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S.A.No.361 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.361 of 2007

and

MP.No.1 of 2007

Minor M.Mohan
rep.by his next friend and
mother Muniammal
(Sole appellant declared as major and
his next friend and mother Muniammal discharged
from the guardianship vide order of Court
dated 17.02.2020 made in CMP.Nos.2727
2730/2020 in S.A.No.361/2007)
...Appellants

Vs.

1.Prabu @ Moranahalli (Died)
2.Mettigan @ Ramasamy (Deceased)
3.Peria Kempa
4.Mallaka
5.Chikkolu
(R3 to R5 brought on record as LR's
of the deceased R2 vide order of Court
dated 22.10.2013 made in M.P.Nos.1 & 2/2012
in S.A.No.361/2007)

...Respondents



S.A.No.361 of 2007

WEB COPY

(R1-Died, sole appellant recorded as the only
LR's of deceased R1 vide order of Court
dated 03.02.2023 made in CMP.No.10758/2022
in S.A.No.361/2007)

Prayer: Civil Revision Petition filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of learned I Additional District Judge, Krishnagiri, made in A.S.No.19 of 2005 dated 25.01.2006 reversing the judgment and decree of the learned Subordinate Judge, Krishnagiri, made in OS.No.45 of 1999 dated 25.02.2005.

For appellant : C/V filed by
Mr.R.Dhamodaran

For Respondents : Mr.K.Varatharajan for R3
(no appearance)
R1 & R2 died (steps taken)
R4 & R5-served-no appearance

JUDGMENT

The appellant herein is the plaintiff. The deceased first defendant is the father of the plaintiff and the deceased second defendant is the grandfather of the plaintiff. After demise of the first defendant, the plaintiff



S.A.No.361 of 2007

was recognized as his legal representative and after demise of the second defendant his legal representatives were arrayed as respondents 3 to 5.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

3. The brief facts which gave rise to the instant Second Appeal are that:

The suit property is the ancestral property of the plaintiff and the defendants. The plaintiff being the co-parcener has filed a suit for the relief of partition claiming 1/4th share in the suit property. The said suit was resisted by the defendants by contending that the suit property are self acquired property. Therefore, the plaintiff cannot have any right over the same by birth.

4. Before the trial Court, on behalf of the plaintiff two witnesses were examined as Pws.1 and 2, and 3 documents were marked. On behalf of the defendants, 2 witnesses were examined and 4 documents were marked.



S.A.No.361 of 2007

WEB COPY

5. The trial Court after considering the oral and documentary evidence, decreed the suit as prayed for.

6. Aggrieved by the same, the defendants 1 & 2 preferred the first appeal before the First Appellate Court. The First Appellate Court on re-appreciation of evidence has held that some of the properties are not belonged to the joint family and listed out those properties. In para 21 & 22 of the first Appellate Court's judgment, it is stated that the property belongs to the defendants is the ancestral property. However, while concluding the judgment, the property referred to in para 21 of the judgment has no reference and has modified the share of the plaintiff from 1/3rd share. Not being satisfied with the said order, the plaintiff has approached this Court.

7. The short arguments of the learned counsel for the appellant is that there is no dispute regarding the quantum of share allotted by the first Appellate Court. However, he wants to add the property which has been inadvertently omitted by the first Appellate Court, in the concluding portion.



S.A.No.361 of 2007

The property, which according to the learned counsel for the appellant, omitted to be included are in S.F.Nos.184/2B, 184/2H, 187/1E and 184/1H which were sub-divided in the name of one Mettigan. Hence, the learned counsel for the appellant prayed to interfere with the order of the first Appellate Court.

8. Despite the name printed in the cause-list, no one appeared on behalf of the respondents.

9. I have given my anxious consideration upon the submission made by the learned counsel for the appellants. After hearing the submissions of the appellants, the only point that arises for our consideration is whether the property alleged to have been omitted in the final conclusion of the judgment is to be substituted or not. This Court deems it appropriate to extract the findings rendered by the first Appellate Court in para 21 & 22, which reads as follows:

“21.The S.Nos.184/2B, 184/2B, 187/1E, 187/1-H, sub-divided in the name of Mettigan, the second defendant in the suit. The total area of



S.A.No.361 of 2007

those lands are 90-15 cents, in which the plaintiff can claim 30-05 cents.

22. The S.Nos.184/2E, 184/2J sub-divided in the name of Moranalli. He is not a party in the suit. It is the divided separate property of Moranavalli. So the plaintiff cannot claim any share in the land of Junior paternal grand-father Moranalli. The S.Nos.187/1B, S.No.187/17 also in the name of Moranavalli. So the plaintiff cannot claim any share in the above lands. S.Nos.184/2D, 184/2K, sub-divided in the name of Poosari, another brother of second defendant. So, it is the separate property of poosari. The plaintiff cannot claim any share in the lands also. S.No.165/5B and S.No.165/5F sub-divided in the name of Mettigan @ Ramasamy, the second defendant. The total extent of these 2 survey numbers are 1-03 cents, in which the plaintiff can claim 1/3rd share, it comes only 34 1/2 cents. S.No.166/3D, 166/3G, 166/3J also stands in the name of Mettigan. The total extent of these lands are 1-16 cents. In which the plaintiff can claim 1/3rd share which is equal to 38-



S.A.No.361 of 2007

70 cents. S.No.184/2F sub-divided in the name of Arikolan, Mettigan, Dasappan and Moranalli. The total extent of S.No.184/2F is 0-05-0 Hec. Equal to 12-35 cents, in which Mettigan is having 1/4th share equal to 3 cents, in which the plaintiff can claim only one cent. S.No.191/6 sub-divided in the name of Arikolan, Mettigan, Baguthan, Moranalli and Poosari. The total extent is 24-76 cents in which the second defendant is having 1/5th share equal to 4-94 cents. In which the plaintiff can claim 1/3rd share 1-64 cents. But the co-shares in S.No.184/2F, 191/6 are not added as parties in the suit. So the plaintiff cannot claim any share in S.No.184/2F and S.No.191/6, the claim against these lands suffers for want of adding necessary co-shares.”

10. It is obvious that, there is a clear findings that in respect of these S.F.Nos.184/2B, 184/2B, 187/1E and 187/1H, which were sub-divided in the name of the second defendant are the total area of those lands are the extent of 90.15 cents. There was a specific findings that in S.F.Nos.184/2B, 187/1E and 187/1H, the plaintiff can claim 1/3rd share namely, 30.05 cents.



WEB COPY



S.A.No.361 of 2007

11. As rightly contended by the learned counsel for the appellant that S.F.Nos.184/2B, 187/1E and 187/1H have not been mentioned in the final result of the first Appellate Court judgment, which resulted in granting no decree in respect of S.F.Nos.184/2B,187/1E and 187/1H.

12. Therefore, in view of such peculiar circumstances of this case and in view of the defects apparent on the face of the record, this Court finds force in the submission made by the learned counsel for the appellant. Hence, the Second Appeal is allowed by granting share of 1/3rd in the property in S.F.Nos.184/2B, 187/1E and 187/1H along with the share already granted by the First Appellate Court. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

12.04.2024

Index : Yes / No
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S.A.No.361 of 2007



S.A.No.361 of 2007

WEB COPY **To**

- 1.The I Additional District Judge, Krishnagiri,
- 2.The learned Subordinate Judge, Krishnagiri,



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S.A.No.361 of 2007

C.KUMARAPPAN,J.
dna

S.A.No.361 of 2007
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