



A.S(MD) No.186 of 2016

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Dated: 19.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.186 of 2016
and
C.M.P(MD) No.3046 of 2022

1. Sellammal
2. Rani

.. Appellants/Plaintiffs 2 and 4

.Vs.

1. Latha
2. Ramprasad
3. Rajalakshmi
4. Muthulakshmi
5. Dhanalakshmi
6. Malaikolundu
7. Selvi
8. Rathinagiri
9. S.Ramanujam
10. S.Sourirajan
11. S.Narayanan
12. R.Raghunathan
13. Kailasammal
14. Jayalakshmi

..Respondents 1-12/Defendants

..Respondents 13& 14/Plaintiffs 1, 3

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 25.01.2016 passed in O.S. No.143 of 2011 on the file of the III Additional District Judge, Tiruchirapalli.



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For Appellants	: Mr.P.Vinoth for Mr.M.Saravanan
For R1 to R3	: Mr.H.Lakshmi Sankar
For R9 to R12	: Mr.K.S.Kathiravan
For R. 4 to 8,13,14,	: No appearance

JUDGMENT

This Appeal Suit has been filed as against the decree and judgment passed in O.S. No.143 of 2011 on the file of the III Additional District Judge, Tiruchirapalli, wherein the appellants herein have filed the above suit for partition, separate possession and for rendering accounts. The trial Court had dismissed the suit in respect of 'B' schedule property and the suit is partly decreed in respect of A- schedule property. As against the dismissal of the suit in respect of B -schedule properties the present appeal has been filed by the second and fourth plaintiffs.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

3. The brief facts of the plaint averments are as follows:

The suit A' and 'B' Schedule properties belongs to one Muthiriyar of Ettarai Village, Srirangam Taluk and the said Muthiriyar died on 10.03.2005 leaving behind his six children ie.,



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plaintiffs, defendants 4 and 5 and his son Palanivel as legal heirs to succeed his estate. His wife Periyakkal predeceased him in the year 1987. After the death of Muthiriyar his only son Palanivel was in possession and enjoyment of the suit properties and paying amount to his sisters. On 26.04.2005, the said Palanivel died leaving behind his widow wife and children i.e., defendants 1 to 3 to succeed his estate. After the death of Palanivel, the first defendant has been in possession and enjoyment of the suit properties. The plaintiffs are entitled to 1/7 share each in the suit properties, the defendants 1 to 3 are jointly entitled to 1/7 share and the defendants 4 and 5 are each entitled to 1/7 share in the suit properties. The plaintiffs have demanded for amicable partition but the defendants refused for the same. The defendants 6 and 7 are the purchasers of the items 7 and 8 of the A schedule property from defendants 1 to 3. The defendants 1 to 3 have no exclusive right over the properties. The eighth defendant is in possession and enjoyment of second item of A schedule properties and he obtained mortgage deed on 04.12.2002 from deceased Muthiriyar and he is in possession and enjoyment of the said land. The defendants 9 to 12 are landlords of the suit B schedule lease hold properties. The plaintiffs and the defendants are in joint possession and enjoyment of the suit properties and the defendants 1 to 3 are liable to render accounts to the plaintiffs in



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respect of their 4/7 shares in the suit properties. On 30.08.2011, the plaintiffs have issued notice to the defendants demanding for partition and for rendering accounts. The defendants 1 to 3 have managed to return the notice but the defendants 4 and 5 have received notice, but they have not given any reply. Therefore, the plaintiffs have filed the suit.

4. The gist of the written statement filed by the defendants 1 to 3 are as follows:

The suit is false and liable to be dismissed. The plaintiffs are not entitled to the relief as prayed for. The properties originally belonged to one Muthiriyar. The relationship between the parties are admitted. Even during the life time of said Muthiriyar, he sold several items of suit properties, namely items 1,3,4,6 of A first schedule and A second scheduled properties. Therefore, those properties are not available for partition. In respect of B schedule properties, the plaintiffs are not entitled to any claim and the lands are leasehold lands taken by the deceased Muthiriyar and during his life time, he had surrender item Nos. 2,3,5 to the owners of the land after receiving compensation from them. The items 1, 4 and 6 are under the possession and enjoyment of the defendants 1 to 3 and they have been putting their physical labour and doing cultivation.



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Hence, they are cultivating tenants in respect of those items, the plaintiffs cannot claim any right over the properties. The plaintiffs have omitted to include necessary parties in the suit. The landlord in respect of B schedule lands and the purchasers in respect of five items of A schedule properties are necessary parties to the suit and the suit is bad for non joinder of necessary parties. The plaintiffs are harassing the poor widow and two children with a view to extract money from the purchasers, therefore, the suit is liable to be dismissed.

