



S.A(MD) No.622 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.622 of 2016

and

C.M.P(MD) No.9278 of 2016

Savariammal (died)

1.Marthal Mary

2.S.Arockia Raj

...Appellants

-Vs-

1.Arockiamary

2.Chinnappan

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment passed by 2nd Additional Sub Court, Trichy, in A.S.No.218 of 2011 dated 16.12.2014 confirming the decree and judgment of Additional District Munsif Court, Lalgudi, in O.S.No.198 of 2004, dated 27.06.2011.

For Appellants : Mr.K.P.Narayanakumar

For R1 : Mr.R.Sundar Srinivasan



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JUDGMENT

The plaintiffs in the suit are the appellants. The suit is for partition. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the same, the plaintiffs are before this Court.

2. Pending suit, the original first plaintiff Savariammal died and her legal representative was brought on record as third plaintiff. The plaintiffs 2 and 3 are before this Court by way of this second appeal.

3. According the appellants/plaintiffs, the original plaintiffs 1 and 2 and the first defendant Arockiamary are daughters of Gnanathickam and the second defendant Chinnappan, purchased the portion of the suit property from the first defendant. The suit property originally belonged to one Arockiasamy, father of Gnanathickam. After his death, only Gnanathickam got the suit property absolutely. He had two wives, namely, Annammal and Packiathammal. The plaintiffs 1 and 2 namely, Savariammal and Marthammary are daughters of first



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wife Annammal and the first respondent/first defendant is the daughter of second wife Packiathammal. The appellants claimed that after the death of Gnanathickam, three daughters are each entitled 1/3rd share in the suit property and hence, they laid the suit property for partition of their 2/3rd share.

4. The first respondent filed a written statement and resisted the suit on the ground that there was a partition between the parties in the year 1983 itself and hence, the present suit for partition was not maintainable. It was further averred in the written statement filed by the first respondent by referring to the previous notice issued by plaintiffs that the plaintiffs in the said notice issued by them alleged that the suit property was allotted to the share of the second wife of Gnanathickam, namely, Packiathammal with life estate and hence, they admitted the fact of earlier partition. The respondents also raised a plea that all the properties owned by Gnanathickam were not mentioned in the plaint and therefore, the suit was bad for partial partition. The respondents also averred that as plaintiffs suppressed the material fact concerning the earlier partition between the parties, the suit was liable to be dismissed.



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5. The appellants filed a reply statement wherein they admitted the partition in the year 1983, but however contended that in the said partition, the plaintiffs 1 and 2 and the first defendant, namely, three daughters of Gnanathickam were allotted with 61 cents of land each. It was further alleged that when the plaintiffs were out of the village, Packiathammal taking advantage of the absence in the village, managed to get batta in respect of 30 cents of properties allotted to the second plaintiff Marthal Mary. Now, after the death of Packiathammal, the lands in the hands of Packiathammal have to be divided between the plaintiffs and first defendant.

6. The trial Court, on appreciation of oral and documentary evidences, came to the conclusion that the appellants failed to prove their case and consequently, dismissed the suit. Aggrieved by the same, the appellants filed an appeal in A.S.No.218 of 2011, on the file of the II Additional Sub Court, Trichy. The First appellate Court also affirmed the findings of the trial Court. Aggrieved by the same, the appellants are before this Court.

7. The learned counsel for the appellants tried to assail the findings of the Courts below that there was no plea on the part of the appellants to the effect



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that the suit property was given to the Packiathammal with life estate. The learned counsel by taking this Court to the evidence of the first respondent herein as D.W.1 submitted that she herself admitted in her evidence that the property was allotted to Packithammal with life estate in lieu of her maintenance. Therefore, it is the contention of the learned counsel for the appellants that when the first respondent herself admitted about the allotment of suit property to Packiathammal with life estate, the Courts below ought not to have rejected the claim of partition made by the appellants on the ground of lack of pleadings.

8. I am unable to accept the contentions made by the learned counsel for the appellants. First of all, the appellants in the plaint failed to plead anything about the partition made in the year 1983. When the respondents had come up with the plea of earlier partition, the appellants filed a reply statement, wherein they pleaded that in the year 1983, the plaintiffs 1 and 2 and first defendant, namely, daughters of Gnanathickam were allotted with 61 cents of land each. It was not the case of the appellants in their pleadings that the suit property was allotted to Packiathammal with restricted life estate. However, by referring to the evidence of D.W.1 in the cross-examination, the learned counsel tried to project



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that there was admission by D.W.1 that the suit property was allotted to Packiathammal with restricted life estate. When a suggestive question was put to D.W.1 as if the suit property was allotted to Packiathammal with life estate, the first respondent answered that the suit property was allotted to Packiathammal. She never admitted the suggestion made by the appellants about the restrictive estate of Packiathammal. She clearly deposed that the property was allotted to Packiathammal.

9. In the reply statement, the appellants had averred that Packiathammal had trespassed into the property allotted to the appellants and obtained patta in her name for 30 cents and after her death, the property has to be divided among the three daughters of Gnanathickam. The said averment made by the appellants has no legal basis as plaintiffs 1 and 2 cannot claim themselves as daughters of Packiathammal. Even as per the pleadings of the appellants, Packiathammal had only one daughter, namely, first respondent. Therefore, the appellants are not entitled to lay any claim over the property in respect of which patta stands in the name of Packiathammal. If it is the case of the appellants that Packiathammal illegally trespassed into the property allotted to them and hence, they have got



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right over the same, the appellants should have filed a suit for recovery of possession and the suit for partition filed by them is misconceived.

10. In view of the discussion made earlier, I do not find any substantial question of law arising for consideration in the second appeal. The finding of facts arrived at by the Courts below are confirmed and the second appeal is dismissed.

11. In nutshell,

(i) The Second Appeal is dismissed by confirming the judgment and decree, dated 16.12.2014, made in A.S.No.218 of 2011, on the file of IInd Additional Sub Court, Trichy, confirming the decree and judgment of the Additional District Munsif Court, Lalgudi, in O.S.No.198 of 2004, dated 27.06.2011;

(ii) In the facts and circumstances, there will be no order as to costs; and

(iii) Connected miscellaneous petition is closed.

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



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To

- 1.The II Additional Subordinate Judge,
Trichy.
- 2.The Additional District Munsif,
Lalgudi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.



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