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A.S.No.486 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

A.S. No.486 of 2011

1.Periyannan Senapathi

2.Periyannan Sethupathi

Both rep. by Power Agent Sekar

.. Appellants

vs.

1.Periyannan

2.Nirmala Rathinam

3.Narmadha Kuppusami

4.Sivaraj

.. Respondents

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the Principal District Judge, Namakkal dated 26.07.2011 made in O.S. No.118 of 2010.

For Appellants

: Mr.M.S.Krishnan,
Senior Counsel for
Mr.C.Jagadish

For Respondents

: Mr.T.Dhanyakumar for R1
R2 to R4-No appearance



A.S.No.486 of 2011

JUDGMENT

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This Appeal Suit has been filed by the plaintiffs in the suit O.S. No.118 of 2010 on the file of the Principal District Court, Namakkal, challenging the impugned judgment and decree dated 26.07.2011.

2.The respondents are the defendants in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3.The suit has been filed for partition in respect of two schedules, both involving immovable properties. The plaintiffs are the brothers, the first defendant is their father, the defendants 2 and 3 are their sisters and the fourth defendant is the person, who has purchased one of the properties, belonging to the joint family property. Under the impugned judgment and decree, the suit claim as prayed for in the suit O.S. No.118 of 2010 on the file of the Principal District Court, Namakkal has been decreed in favour of the plaintiffs in entirety. However, the plaintiffs have challenged the impugned judgment and decree on the ground that erroneously, the Trial Court has included company shares, belonging to



A.S.No.486 of 2011

the respective plaintiffs in their individual capacity despite the fact that they never asked for partition in respect of those shares and in the schedule to the plaint, the said shares were also not disclosed.

4. Based on the written statement filed by the defendants in the suit, the shares have also been partitioned under the impugned judgment and decree though admittedly, the said shares were not included in the schedule to the plaint filed in O.S. No.118 of 2010. Despite the same, the Trial Court has framed the issues, involving the company shares, which the plaintiffs categorically contend that it belongs to them absolutely, but, the Trial Court has framed issues beyond the scope of the suit by framing an issue as to whether the properties 1999 shares in Vellalar Mills is liable to be partitioned.

5. When the plaintiffs themselves had not asked for partition in respect of 1999 shares in Vellalar Mills, the defendants had pleaded in their written statement that company shares are also belonging to the joint family, but admittedly, no counter claim has been filed by the defendants seeking for partition of 1999 shares in Vellalar Mills.



However, the Trial Court has gone beyond the scope of the suit by granting the relief of partition to the defendants in respect of 1999 shares in Vellalar Mills despite the fact that the same was not mentioned in the schedule to the plaint and the plaintiffs never sought for partition in respect of those company shares.

6. During trial, the Trial Court has framed the following issues:

- 1. Whether the plaintiffs are entitled to each 1/5th share in the properties?*
- 2. Whether the properties, 1999 shares, in Vellalar Mills is liable to be partitioned?*
- 3. Whether B Schedule item 2 is not liable to be partitioned?*
- 4. To what other relief if any the plaintiffs are entitled to?*
- 5. Whether the first defendant is entitled to preliminary decree of 1/5th share including 1999 shares, in Vellalar Mills excluding B schedule item 2?*

7. The point for consideration in this appeal is whether the Trial Court had committed an error in the impugned judgment and decree by



A.S.No.486 of 2011

granting the partition relief insofar as 1999 company shares in Vellalar Mills are concerned as the said shares were not the subject matter of the partition suit O.S. No.118 of 2010.

8.Insofar as 1999 shares of Vellalar Mills for which a decree has been passed in the impugned judgment and decree dated 26.07.2011 in O.S. No.118 of 2010 are concerned, 120 shares are held by the wife of the first plaintiffs, who is not a party to the suit O.S No.118 of 2010. Despite the same, by total non-application of mind, the Trial Court, after granting a decree for partition as prayed for by the plaintiffs in the suit, has also granted partition in respect of 1999 shares in Vellalar Mills, despite the fact that the said shares were not the subject matter of the suit O.S. No.118 of 2010 on the file of the Principal District Court, Namakkal. A perverse finding has been rendered by the Trial Court insofar as the company shares are concerned and therefore, the said finding has to be set aside by this Court.

9.Section 46 of the Companies Act, 2013 also makes it clear that once a share certificate is issued, it is presumed that the shares are held in



A.S.No.486 of 2011

WEB COPY

the name of that particular person in whose name the share certificate stands. In the case on hand, as seen from the evidence available on record, the defendants have not placed any material before the Trial Court to rebut the contentions of the plaintiffs that they are the joint owners of the shares for which partition has been granted under the impugned judgment and decree. Since there is a presumption that the shares stand in the name of the person in whose name the share certificates stand as per Section 46 of the Companies Act, 2013 and there is no rebuttal evidence produced by the defendants to disprove the same, the Trial Court has erroneously by total non-application of mind to the said Section has granted a partition decree in respect of the company shares also despite the fact the company shares were not the subject matter of the partition suit.

10.This Court is of the considered view that the Trial Court has erroneously by a perverse finding has granted partition relief in favour of the defendants in respect of the company shares, which are not the subject matter of the suit.



A.S.No.486 of 2011

WEB COPY

11. For the foregoing reasons, the impugned judgment and decree passed by the Principal District Court, Namakkal in O.S. No.118 of 2010 with regard to the movables, i.e. the shares in Vellalar Mills are set aside. Accordingly, this appeal is allowed as prayed for. However, the findings, with regard to the immovable properties disclosed in the two Schedules, i.e. Schedule 'A' and Schedule 'B' mentioned in the plaint are concerned, the same is confirmed. No costs.

25.06.2024

vga

To

1. The Principal District Judge, Namakkal.
2. The Section Officer,
V.R. Section, High Court, Madras.



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A.S.No.486 of 2011

ABDUL QUDDHOSE, J.

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A.S. No.486 of 2011

25.06.2024