



SA.No.1905 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1905 of 2004

1. C.Raju (deceased)
 2. R.Parvathy
 3. R.Rajeswari
- (Appellants 2 & 3 brought on record as LR's of
the deceased sole appellant vide order dated 26.06.2007
made in CMP.No.1437/2007)

... Appellants

- Vs -

1. C.Ramachandran (died)
 2. H.Mahalingam
 3. Gangadharan
 4. Saraswathi
W/o.C.Ramachandran
 5. Dhanalakshmi
W/o.C.Ramachandran
 6. Meena
D/o.C.Ramachandran
- (R4 to R6 brought on record as LR's of R1 vide
order dated 11.01.2013 made in
CMP.No.683/2011)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.03.2004 passed in A.S.No.74 of 2003 on the file of the learned judge of Nilgiris at Ootacamund, confirming



SA.No.1905 of 2004

the judgment and decree dated 30.09.2003 passed in O.S.No.37 of 1999 on the file of the learned Subordinate Judge of Nilgiris at Ootacamund.

For Appellant : Mr.S.Sabarish
for Mr.S.Kingston Jerold

For Respondents : Mr.T.Girish for R3 to R6
R1-Died
R2-No Appearance

J U D G M E N T

The first defendant before the Trial Court is the appellant herein and the plaintiff and defendants 2 and 3 are the respondents before this Court. After the demise of the first respondent herein, his legal heirs were impleaded. Similarly, after the demise of the sole appellant, his legal heirs were impleaded.

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

3. It appears that the suit property was originally belongs to one Beeriah. After his death, his son Chenniah inherited the same. The said



SA.No.1905 of 2004

Chenniah, through his first wife Murugiammal had two sons viz., the plaintiff and another son by name C.Haliah. He also had daughters by name Smt.Seetha, Smt.Lakshmi and Smt.Parvathi. It appears that his son Haliah died leaving behind his sons Mahalingam and Gangadharan, who are the 2nd and 3rd defendants in the suit. According to the plaintiff, after the demise of Murugiammal, the said Chenniah married Madiammal as his second wife and through the 2nd wife, he had one son by name Raju and daughters by name Smt.Devammal and Smt.Neelammal. It is the contention of the plaintiff that the suit property was the ancestral property as evident by the conduct in executing the Mortgage Deed along with his sons. Hence, the plaintiff (one of the sons of Chenniah) has filed a suit for the relief of permanent injunction.

4. The said suit was resisted by the defendants by contending that the suit property is self-acquired property of Chenniah, and that Chenniah has executed a Will in favour of the defendants.

5. Before the Trial Court, the plaintiff has marked 13 documents as Exs.A1 to A13, and examined one witness as PW1. On behalf of the



SA.No.1905 of 2004

defendants, two witnesses were examined as DW1 and DW2 and 6 documents have been marked as Exs.B1 to B6.

6. The Trial Court, after having considered the oral and documentary evidence, dismissed the suit with liberty to file a fresh suit. Aggrieved with the liberty granted by the Trial Court, the first defendant has preferred the First Appeal, where the First Appellate Court dismissed the appeal confirming the decree granted by the Trial Court. Not satisfying with the judgment of the First Appellate Court, the first defendant has preferred the instant Second Appeal.

7. At the time of admission on 05.11.2004, this Court has formulated the following substantial questions of law:-

“1. Whether the learned Subordinate Judge of Nilgiris at Ootacamund is right in granting liberty to the First Respondent to institute a fresh sit, having rightly held that the suit must fail for partial partition as well as for non-joinder of necessary parties and dismissing the suit?

2. Whether the findings of the court below that the suit properties are joint family properties and not personal



SA.No.1905 of 2004

properties of B.Chennaiah especially when the said finding are rendered without properly appreciating the sale deeds executed in favour of the late B.Chenniah as well as the dealings with third parties by late B.Chenniah?

3. Whether the lower appellate court is right in dismissing the appeal especially when the appellant preferred the appeal with regard to the findings rendered against the appellant by the trial court?."

8. The learned counsel for the appellants would submit that both the Courts below have failed to note that the suit property is the self-acquired property of Late.Chenniah and that Chenniah, during his lifetime executed a Will-Ex.B2 in favour of the appellant and his mother, giving life interest. It is also contended by the learned counsel for the appellants that both the Courts below have failed to note that by virtue of Exs.A5 to A7 and Ex.B1, the suit properties are the self-acquisition of Chenniah and therefore, Chenniah has got testamentary right to execute Ex.B2-Will. It was the contention of the learned counsel for the appellants that when both the Courts below have arrived at a conclusion that the suit is bad for partial partition, the Courts below ought to have dismissed the suit without granting any opportunity to re-agitate the same.



SA.No.1905 of 2004

9. Per contra, the learned counsel for the respondents would vehemently submit that both the Trial Court as well as the First Appellate Court have given findings in respect of the character of the property and only in view of the partial partition and non joinder of necessary parties, the suit was dismissed. However, both the Courts below have rightly given liberty to the plaintiff to institute fresh suit, which in no way prejudice the appellants and hence, prayed to confirm the judgment and decree of the Courts below.

10. I have given my anxious consideration to either side submissions.

11. There is no serious dispute in respect of the finding. The learned counsel for the appellants would submit that he is only agitating the liberty granted by both the Courts below. While perusing the judgment of the Trial Court, the Trial Court has found that the plaintiff has got right in the suit property, only on the technical ground, such as partial partition and non joinder of necessary party, the suit could not be adjudicated on merits and dismissed the suit by granting liberty to the plaintiff. The said finding was also confirmed by the First Appellate Court.



SA.No.1905 of 2004

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12. Therefore, this Court is of the firm view that both the Courts below have not adjudicated the matter to the hilt and proceeded only upon the technical ground. The rights of the parties will not eclipse on account of any technical objection, further granting an opportunity to rectify the curable mistake cannot be faulted. Further, the right has to be adjudicated by impleading all necessary parties. Thus, this Court could not find any infirmity in judgment and decree passed by both the Courts below. Hence, in view of the above discussion, all the substantial question of law are answered in favour of the respondents.

13. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

03.04.2024

kmi

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The Sub Judge,
Subordinate Court,
Ootacamund.
2. The District Judge,
District Court,
Ootacamund.



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SA.No.1905 of 2004

C.KUMARAPPAN, J

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S.A.No.1905 of 2004

03.04.2024