



WEB COPY



A.S.No.260 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.260 of 2022

M.Jacob

... Appellant

Vs.

1.M.Joseph Mathew

2.Aney Thomas

3.Jessy Kenncy

... Respondents

Prayer:

Appeal filed under Section 96 of Civil Procedure Code praying to allow this appeal and set aside the judgment and decree in O.S.No.28 of 2018 on the file of the XVIII Additional City Civil Court (XVIII Additional Sessions Court), Chennai, dated 03.03.2022 and allow the said suit.

For Appellant : Mr.R.Srinivas

Senior Counsel

for M/s.V.Mythili

For Respondents : Mr.A.N.Rajan for R1

R2 and R3 – No Appearance

J U D G M E N T

The plaintiff in the partition suit is before this Court as appellant being aggrieved by the dismissal of his suit by the trial Court.



A.S.No.260 of 2022

WEB COPY

2.The brief facts leading to the appeal is as under:

(i)Mr.P.C.Mathew who purchased the suit schedule property by way of registered sale deed on 09.03.1994 died intestate on 16.08.2008 leaving behind his wife Kunjamma Mathew, two sons and two daughters. His wife Kunjamma Mathew later died on 04.03.2012 leaving her children to succeed the property left by P.C.Mathew. In the said circumstances, the plaintiff, the eldest son has preferred the partition suit arraying his brother and sisters as defendants 1 to 3. The written statement was filed on behalf of the first defendant contesting the suit, whereas, the written statement on behalf of the defendants 2 to 3 was in tune with the claim made by the plaintiff. Required Court fees was also paid by them conceding to grant a decree of partition.

(ii)Though parties admitted the ownership of the suit property and their right in the property, the main contention raised by the first defendant was that at the time of purchasing the property, he has contributed a sum of Rs.75,000/- and also he was promised to be allotted 1091 sq.ft. of property in the front portion of the property. That apart, certain averments regarding movables and valuables which



A.S.No.260 of 2022

belonged to the family alleged to have been taken away by the plaintiff.

WEB COPY

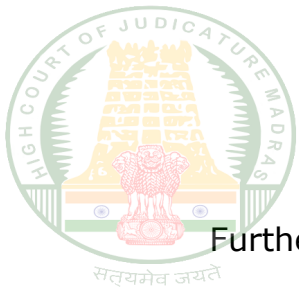
(iii)The trial Court based on the pleadings framed the following issues:

1)Whether the plaintiff is entitled to the relief of partition and separate possession of $\frac{1}{4}$ share as prayed for?

2)Whether the first defendant had invested Rs.75,000/- in purchase of the suit property?

3)To what other reliefs is the plaintiff entitled to?

(iv)The plaintiff and the first defendant mounted witness box and subjected themselves for cross examination. In support of his case, plaintiff filed six documents which were marked as exhibits Ex.A1 to Ex.A6 and the defendant relied on two documents marked as exhibits Ex.B1 and Ex.B2. The Trial Court after appreciation of evidence has passed the judgment dismissing the partition suit holding that plaintiff had failed to produce the original of the title document. Even the encumbrance certificate was not produced by him to hold that the property is within the family and in enjoyment of the family members.



A.S.No.260 of 2022

Further the trial Court has held that mere exchange of notice between the parties regarding the property will not establish the title of the suit property. On said terms partition suit was dismissed. In respect of the second issue regarding contribution of Rs.75,000/- by the first defendant, for purchase of the property the trial Court has held that the first defendant had not produced any document or oral evidence in support of his claim to establish that his Father – in – Law contributed Rs.75,000/- for the purchase of the suit property.

3.Thus being aggrieved by the trial Court judgment, the present appeal is filed on the ground that when there is no dispute regarding the title and ownership of the suit schedule property in the name of the late father Mathew and right of the respective parties in the property as legal heirs of the deceased father, non production of the title document either original or certified copy is not an issue for consideration by the Court, the trial Court ought not to have dismissed the suit on the said score.

4.The appellant had taken out an application to receive the sale deed dated 09.03.1994 executed in favour of P.C.Mathew, the Father of the parties and the said application in C.M.P.No.3162 of 2023 was



A.S.No.260 of 2022

WEB COPY

allowed on payment of costs and costs also received by the respondent. The original document is available before this Court and the same has been taken on file and marked as additional document Ex.A7.

