



S.A.(MD) No.94 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**S.A.(MD) No.94 of 2023
and
C.M.P.(MD) No.2276 of 2023**

Appavu (died)

1.Periyathambi

2.Nachimuthu

3.Ganesan

4.Dhandapani

Periya Gounder @ Ayyavu (died)

5.Periyasamy @ Subramani

Perumal (died)

6.Parvathi

7.Periyakkal

8.Chinna Periyakkal

Saraswathi (died)

9.Poovathal

Ramathal (died)

..Appellants



S.A.(MD) No.94 of 2023

Vs.

1.Periyasamy Gounder

2.Karuppusamy

3.Magudeeswaran

Samiyappan (died)

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 19.04.2022 made in A.S.No.32 of 2019 on the file of the Additional Sub Court, Palani confirming the judgment and decree dated 21.12.2018 made in I.A.No.378 of 2008 in O.S.No.230 of 2008 on the file of the District Munsif Court, Palani.

For Appellants : Mr.J.Bharathan for
Mr.D.Venkatesh

For Respondents : Mr.T.Lenin Kumar

JUDGMENT

This second appeal is initiated against the judgment of the Additional Sub Court, Palani, in A.S.No.32 of 2019 confirming the order passed in the final decree petition in I.A.No.378 of 2008 in O.S.No.230 of 2008 on the file of the District Munsif Court, Palani.



S.A.(MD) No.94 of 2023

2.The respondents as plaintiffs filed a suit in O.S.No.214 of 1986 on the file of the District Munsif Court, Palani against the appellants/defendants seeking the relief of declaration that the respondents/plaintiffs are the absolute owners of the 'A' schedule property and possession or alternatively for partition and separate possession and for costs. After contest, the learned trial Judge granted the alternative relief of partition and held that the respondents/plaintiffs are entitled for 1/3rd share and separate possession. The judgment of the learned Additional Subordinate Judge, Dindigul in O.S.No.214 of 1986 was not challenged by the appellants/defendants and that has become final.

3.The respondents/plaintiffs have filed a final decree petition in I.A.No. 378 of 2008 under Order XXVI Rule 13. After contest, the learned District Munsif, Palani passed the final decree on 21.12.2018. Against the said order, the appellants filed an appeal in A.S.No.32 of 2019. The learned Additional Subordinate Judge, Palani confirmed the final decree passed by the learned District Munsif, Palani and dismissed the appeal. Challenging the dismissal of A.S.No.32 of 2019, this second appeal is filed.

4.It is the submission of the learned counsel for the appellants that the main ground taken during the enquiry before the Courts below was that the respondents 9 and 10, namely Samiyappan and Perumal had died during the



S.A.(MD) No.94 of 2023

course of proceedings. However, without impleading their legal representatives, the final decree was passed. Thus, without impleading the legal representatives of the deceased respondents 9 and 10, namely Samiyappan and Perumal, passing of final decree is not appropriate and legal and thus, this second appeal came to be filed.

5.In reply to the submissions, Mr.T.Lenin Kumar, learned counsel appearing for the respondents submitted that the deceased Samiyappan and Perumal had already sold their part of the share to third parties. The learned trial Judge had considered every aspects including the sale of certain portion of suit property by the aforesaid respondents to third parties, considered the interest of purchasers also and passed the final decree and thus, non impleadment of the legal representatives of the deceased respondents 9 and 10, Samiyappan and Perumal, will not alter the final decree passed by the Court below.

6.Considered the rival submissions and perused the records.

7.The reading of the order of the learned District Munsif, Palani in I.A.No.378 of 2008 shows that as per the Commissioner's report, the extent of S.No.120 is 4 acres and 41 cents, the extent of S.No.119/4 is 1 acre and 58 cents. The land available in S.No.120 was divided into 32 plots. Out of this, 15 plots in



S.A.(MD) No.94 of 2023

S.No.120 and 2 plots in S.No.119/4 were sold to third parties. It is also referred in the Commissioner's report that concerned sale deeds were produced in the Court. In fact, buildings have been constructed on the plots sold.

8.Taking into consideration of all these aspects, the learned District Munsif, Palani recorded that though no permission was granted by the Court for sale of part of the suit property to third parties, when the proceedings are pending; without causing any harm to third party purchasers, the learned trial Judge accepted the report and plan of Advocate Commissioner, Surveyor and allotted the portion earmarked in the report and plan to the petitioners, in the final decree. Thus, it is seen that the final decree was passed taking into consideration the interest of the parties concerned, including the third party purchasers and therefore, this Court finds that the omission to implead the legal representatives of the deceased respondents 9 and 10, Samiyappan and Perumal will not in any way affect the final outcome and allotment of share on the basis of the Commissioner's report and plan. This Court finds that there is no substantial question of law involved for admitting this second appeal.



S.A.(MD) No.94 of 2023

9.In the said circumstances, this Second Appeal is dismissed. The parties are directed to pay their own costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

11.10.2023

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To

- 1.The Additional Subordinate Judge,
Palani.
- 2.The District Munsif,
Palani.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD) No.94 of 2023

G.CHANDRASEKHARAN, J.

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S.A.(MD) No.94 of 2023

11.10.2023