



A.S.No.176 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.176 of 2022
and C.M.P.No.6442 of 2022

D.Abilash

... Appellant/Plaintiff

-VS-

1. D.Baskar Reddy

2. D.B.Usha Rani

... Respondents/Defendants

Prayer: Appeal Suit is filed under Section 95 r/w Order XLI Rule 1 of CPC to set aside the judgment and decree passed on 23.12.2020 in O.S.No.252 of 2019 on the file of District Court IV, Thiruvallur @ Ponneri, dismissing the suit and allow the present appeal.

For Appellant : Mr.R.Chandrasekar

For Respondents : No Appearance
(Remained Exparte)

J U D G M E N T

A challenge has been made to the judgment and decree of the Trial Court, dismissing the suit on the ground that the plaintiff has not proved that the suit property is an ancestral property.



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2. It is the case of the plaintiff that the 1st defendant is the father and 2nd defendant is the mother. The suit property is an ancestral property acquired by the 1st defendant and the plaintiff reliably understands that the 1st defendant settled the property in favour of the 2nd defendant on 08.03.2012 registered as Doc.No.7523 of 2012. Hence, a legal notice was issued by the plaintiff on 25.03.2019.

3. The defendants remained exparte before the Trial Court. The plaintiff examined himself as P.W.1 and marked documents as Ex.A1 to Ex.A6. The Trial Court has dismissed the suit on the ground that the character of the property has not been established.

4. Learned counsel for the appellant mainly would submit that Ex.A1 / settlement deed executed by the 1st defendant clearly shows that the property is the ancestral property and there is no contra evidence produced to disprove the evidence of P.W.1. Therefore, it was pleaded that the very decree and judgment is liable to be set aside.



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5. In the light of the above, the point for consideration in this case is as to whether the plaintiff has discharged the initial burden to prove that the suit property is ancestral in nature?

6. The Trial Court has mainly dismissed the suit on the ground that the plaintiff has failed to prove that the property is inherited upto four generations of male lienage to claim share in the property. The defendants remained exparte even before this Court.

7. I have perused the material documents available on record.

8. As stated supra, the Trial Court has dismissed the suit on the ground that the plaintiff has not established the 4th generations of male lienage to claim share in the property. It is relevant to note that once parties admitted the character of the property, there is no need to still place the burden on the plaintiff to establish the character of the property and the same is not warranted. On perusal of Ex.A1, executed by the 1st defendant, it



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is seen that the property was derived by the 1st defendant from his ancestors.

When a Kartha of family himself admitted the character of the property, still placing the burden on the junior member of the family to prove the ancestral character of the property is not proper. Therefore, finding of the Trial Court in that regard stands set aside.

9. When this Court posed a question during submissions, learned counsel for the appellant fairly submitted that apart from the plaintiff, one more legal heir, namely, another son of the defendants is available and since he was not ready to join with the plaintiff, he has not been impleaded in the suit.

10. The suit was mainly filed for partition of the property and therefore, irrespective of the fact that the other co-owner is interested in partition or not, the presence of the co-owner is absolutely necessary for dividing the property equally. Thus, the person, who has share in the property is a necessary party and without his presence, there cannot be any proper adjudication and on that score, the suit fails and the same is liable to



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be dismissed.

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11. According, the present Appeal Suit is dismissed for non-joinder of necessary party. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes / No

Internet: Yes / No

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To:

The IV District Judge,
Thiruvallur @ Ponneri.



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N.SATHISH KUMAR,J.,
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