



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A. (MD) No.315 of 2017

and

C.M.P (MD) No.2358 of 2018

1.Manonmani Nadachi
2.Sugambukani

... Defendants 3 & 4
/Appellants/Appellants

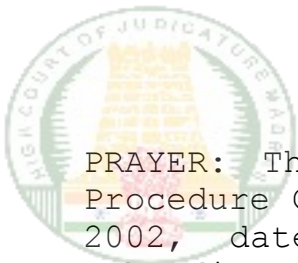
vs.

1.T.Ramachandran
2.Ratnamony Nadachi
3.P.Arunachala Perumal Nadar (died)
4.N.Ramasamy Nadar (died)
5.Annalakshmi
6.E.Thankasamy (died)
7.M.Madhu Suthana Perumal
8.M.Kasi Thangam
9.M.Esakki Neelan
10.M.Subramanian
11.M.Ponnayya
12.M.Thinamony
13.M.Chellathurai
14.Padamavathy
15.Paramalekshmi Nadachi (died)
16.Bakialakshmi
17.Meera
18.Sekar
19.Chinnathangam
20.Ramachandran
21.Ravichandran
22.Sasi
23.Ponniah
24.Kasithangam
25.Chelladurai
26.Madhusudhanaperumal
27.Thinamani
28.Subramanian
29.Esakkineelan
30.Padmavathy

(RR 16 & 17 are brought on record as Lrs
of deceased R3 and R18 & R19 are brought
on record as Lrs of the deceased R4 and
R20 to R22 are brought on record as Lrs of deceased
R6 and R23 to R30 are brought on record
as Lrs of the deceased R15 vide order

<https://hcservices.ecourts.gov.in/hcservices/>
(dated 17.11.2011)

...Plaintiffs/Respondents/
Respondents



PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree made in A.S.No.43 of 2002, dated 26.04.2005 on the file of the Second Additional Subordinate Judge at Nagercoil confirming the Judgment and Final Decree passed in I.A.No.1167 of 1988 in O.S.No.500 of 1972 dated 29.04.2002 on the file of the Additional District Munsif, Nagercoil.

For Appellant	:	Mr.S.Rajasekar for Mr.T.Lajapathi Roy
For R1	:	Mr.Sankar Prakash
For R24, 26, 28 to 30	:	Mr.C.Godwin
For R7 to 11, R13, 14 16 & 17	:	Mr.M.P.Senthil
RR 3 to 6, 12, 15, 22 and 27	:	Died
For RR 18, 20, 21, 23, 25	:	No appearance

J U D G M E N T

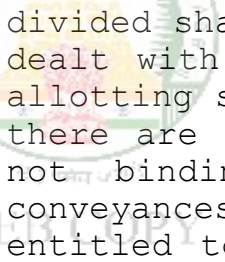
Defendants 3 and 4 in the suit in O.S.No.500 of 1972 on the file of Additional District Munsif Court, Nagercoil are the appellants in the Second Appeal.

2. A Preliminary decree for partition was passed on 27.04.1978 in O.S.No.500 of 1972 on the file of the District Munsif Court, Nagercoil and it has become final. As per the preliminary decree, defendants 3 and 4 are entitled to 1/16 share. After preliminary decree, the plaintiff who are the contesting respondents in this appeal filed I.A.No.1167 of 1988 in O.S.No.500 of 1972 to pass final decree and a final decree was also passed on 29.04.2002. Appellants herein preferred an appeal in A.S.No.43 of 2002 on the file of II Additional Sub Court, challenging the final decree. The lower appellate Court also dismissed the appeal confirming the final decree passed in O.S.No.500 of 1972. Hence this appeal.

3.The learned counsel for the appellants submitted that the properties, which are the subject matter of the preliminary decree, have been alienated by the respondents in this appeal long back and that no other properties are available. The learned counsel for the appellants states that the appellants are justified in asking for allotment of the property, which is unsold and available for partition, namely item No.6.

4. The learned counsel for the respondents submitted that the suit for partition is of the year 1965 and the preliminary decree was passed in 1978. Despite passage of 45 years, the respondents, who are plaintiff in the suit is unable to get the property based on preliminary decree.

5.The learned counsel for the contesting respondents, who are also sharers and whose share has been declared in the preliminary decree submitted that some of the parties have alienated their un-



divided share in the properties to third parties and that no one has dealt with the share of others. The final decree has been passed allotting shares to the parties in each item of properties. Even if there are alienations by some of the sharers, such alienations are not binding on the co-owners, who are not parties to the conveyances. It is further submitted that the appellants who are entitled to 1/16 share cannot insist allotment of a very valuable property to their share ignoring valuation.

6. It is further noticed that the final decree in this case was passed on 29.04.2002 and the appeal was dismissed on 26.04.2005. This appeal is numbered only in the year 2017. In such circumstances, it is very difficult to trace the persons, who have purchased the un-divided shares from the sharers. Be that as it may, the alienees are not parties before this Court, and this cannot be taken as an advantage by the appellants to plead any equity for the simple reason that any alienation pending suit is hit by lis pendens as per Section 52 of Transfer of Property Act and hence, no prejudice is likely to be caused to any one. Even if there are any alienation, the rights of the appellants to take delivery of the property, which is allotted to him in the final decree proceedings is not taken away by any alienation during pendency of the appeal. It is not the case of the appellants that there was some alienation even prior to passing of preliminary decree so as to affect the rights of the parties to reap the benefit of decree that was obtained by them earlier.

7. This Court does not find any reason to entertain this second appeal.

8. The learned counsel for the appellants further submitted that his endeavour is to get the property in which he is in possession in the final decree. It is admitted that the very same stand taken by the appellant was considered by the Advocate Commissioner, who inspected the property and suggested allotment before the final decree is passed. Having regard to the valuation of the properties, the contention of the appellant was negatived by the courts below. This Court does not find any legal ground to take a different view than what was taken by the courts below. No question of law is involved in this second appeal.

9. In the result, the Second Appeal is dismissed. Consequently, connected miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Subordinate Court, Nagercoil.

2. The Additional District Munsif, Nagercoil.

+1cc to Mr. M. P. Senthil, Advocate, SR.No.58832

+1cc to Mr. C. Sankar Prakash, Advocate, SR.No.58730