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A.S.No.149 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :20.02.2025

CORAM:

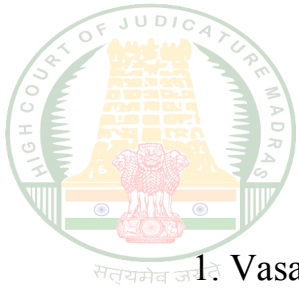
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.149 of 2022 & CMP.No.5676 of 2022

1. Rani
2. Murugan
3. Saravanan
4. Palaniammal
5. Minor Parimala
Rep. by guardian and next friend
her grandmother Kasthuri
6. Kottaiammal
7. Kasthuri
8. Alamelu
9. Ponniammal
10. Chinnaponnu
11. Tallammal
12. Subbuammal
13. Govindaraj
14. Mohan
15. Sulochana
16. Muniyan
17. Ramamoorthy
18. Krishnamoorthy

... Appellants

Versus



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1. Vasanthakumari

2. Vijayakumari

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the Order and Decreetal Order dated 09.12.2021 made in I.A.No.1368 of 2018 in O.S.No.301 of 2018 on the file of the Court of Principal District Judge, Kancheepuram at Chengalpet by allowing this regular first appeal.

For Appellants : Mr.T.Dhanasekaran

For Respondents : Mr.V.V.Sathya – R1

No appearance – R2

JUDGMENT

Challenging the Order of the trial Court in rejecting the plaint, the present Appeal came to be filed.

2. The plaintiffs have filed the suit in O.S.No.301 of 2018 for the following reliefs :



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i. To declare the plaintiffs' title and for consequential relief of to quit and deliver the vacant possession of the suit schedule mentioned property.

ii. To declare the partition deed dated 10.09.1988 which was registered on 10.10.1998 as document No.1285 of 1988 which was done between the defendants' father Thiru Adhiappa Reddiar and Thiru Narasa Reddiar in respect of the suit schedule mentioned property which is fallen in 'A' schedule mentioned properties of Thiru Adhiappa Reddiar as null and void;

iii. To declare the partition deed dated 17.07.2000 which was registered on 28.08.2000 as document No.1091 of 2000 which was done between the defendants' father Thiru Adhiappa Reddiar and the defendants in respect of the suit schedule mentioned property which fell in 'C' schedule of the first defendant as null and void;



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iv. To directing the defendants to pay the costs of the suit
and to pass other suitable relief or reliefs;

3. The case of the plaintiffs in brief is as follows :

An extent of 3 acres in Survey No.189/1 has been owned by one Saravana Pillai and Nataraja Pillai which was purchased by one Parvathiammal vide sale deed dated 17.01.1963 and and she has settled the property in favour of the plaintiffs 17 and 18 on 15.06.1978. However, the defendants while dividing the property on 21.04.1994, instead of survey No.189/1, survey No.188/1 has been wrongly mentioned at the instance of one Srinivasa Pillai. Later the defendants have partitioned the property including the plaintiff's property in survey No.188/1. Hence, the plaintiff has sought declaration and also cancellation of consequent documents.

4. An application has been taken out by the defendants to reject the plaint on the ground that the property in survey No.189/1 is the ancestral property of the defendants and the property was originally partitioned between



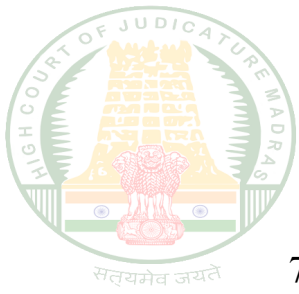
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Athiyappa Reddiar and Narasa Reddiar and the suit property has been allotted to Athiyappa Reddiar and patta has also been given in their name. That apart a suit in O.S.No.265 of 2004 has been filed by the first defendant against one Srinivasa Masthri and plaintiffs 12 to 15. Therefore, sought to reject the plaint.

5. The trial Court considering the submissions on either side, holding that partition has been taken place more than 30 years back and hence, presumption can be drawn against plaintiffs and the fact that there was an earlier suit filed by the first defendant against one Srinivasa Mesthri and the plaintiffs 12 to 15, rejected the plaint.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused entire materials available on record.



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7. It is the contention of the learned counsel appearing for the appellants that the documents of the year 1963 and 1978 clearly show that the ancestors of the plaintiff had purchased the suit property. Since the said survey was wrongly mentioned in a partition deed entered between the family members of the defendants, the same has been taken advantage and they included that survey number in the partition deed executed between the family members of the defendants. Therefore, submitted that these are matter of evidence and the same has to be decided only in the suit.

8. Whereas, the leaned counsel appearing for the respondents would submit that the earlier suit in O.S.No.265 of 2004 filed for declaration and injunction has been decreed exparte in favour of the first defendant and others and the defendants themselves admitted that the survey No.188/1 mentioned in their partition deed do not belong to their family. Now it is too late to seek declaration of title and also to cancel the documents which have been executed thirty years back.



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9. In the light of the above submissions, the point that arise for consideration is

Whether the trial Court is right in rejecting the plaint merely on the basis of the application filed by the defendant.

10. Point :

The plaint can be rejected only on the grounds set out under Order VII Rule 11 of Code of Civil Procedure, which reads as follows :

Rejection of plaint.

The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the



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plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

[e] Where it is not filed in duplicate

[f] Where the plaintiff fails to comply with the provisions of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”



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11. When there are disputed facts, the suit cannot be rejected merely on the basis of the application filed by the defendants or on the basis of the allegations in the written statement. The Court has to see whether there is cause of action in the plaint and its documents. The cause of action is bundle of facts. Therefore, merely because the defendants have filed an application, that itself cannot be a ground to reject the plaint, particularly when there are disputed facts writ large in the pleadings.

12. The specific case of the plaintiffs is that the survey No.188/1 belong to them which is the subject matter of the property purchased under the sale deed of the year 1963. The said document has also been filed along with the plaint documents. Whereas, the defendants had set up title only on the basis of the partition deed entered between themselves. In such view of the matter, whether the parties have derived title over the property or not, is a matter of evidence and the same has to be seen on proper adjudication. Therefore, the plaint cannot be rejected when there are disputed facts pleaded



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in the pleadings. Hence, the Order of the trial Court has to be set aside and the suit has to be restored.

13. In the result, this Appeal Suit is allowed and the Order of the trial Court in I.A.No.1368 of 2018 in O.S.No.301 of 2018 dated 09.12.2021 is set aside and the suit in O.S.No.301 of 2018 is restored to file. The trial Court is directed to dispose of the suit expeditiously within a period of eight months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed. There shall be no Order as to costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The Principal District Judge,
Kancheepuram at Chengalpet.

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N. SATHISH KUMAR, J.

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