



S.A(MD)No.46 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.46 of 2007

1.Thiyagarajan

2.Jothi

3.Baskar

4.Ravichandran

...Appellants

-Vs-

1.Shahul Hameed

2.Hamitha Ammal

3.Masuhutha Ammal

4.Ahamadha Ammal

5.Ekamparam (died)

6.Hameedha Ammal

7.K.Gurusamy

8. Lakshmi(died)



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9.Kesavan

10.E.Balamurugan

... Respondents

(Respondents 9 and 10 are brought on record as Lrs of the deceased 5th respondent vide Court order dated 31.01.2023 made in M.P(MD) Nos.1 to 4 of 2008)

(Appellants who are already on record are recorded as Lrs of the deceased 8th respondent vide Court order dated 31.01.2023 made in M.P(MD) Nos.1 to 4 of 2008)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.41 of 2003 on the file of the Sub Court, Pattukottai, dated 27.06.2006 confirming the final decree and judgment in I.A.No.54 of 1999 in O.S.No.97 of 1975 on the file of the District Munsif Court, Pattukottai, dated 28.06.2001.

For Appellants : Mr.M.P.Senthil

For R2, R3 & R4 : Mr.S.C.Herold Singh

For R1 & R6 : Mr.V.K.Vijayaraghavan

For R7 to R10 : No appearance



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JUDGMENT

The second appeal is arising out of a final decree passed in a partition suit. The respondents 1 to 4 filed a suit for partition against the appellants and others in O.S.No.97 of 1975 seeking half share. The trial Court passed a preliminary decree granting half share in favour of the respondents 1 to 3. Thereafter, final decree application was filed by the respondents 1 to 4 for passing of final decree. The trial Court allowed the said application and passed the final decree. Aggrieved by the same, the appellants, who are all legal representatives of the deceased fifth defendant, filed an appeal and the same was also dismissed. Hence, they are before this Court.

2. The respondents 1 to 4 obtained a final decree in O.S.No.97 of 1975 and the said suit was tried along with O.S.No.147 of 1974 filed by the 9th defendant in the suit, namely, Hamitha Ammal seeking the relief of partition. The said suit was also decreed granting 1/4th share in favour of Hamitha Ammal. Aggrieved by the same, the first defendant in the suit, Avadaiappa Pathar filed the second appeal challenging the preliminary decree for partition passed in O.S.No.147 of 1974 filed by Hamitha Ammal alone. The said second appeal was allowed by setting



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aside the preliminary decree passed in O.S.No.147 of 1974 filed by the Hamitha Ammal. Aggrieved by the same, the said Hamitha Ammal filed special leave petition before the Hon'ble Apex Court and the same was converted as Civil Appeal No.110 of 1984. The said civil appeal came to be allowed on 07.11.1990. Thus, the judgment and decree passed by the High Court in S.A.No.1644 of 1978 was set aside and the preliminary decree passed in favour of Hamitha Ammal by the trial Court was confirmed.

3. Thereafter, the respondents 1 to 4, who are plaintiffs in O.S.No.97 of 1975, filed I.A.No.54 of 1999 seeking to pass final decree in pursuance of the preliminary decree passed in their favour. The father of the appellants Muthulingam Asari, who was arrayed as fifth defendant in the suit, filed a counter and resisted the final decree petition mainly on the ground that it was barred by limitation.

4. The trial Court found that the Muthulingam Asari was not allotted with any share in the preliminary decree and therefore, he was not entitled to oppose the final decree application and ultimately passed the final decree in favour of the



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respondents 1 to 4. Aggrieved by the same, Muthulingam Asari and the sixth defendant Gurusamy Pathar filed an appeal in A.S.No.41 of 2003 on the file of the Sub Court, Pattukottai. Pending first appeal, the said Muthulingam Asari died and the appellants herein were brought on record as legal representatives. The first appellate Court also dismissed the appeal on the ground that the persons, who were not allotted with any share in the preliminary decree, could not oppose the final decree application filed by the respondents 1 to 4. Hence, the first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the appellants have come by way of this second appeal.

5.The learned counsel for the appellants submitted that preliminary decree was passed by the trial Court on 29.01.1976. The present application for passing final decree was filed by the respondents 1 to 4 only on 27.01.1999 and therefore, the final decree application is barred by limitation. He further submitted that the present suit was filed along with the suit for partition filed by the 9th defendant in O.S.No.147 of 1974 and challenging the preliminary decree passed in the connected suit, the first defendant therein filed a second appeal in S.A.No.1644 of 1978 and the preliminary decree passed in the connected suit in favour of the



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9th defendant Hamitha Ammal was set aside by the High Court and hence, the respondents 1 to 4 are not entitled to maintain an application for passing of final decree.

6.As far as the partition suits are concerned, till the final decree is passed the suit is deemed to be pending and hence, there is no limitation for filing an application for passing of final decree. Therefore, the first submission made by the learned counsel for the appellants that the application for passing of final decree is barred by limitation is not acceptable to this Court. Further, the second appeal filed by the first defendant in the suit challenging the preliminary decree for partition passed in favour of the 9th defendant in the connected suit in O.S.No. 147 of 1974 was disposed on 24.12.1982 and the appeal filed to the Hon'ble Supreme Court challenging the judgment and decree passed in Second appeal was allowed on 07.11.1990. Thereafter the present final decree application is filed on 27.01.1999. Therefore, the submission made by the learned counsel for the appellants on the ground of limitation, is rejected.

7.As far as the second submission made by the learned counsel for the



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appellants that the decree for partition passed in favour of 9th defendant in the connected partition suit filed by her in O.S.No.147 of 1974 was set aside by High Court and hence, the respondents 1 to 4 could not maintain the final decree petition is concerned, the judgment and decree passed in the second appeal in S.A.No.1644 of 1978 was set aside by the Hon'ble Apex Court in Civil Appeal No.110 of 1984 by restoring the preliminary decree for partition passed by the trial Court. Therefore, the appellants are not entitled to place reliance on the judgment and decree passed by the High Court in S.A.No.1644 of 1978 for the simple reason that the same was set aside by the Hon'ble Apex Court.

8. Therefore, both the submissions made by the learned counsel appearing for the appellants are not acceptable to this Court. I do not find any substantial question of law to interfere with the findings of the Courts below and consequently, this Second Appeal stands dismissed. No costs.

10.04.2024

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

- 1.The Subordinate Judge,
Pattukottai.
- 2.The District Munsif,
Pattukottai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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