5. The defendants 4 and 5 have filed written statements by admitting the claim of the plaintiffs and they also demanded 1/7 share over the properties by paying requisite fees.

6. The gist of the written statement averments filed by the eighth defendant are as follows:

The suit is not maintainable either in law or on facts. The averments made in the plaint are unconnected with this defendant except para 12 of the same. Originally, the owner of the land Muthirian mortgaged item II of A – Schedule property as simple mortgage by receiving a sum of Rs.82,000/- on 04.12.2002. After the demise of Muthiriyar, his son Palanivel executed registered sale



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deed in respect of second item of A schedule property, for discharging his debt. Even though, the plaintiffs are having right over the suit properties they are bound to pay the debt incurred by the Muthiriyar. Therefore, the plaintiffs have no right to question about the sale in favour of the eighth defendant . Therefore, the suit is liable to be dismissed.

7. The gist of the written statement filed by the 10th defendant adopted by 9,11 and 12 defendants are as follows:

The suit is not maintainable. The averments made in the plaint are false and the plaintiffs are put to strict proof of those averments. The suit has not been properly valued. There is no cause of action for the suit. The ninth defendant is not the owner of any of the items of B Schedule property. The suit B schedule items 2,3 and 6 belongs to 10th defendant. The suit B schedule item No. 5 belongs to 12th defendant, the said lands were under the cultivation of Late Muthiriyar Murthuraja. After his demise, his son was the cultivating tenant under the 10 and 12th defendants. After the life time of Palanivel, his wife Latha, the first defendant was the cultivating tenant of the suit properties in respect of their lands. The daughter of late Muthiriyar, after marriage got separated from the family. As far as said lands are concerned, the daughter of Muthiriyar never



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cultivated the above said lands at any point of time. There is no relationship as landlord and tenant in respect of B schedule lands between the plaintiffs and the defendants 4 and 5 with the defendants 9 to 12 at any point of time. The suit has not been properly valued. The B scheduled fourth item of the property comprised in S.S.No.4/3B to an extent of 0.94 cents comprised in Mullikarumbur Village belongs to the 11th defendant . The Late Muthiriyar was not the tenant in respect of the said item of land . The said land has been under the cultivation of Rajarathinam and his wife Valli . After the demise of Rajarathinam, his wife Valli was the cultivating tenant under the 11th defendant. In so far as the B schedule first item property in S.No.33/1 is concerned, it only belongs to one Pattamal and she sold the properties to the third parties and they are now under the enjoyment. B scheduled 2,3,6 items belongs to 10th defendant and the same are under the cultivation of the first defendant. B schedule lands are not partial lands. The plaintiffs cannot seek any partition in respect of B schedule lands, therefore, the suit is liable to be dismissed.

8. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

i) Whether the plaintiffs are entitled to the relief of



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preliminary decree for partition of 4/7 share in the suit properties by metes and bounds?

ii) Whether the defendants 1 to 3 are liable to render account of the income with respect to 4/7 shares of the plaintiffs in the suit properties?

iii) Whether the fourth defendant is entitled for 1/7 shares in the suit properties?

iv) Whether the fifth defendant is entitled for 1/7 shares in the suit properties?

v) To what other relief?

9. In order to prove the case before the trial Court, on the side of the plaintiff, they have examined P.W.1 and marked documents Ex.A.1 to A.12. On the side of the defendants D.W.1 to D.W.3 were examined and exhibits B.1 to B.10 were marked.

10. The trial Court after considering the evidence adduced on both sides partly allowed the suit in respect of A schedule property and dismissed the suit in respect of B schedule property. As against the dismissal of B schedule property, the plaintiffs 2 to 4 have filed the present appeal on various grounds:



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Grounds of appeal

i) The judgment and decree of the trial Court are opposed to law, weight of evidence and the probabilities of the case

ii) The trial Court failed to see that the respondents 1 to 3 had no right to alienate any property as they had only a 1/7th share in the property?

iii) The trial Court grossly erred in overlooking that the eighth defendant had neither proved nor sought for the discharge of the mortgage debt and that the appellants were not liable to discharge the alleged debt ?

iv) The trial Court ought to have seen that the tenancy right of the father in B schedule items would devolve on the sharers

v) The trial Court erred in deciding that the appellants had not contributed their physical labour for cultivation

vi) In any view of the matter the trial Court ought to have decreed the suit in reading the evidence in the proper perspective

vii) The Court below ought to have seen that the respondents 1 to 3 did not produce any documents to prove their exclusive possession over B schedule items.



