said Muthiah Servai has sold the property in the year 1974 to the third defendant Janakiammal. The said sale deed has not been challenged so far. Further, it is also denied that the third plaintiff is the adopted son of Subbiah Servai. The suit has been filed in the



A.S.(MD).No.125 of 2019

year 2015 is barred by limitation. Hence, opposed the suit on the ground that the property is the absolute property of Alagau Servai. The defendants 1 and 4 also took a similar defence that the third defendant has purchased the property from the vendor in the year 1974. Based on the above pleadings, the trial Court has framed as many as nine issues.

- (i) Whether the property is the joint family property?
- (ii) Whether the third plaintiff is the adopted son of Subbiah Servai?
- (iii) Whether the property is separate property of Alagu Servai?
- (iv) Whether the plaintiffs are entitled to 2/3rd share in the property?
- (v) Whether the plaintiffs are entitled to preliminary decree as prayed for?
- (vi) Whether the sale deed dated 08.07.1948 is valid?
- (vii) Whether the sale deed 18.07.1974 is valid?
- and (viii) Whether the sale deed in respect of S.Nos.16/28 and 16/35 is valid?

6. On the side of the plaintiffs, P.Ws.1 to 3 were examined and Exs.P1 to P7 were marked and on the side of the defendants, D.W.1 was examined and Exs.D1 to D7 were marked.



A.S.(MD).No.125 of 2019

WEB COPY

7. During the pendency of the appeal, an application in C.M.P.(MD).No. 6508 of 2023 has been filed to file additional documents relating to the property in the year 1948 and subsequent documents.

8. It is the contention of the learned counsel appearing for the appellants that all the legal heirs of Muthu Karuppan Servai have not been impleaded and the property has been sold in the year 1948 itself. Despite the demand made by P.W.1 for giving up their right over the property, which was already been sold, the trial Court has nullified the document of the year 1948 without any materials. Further, it is the contention that the additional documents also absolutely necessary to establish their right. According to him, the property is owned by Alagu Servai and he has dealt with the property in the year 1948 itself. It has not been decided properly by the trial Court. Further, having framed the issue as to whether the third plaintiff is the adopted son of Subbiah Servai, there is no discussion whatsoever was made by the trial Court. Hence, submitted that the additional documents also absolutely necessary and the entire judgment has to be set aside.



A.S.(MD).No.125 of 2019

WEB COPY

9. The learned counsel appearing for the respondents would submit that the trial Court has decided the issue on the basis of the materials available on record. The appellants have not filed any document to show the sale as valid and according to him, even though there was a sale, the same is not binding on the plaintiffs and admittedly, the properties belonging to Muthu Karuppan Servai. Hence, opposed the appeal.

10. In the light of the above submissions, now the points for consideration in this appeal are,

(i) Whether the property is self acquired property of Alagu Servai or joint family property of Muthu Karuppan Servai?

(ii) Whether the trial Court is right in dealing with the suit without deciding the character of the property?

11. I have perused the entire materials.



A.S.(MD).No.125 of 2019

WEB COPY

12. Though the plaintiffs 1 and 2 claimed that they are the grandsons of one Karupiah Servai, this fact has not been disputed by the defendants. However, the third plaintiff claimed that he is the adopted son of one Subbiah Servai. Absolutely there is no pleading whatsoever in the plaint. Further, there is no other document whatsoever filed to show that the adoption has been established as per law.

13. Be that as it may, it is the specific stand of the defendants that the property is a separate property of Alagu Servai, who is one of the son of Muthu Karuppan Servai. This aspect has not been gone into by the trial Court. In fact, P.W.1, in his evidence admitted that they are not claiming any right over the property ie., an extent of 21 cents, which was sold in the year 1948 by Alagu Servai. Despite the same, the trial Court has in fact held that the sale is not valid in the eye of law. Further, having framed issue as to the right of the third plaintiff as adopted son, no material whatsoever available on record to show that the adoption is validly established in the eye of law. Now, the additional documents also filed to show that an extent of 21 cents already sold by registered documents.



A.S.(MD).No.125 of 2019

WEB COPY

14. Such being the position, this Court is of the view that without any proper material mainly on the basis of oral evidence, it cannot be presumed that the property is a joint family property. In such a view of the matter, as the trial Court has not gone into the aspects properly, the matter requires retrial for deciding all these issues, particularly the issue as to whether the property is a separate property of Alagu Servai or the joint family property as pleaded by the plaintiffs.

15. In such a view of the matter, the entire finding of the trial Court is set aside and the matter is remanded back to the trial Court and the trial Court shall give an opportunity to the parties to adduce evidence including the additional evidence filed before this Court and proceed afresh and dispose of the suit in O.S.No.50 of 2015, within a period of six months from the date of receipt of a copy of this order.



A.S.(MD).No.125 of 2019

WEB COPY

16. In the result, the Appeal Suit is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

06.06.2023

akv

To

The Additional District Court,
Pudukottai.



WEB COPY



A.S.(MD).No.125 of 2019

N.SATHISH KUMAR, J.

akv

A.S.(MD).No.125 of 2019

06.06.2023