5.Point for determination whether the trial Court is right in dismissing the suit for partition for want of original title document and whether trial Court is right in rejecting the plea of the first defendant regarding his claim of contributing Rs.75,000/- for purchase of the suit property by his Father.

6.The learned Senior Counsel appearing for the appellant would submit that except in the reply notice and written statement, there is no iota of evidence to substantiate the plea of the first defendant regarding his contribution for purchasing the property. The trial Court has rightly held that there is no evidence produced by the first defendant either documentary or oral to support his claim, however, the trial Court failed to take note of the fact that regarding the ownership of the property, when the parties have not disputed and admitted there is no necessity for any proof of an admitted fact and for



A.S.No.260 of 2022

WEB COPY

non production of the title document the share of the plaintiff in the property in his deceased father cannot be deprived. He would also submit that even assuming the first defendant had contributed some money at the time of purchasing the property through his Father – in – Law, that will not create any ovalty over the property unless and until there is an expressed written right given to him by the title holder namely, P.C.Mathew.

7.The learned counsel appearing for the first respondent would submit that in the reply notice Ex.A4 and rejoinder Ex.A6 as well as in the proof affidavit filed in lieu of chief examination, the first defendant has expressly mentioned about the contribution of Rs.75,000/- for purchase of the property and he has explained that he has sourced that money through his Father – in – Law and also he has contended that 24 sovereign gold jewels were taken away by the plaintiff and he has not accounted it nor shared it with the siblings. Therefore, the trial Court erred in not taking into account the pleadings.

8.This Court after giving anxious consideration to the pleadings and on perusal of the record find that the trial Court has miserably



A.S.No.260 of 2022

WEB COPY

failed to properly appreciate the evidence at the first instance when there is no issue framed regarding the admissibility of the certified copy and non production of original title deed is not a controverted facts between the parties. Absence of dispute regarding the title of the property, the trial Court ought not to have dismissed the partition suit on that score.

9.Be that as it may. The said defect is now cured as the original document is produced which has been admitted as additional document Ex.A7. It is not the case of the first defendant that the suit property does not belong to his family or the plaintiff and defendants 2 and 3 have no share in the property. His contention is that he had contributed money for purchase of the property, he has been taking care of his parents and had been living in the property, therefore, he has predominance over the property. Further his father promised that he will be given 1091 sq.ft. of the property in the frontage this promise has to be honoured.

10.This Court is unable to appreciate the said contention when there is no evidence to prove the contribution of Rs.75,000/- for



A.S.No.260 of 2022

purchase of the property or promise by the father to allot 1091 sq.ft. out of 2,400 sq.ft. of the property to the first defendant.

11.Perusal of the cross examination of plaintiff where certain suggestions been made, and shoutly denied and the oral evidence of the defendant, this Court could not find any material which support the case of the first defendant that he had any excess right in the property for his contribution for purchase of the property. When there is no evidence to show that he has contributed anything for purchase of the property and the sale deed which has now been marked and admitted as additional document Ex.A7 does not whisper about his contribution, the oral evidence contrary to the documentary evidence not supported by adequate and reliable evidence.

12.In this case, this Court find that there is no evidence available to uphold the contention of the first respondent and therefore the point for determination is decided in favour of the appellant holding that he being the son of P.C.Mathew is entitled for $\frac{1}{4}$ share in the property left by P.C.Mathew and the property has to be divided among four children of the deceased P.C.Mathew.



A.S.No.260 of 2022

WEB COPY

13. Accordingly, a preliminary decree of partition allowing $\frac{1}{4}$ share to the plaintiff/ appellant and $\frac{1}{4}$ share to each of the three defendants 1 to 3/ respondents 1 to 3 is permitted.

14. In the result, the appeal suit is allowed. The judgment and decree in O.S.No.28 of 2018 on the file of the XVIII Additional City Civil Court (XVIII Additional Sessions Court), Chennai, dated 03.03.2022 is set aside. No order as to costs.

06.06.2025

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1. The XVIII Additional City Civil Court
(XVIII Additional Sessions Court),
Chennai.



WEB COPY



A.S.No.260 of 2022

Dr.G.JAYACHANDRAN,J.
pri

A.S.No.260 of 2022

06.06.2025