



S.A.No.1175 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 11.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1175 of 2013 &
M.P.No.1 of 2015

Viswanatha Thanthiriyar

... Appellant

-Versus-

1.Dhanalakshmi

2.Kasthuri

3.Velmurugan

4.Devaki

5.G.Karunanidhi

6.P.P.Selvam

7.Pachaiammal

... Respondents

(R5 impleaded as party respondent vide order dated 20.04.2015 made in M.P.No.1 of 2014)

(R6 & R7 are impleaded as party respondents vide order dated 05.08.2022 in CMP.No.11869 of 2022)

Appeal filed under Section 100 of C.P.C. against the judgement and decree of the learned Principal Subordinate Judge, Tindivanam in A.S.No.1 of 2012 dated 21.03.2013 reversing the Judgment and Decree of the learned District Munsif, Vanur in O.S.No.20 of 1996 dated 06.09.2010.



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For Appellant : *Mr.A.K.Kumarasamy,*
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondents : *Mr.N.Suresh*
1 & 2

For Respondents : *Mr.N.Santhosh*
3 & 4

For Respondent 5 : *Mr.A.Thamilarasan,*
for Mr.V.Venkatesan

For Respondents : *Mr.S.Anburaj*
6 & 7

JUDGEMENT

The present second appeal arising out of the judgment and decree of the court of the learned Subordinate Judge, Tindivanam in A.S.No.1 of 2012 dated 21.03.2013. By the said judgment and decree, the learned Principal Subordinate Judge reversed the judgment and decree of the learned District Munsif, Vanur in O.S.No.20 of 1996 dated 06.09.2010.

2. O.S.No.20 of 1996 is a suit filed for declaration of title and for injunction.

3. For the sake of convenience, the parties will be referred to as their ranks in the original suit.



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4. The case of the plaintiff is that the properties were self acquisitions of one Rathina Thanthriyar. The said Rathina Thanthriyar married twice. We are concerned with the branch through his first wife. Through his first wife, Rathina Thanthriyar had two children namely one Appavu Thanthriyar and daughter Pachaiammal. Appavu Thanthriyar in turn had two sons viz., Ponnambala Thanthriyar and Viswanathan Thanthriyar. Ponnambala Thanthriyar passed away leaving behind his wife/Devaki and son/Velmurugan as his legal heirs. The plaintiff in the present suit is Viswanathan. Claiming declaration of title and for injunction over seven items of the property, he filed the suit.

5. The contesting defendant is none else than his cousin brother through his paternal aunt, Pachaiammal. Pachaiammal is admittedly the daughter of Rathina Thanthriyar through his first wife. She married one Gopal and she begot two children viz., one Ayyadurai and the other Periyathambi. Ayyadurai in turn begot two daughters viz., Dhanalakshmi and Kasthuri, who were arrayed as defendants 2 and 3 in the present suit.



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6. The learned trial judge came to the conclusion that the plaintiff has proved his title to the property and therefore, decreed the suit. It was taken on appeal before the learned Principal Subordinate Judge, who had reversed the decree and against which, the present second appeal.

7. This second appeal was admitted on 29.01.2014 on the following substantial questions of law:

“1) Is the lower Appellate Court justified in dismissing the suit in entirety overlooking the admission of the defendants in their written statement and evidence regarding the ownership of certain items of suit properties with the plaintiff/appellant?

2) When the title and possession of the plaintiff in respect of certain item of suit properties and admitted by the defendants, is the dismissal of the suit in entirety legally sustainable?”

8. It transpires that pending the suit, Dhanalakshmi and Kasthuri sold the property in favour of one Karunanithi who was impleaded as the fifth respondent in the appeal. Impleading of the said Karunanithi would not make any difference to the present proceedings because his interest is represented by



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his vendors viz., defendants 2 and 3.

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9. While hearing the appeal, Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the appellant brought to my notice that Selvam and Pachaiaammal, the son and daughter of Periyathambi have been impleaded in the appeal vide order of this court dated 05.08.2022 on the application filed by them in CMP.No.11869 of 2022

10. Mr.S.Anburaj, learned counsel appearing for the newly impleaded parties would submit that his defence is entirely different from the one taken by Dhanalakshmi and Kasthuri. He would submit that in the partition between Appavu Thanthriyar, Pachiyammal, Velusamy and Natarajan, the suit schedule mentioned property were allotted to their grandmother Pachiyammal and therefore, it has come down to Periyathambi and through him to his clients.

11. Therefore, I have framed an additional question of law as to the effect of impleading new parties who take a fresh defence in the proceedings pending the appeal. This position of law is no longer *res integra*. It has been settled by the Division Bench of this Court in ***A.Peter vs. Royappan***,



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MANU/TN/0793/1993. By the said judgment, the Division Bench of this Court

was pleased to hold as follows:

“4. Learned counsel also pointed out that the Society having been impleaded by this Court with Procedure prescribed under O.I, R10(A) of Civil Procedure Code, should be followed. We are of the view that the submission made by learned counsel for the Society is well founded. As the Society has been impleaded, it should be given an opportunity to state its case. At first, the plaintiffs should amend the plaint to when the Society is a party to the suit and include some averments in the body of the plaint with regard to the Society. An opportunity must be given to the Society and the other defendants to file written statement. Thereafter, the parties should be allowed to let in evidence on those pleadings.”

12. From the clear and categorical view taken by the Division Bench, once a party has been impleaded as a party in the appellate stage, it is the duty of the court to give an opportunity to the newly impleaded party to file his pleadings and to let in evidence.

13. Therefore, following the aforesaid verdict, the second appeal is allowed with the following directions and observations:



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(i) The judgment and decree of the learned Subordinate Judge at Tindivanam in A.S.No.1 of 2012 dated 21.03.2013 is set aside and the matter is remitted to the file of the learned Principal Subordinate Judge at Tindivanam restoring A.S.No.1 of 2012 on to its file.

(ii) The plaintiff is permitted to amend his plaint to make the necessary averments that are essential for the case as against the newly impleaded parties viz., Selvam and Pachaiyammal.

(iii) By consent of both sides, the parties shall appear before the lower appellate court on 12.04.2024.

(iv) Selvam and Pachaiyammal having been added to the array of parties, separate impleading application is not necessary in the first appeal. A memo bringing it to the notice of the court by the plaintiff that they have been added as parties vide CMP.No.11869 of 2022 would suffice.

(v) On carrying out the amendment, the newly impleaded parties would be granted two weeks' time to file their written statement.

(vi) The lower appellate court shall record any evidence that may be necessary for the purpose of dealing with the contentions that have been raised by the plaintiff in his amendment as well as those of the newly impleaded



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parties.

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(vii) The learned Principal Subordinate Judge is requested to expedite the hearing at all stages and dispose of the appeal, within a period of nine months ie., on 31.01.2025. and submit a report to this court.

(viii) In case, the learned appellate judge feels that any of the parties are trying to drag on the proceedings, absolute discretion is given to the learned judge to deal with the matter appropriately.

(ix) Both the parties are at liberty to let in evidence on their pleadings.

(x) It is made clear that the evidence already recorded will stay on record and the parties will be permitted to let in additional evidence on the basis of the additional pleadings that have been filed by them.

No costs. Consequently, connected miscellaneous petition is closed.

11.03.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

- 1.The Principal Subordinate Judge, Tindivanam
- 2.The District Munsif, Vanur



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V.LAKSHMINARAYANAN, J.

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