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11. During the pendency of the appeal, the appellants have filed a petition under Order 41 Rule 29 of C.P.C to receive the document as additional evidence.

12. The brief averments made in the CMP(MD)No.3046 of 2022 are as follows:

The petitioners are the second and fourth plaintiffs in the suit and the appellants in the above appeal. They filed a suit in O.S. No. 143 of 2011 on the file of the III Additional District and Sessions Court, Tiruchirapalli alongwith respondents 13 and 14 for the relief of partition, separate possession and the same was partly decreed and dismissed in respect of B schedule property. The petitioners claim right in B schedule property. The trial Court dismissed the suit in respect of B schedule property and thereby, the petitioners filed application before the authorities under the tenancy act to register their names as cultivating tenants and issued certificate dated 23.02.2022. The said document has to be received as additional evidence in the above appeal.

13. The respondents in CMP(MD) No.3046 of 2022 have filed counter by denying the averments of the affidavit and the



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documents are created after dismissal of the suit and during pendency of the appeal and they are not essential to decide the case.

14. The learned counsel appearing for the appellants would contend that the plaintiffs are the legal heirs of the deceased Muthiriyar and the said Muthiriyar had six daughters and a son namely, Palanivel who died on 26.04.2005 and the defendants 1 to 3 are the legal heirs of the deceased Palanivel. The said Muthiriyar had properties and the A schedule properties belongs to Muthiriyar and he had leasehold rights as tenants in the B schedule property. Therefore, the plaintiffs being the daughters of Muthiriyar are entitled to share over the properties. The trial Court decreed the suit in respect of A schedule property, which belongs to Muthiriyar and dismissed the tenancy right of Muthiriyar in respect of B schedule properties. The trial Court failed to consider that the plaintiffs and the defendants are in joint possession of the properties. During the pendency of this appeal, they also approached the concerned authorities and applied certified copies to prove their tenancy and the same has to be received as additional evidence and thereby they filed application in CMP No. 3046 of 2022 and the same is liable to be allowed. The decree and judgment passed by the trial Court are liable to be set aside by allowing this appeal.



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15. The learned counsel appearing to the respondents would contend that the relationship of the parties are correct and some of the properties in A schedule properties were already sold by Muthiriyar and those properties are not available for partition, in B schedule property, Muthiriyar was tenant and after his demise his son Palanivel was enjoying the property by investing his labour and after his demise the defendants 1 to 3 are enjoying the properties by investing their labour. Either the plaintiffs or the 4 and 5 th respondents never enjoyed the properties thereby, are not physical possession of the properties. The Trial court after taking into consideration of the evidences adduced by both the parties correctly hold that the plaintiffs are not entitled to share over the suit B schedule property and correctly dismissed the suit as against the B schedule property. Therefore, the appeal is liable to be dismissed.

16. This Court heard both sides and perused the records and upon hearing both sides and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:



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i) Whether the CMP(MD) No.3046 of 2022 is to be allowed or not ?

ii) Whether the plaintiffs are cultivating tenants over B schedule property?

iii) Whether the plaintiffs are entitled to share over the B schedule property?

iv) Whether the decree and judgment passed by the trial Court in respect of B schedule property is sustainable in law and on facts?

v) Whether the appeal is liable to be allowed or not?

Point No.1

17. The appellants have filed petition during pendency of appeal to receive documents of tenancy register and pattas issued by the Head Quarters Tahsildhar in the name of the petitioners/appellants. Those documents are created pendente lite. The available record are sufficient to dispose the case effectively and the petition filed by the petitioners is nothing but the record created after the dismissal of the suit during the pendency of the appeal. Already the same plaintiffs thorough oral evidence admitted that they are not in physical possession of the property and after the



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demise of their father, his brother alone cultivated the lands thereby, the above said records are no way helpful to decide the case. Therefore, the above documents cannot be received as additional evidence. Thus the point is answered

Point No. 2

18. In this case, there is no dispute in respect of relationship of the parties and the father of the plaintiffs deceased Palanivel and the defendants 4 and 5 had tenancy right over the suit B schedule property. According to the defendants, the 9th defendant is no way connected to the suit properties. The 2,3,6 items of B schedule properties are belongs to 10th defendant and the fifth item belongs to 12 defendant. The 4th item B schedule property belongs to 11th defendant. The fourth item of the property was under the enjoyment and cultivation of one Rajarathinam and Valli. The properties 2,3,5 and 6 were originally under the cultivation of Muthiriyar and after his demise his son Palanivel was cultivating tenant and thereafter, the first defendant was cultivating the land. In order to prove the case of the plaintiff they have examined P.W.1 and marked documents Ex.A.1 to A.12. On the side of the defendants D.W.1 to D.W.3 was examined and exhibits B.1 to B.10 were marked. According to the defendants, they admitted the tenancyship of Muthiriyar but after his demise, the property was under cultivation



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of his son Palanivelu and after the demise of Palanivelu now the properties are under the cultivation of the first defendant.

19. Further the plaintiffs have not examined any witnesses to prove that they are also in joint possession with the first defendant. Moreover, the P.W.1 during cross examination admitted that her brother was cultivating the lands. After demise of her father, her brother was cultivating the lands and she did not know what are survey number belongs to her father and what are all the properties enjoyed by their father through tenancy. Therefore, from the evidence of P.W.1 it reveals that she did not put her physical labour in the cultivating lands of B schedule property. Further, the plaintiffs without proving that what are all the items of the properties were under the cultivation of the father of the plaintiffs. Therefore, the plaintiffs failed to prove that they are cultivating lands in B scheduled properties. According to the defendants the deceased Muthiriyar had handed over some properties to the landlords and he only cultivated 2,3,4 and 6 items of B schedule properties. After his demise his son was cultivating and the demise of his son now D1 is cultivating the said lands. But the suit is filed for all items of properties and no evidence in respect of other items that in those items the Muthiriyar had tenancy rights. At this



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At juncture it is relevant to refer the case of ***R.A.Gopalakrishnan and two others Vs State of Tamil Nadu represented by its Secretary, Department of Revenue Secretariat, Chennai-9 and two others*** reported in ***2012(4) CTC 818*** wherein this Court has held that to have share in tenancy, the person should have his own physical labour and investment. In this case, the plaintiff herself admitted that she has not invested her labour and his brother alone was cultivating the land, therefore, the plaintiffs failed to prove that she also cultivated the lands along with the defendants. Moreover, the owners of the land have filed counter stating that after the demise of Muthiriyar, his son was cultivating the land and after his demise, the first defendant was cultivating the lands. Therefore, from the above evidence it is clear that the plaintiffs have not actually cultivated the land, thereby, they are not entitled for the tenancy right over the lands. Thus, the point is answered.

Point No.3

20. This Court also in the previous points discussed and decided that the plaintiffs are not cultivating the land by investing their labour and the first defendant only cultivated the land after the demise of her husband and that too only in respect of item Nos. 2,3,5 and 6 of B schedule property. Other properties are not available with the defendants 1 to 3. In item No.4 one Rajarathinam



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and Valli are the tenants and the ninth defendant is no way connected with the property and P.W.1 herself admitted that she is unable to describe the properties which are cultivated by her father and now, what are the properties cultivated by the first defendant. Therefore, the plaintiffs are not entitled to any share over the B schedule properties. Thus the point is answered.

Point Nos. 4 and 5

21. The trial Court based on pleading framed proper issues and all the said issues were answered through the judgment. Further, the trial Court elaborately discussed about the B schedule property, where the plaintiffs are not actually in possession and they have not put their own physical labour and invested over B schedule property, thereby referred the judgement of this Court in the case of ***R.A.Gopalakrishnan and two others Vs State of Tamil Nadu represented by its Secretary, Department of Revenue Secretariat, Chennai-9 and two others*** reported in ***2012(4) CTC 818*** and dismissed the suit in respect of B schedule property. As far as A schedule property is concerned, the trial Court has decreed the suit but the available evidences shows that the plaintiffs have not filed any document to show that the properties are belongs to the deceased Muthiriyar and some properties were sold and some of the properties were not included as per the



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defendants but the trial Court has decreed the suit and no any appeal filed by the defendants in respect of passing preliminary decree in respect of A schedule property. However, the parties can work out their remedy at the time of passing final decree if any.

22. In view of the above said discussions, this Court is of the opinion that the judgment and decree passed by the trial Court are correct and warrants no interference and this appeal has no merits and deserves to be dismissed.

23. In the result:

a) Civil Miscellaneous petition in CMP(MD) No. 3046 of 2022 is dismissed.

b) The appeal suit in A.S. No.186 of 2016 stands dismissed and the judgment and decree passed in O.S. No.143 of 2011 on the file of the learned III Additional District Judge, Tiruchirapalli are confirmed. No costs.

19.03.2024

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



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1. The III Additional District Judge, Tiruchirapalli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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