



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.02.2022

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S(MD).No.105 of 2017

and C.M.P(MD).Nos.6213 and 6214 of 2017

1.M.Ganthiyammal

2.S.Sasikala

3.P.Devi

.. Appellants/Plaintiffs

Vs.

1.K.Periyampillai

2.K.Samuthiram @ Murugesan

3.M.Karuppaiah

4.Pandiyammal

5.G.Kaleeswari

.. Respondents/Defendants

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.136 of 2013 dated 31.01.2017 on the file of the I Additional District Court, Madurai.

For Appellants : Mr.M.Thirunavukkarasu

For Respondents : Mr.A.R.Kannappan

for Mr.A.Gopal for R4 to R5

No appearance for R1 to R3

J U D G M E N T

This Appeal Suit is preferred against the judgment and decree in O.S.No.136 of 2013 dated 31.01.2017 passed by the I Additional District Court, Madurai.

2. The appellants are the plaintiffs before the trial Court. The appellants/plaintiffs have filed a suit for partition of the 3/12th share in the suit properties and to declare the partition deed dated 27.09.2011 entered into between the defendants 1 to 3 as null and void and to declare the preliminary decree obtained by the



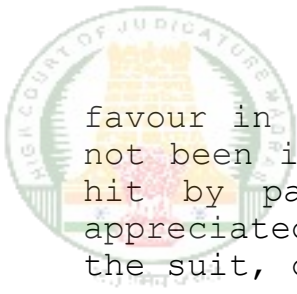
defendants 4 and 5 against the defendants 1 and 2 in O.S.No.553 of 2010 also null and void. The suit has been filed on the basis that the suit properties originally belonged to one Late Maaranadu and the defendants 1 to 3 as Hindu joint family properties. The first plaintiff is the wife and the second plaintiff is the daughter of the late Maaranadu and the third defendant is the son of the Late Maaranadu, the defendants 1 and 2 are brothers of late Maaranadu and defendants 4 and 5 are third parties.

3. Maaranadu died on 01.02.2002 leaving behind his wife and children as his legal heirs. Since Maaranadu died before partition, his share in the suit properties would devolve upon his son/third defendant and the plaintiffs. The plaintiffs would have 3/4th share in the share of Maaranadu and that would come to 4/12th share in the entire suit properties. Despite the plaintiffs' repeated request for partition and separate possession of their shares, the defendants 1 to 3 did not come forward to effect the partition, but, however, they colluded between themselves and entered into a partition deed among themselves on 22.09.2011 and that is not valid. The fourth defendant alleged herself as the wife of the deceased Maaranadu and fifth defendant as his daughter and had filed a suit in O.S.No.553 of 2010 against the defendants 1 and 2 and got an ex-parte decree. Despite the plaintiffs and third defendant were the necessary parties to that suit, they were not impleaded. Hence, the plaintiffs have filed a suit for partition and separate possession of their 3/12th share in the suit properties; the defendants were set ex-parte because of their non-appearance.

4. The first plaintiff examined himself as P.W.1 and produced the documents Ex.A1 to Ex.A12. The learned trial Judge after examining the evidence available on record dismissed the suit. Aggrieved by that, the plaintiffs have preferred this appeal.

5. The learned counsel for the appellants submitted that the first plaintiff is the legally wedded wife of Maaranadu and the plaintiffs 2 and 3 and the third defendant are the children born to Maaranadu through the first plaintiff; Ex.A7 - Partition deed itself would show that the parents of the deceased Maaranadu had only 3 sons, who executed the partition deed dated 27.11.2009 (Ex.A7). Despite the defendants did not make their appearance, the learned trial Judge proceeded to dismiss the suit on some wrong findings; hence, the plaintiffs have preferred this appeal challenging the judgment of the trial Court.

6. The learned counsel for the respondents submitted that the fourth defendant is the wife of the deceased Maaranadu and the fifth defendant is the daughter of Maranadu. The fourth defendant - wife of Maaranadu has filed a suit for partition and got a decree in her



favour in respect of the suit property. Some of the properties have not been included in the suit for partition and hence, the suit is hit by partial partition. The learned trial judge has rightly appreciated the evidence available on record and chosen to dismiss the suit, despite the defendants remained ex-parte.

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7. On the basis of the above pleadings, the following points for consideration should be framed for the disposal of this appeal:-

- (i) Whether the plaintiffs are the legal heirs of Maaranadu; and
- (ii) Whether the dismissal of the suit has laid by fair and proper?

8. The relationship between the plaintiffs and the third defendant was not denied. It is also not disputed that the suit properties were originally belonged to the parents of one Maaranadu and the deceased Maaranadu. The defendants 1 and 2 were the sons of deceased Karuppaiah and it is claimed by the respondents that the first plaintiff is in no way related to the deceased Maaranadu and the fourth defendant alone is the legally wedded wife of Maaranadu. The brothers of deceased Maaranadu themselves have acknowledged that the third defendant is the son of Maaranadu; Maaranadu had predeceased his parents. There is no quarrel over the character of the suit properties that they are the ancestral properties of the deceased Maaranadu.

9. The partition deed - Ex.A7 would show that Maaranadu and his two brothers alone are the legal heirs of their father, namely, Karuppaiah. Maaranadu was not alive at the time of Ex.A7 partition deed. His son - third defendant was included as a party to the partition. So that, the third defendant was accepted as the son of Late Maaranadu, by his brothers. The fact remains that the third defendant was born through the first plaintiff. However, the fourth defendant also claims that she is the legally wedded wife of late Maaranadu. These facts could have better agitated and proved before the Court, if the defendants made their appearance and contested the suit. Though the defendants have not appeared before the trial Court, they have appeared before this Court and made their submissions.

10. It seems many contentious issues have to be analysed and resolved. Hence, it is appropriate to remand the suit to the trial Court for fresh disposal. In that event, the defendants 1 to 5 would get the liberty to file their written statement. In the interest of justice the plaintiff should also be permitted to amend the plaint schedule properties for including the entire properties involved in Ex.A7 partition deed in order to avoid the risk of partial



partition. In the other suit filed by the defendants 4 and 5 against the defendants 1 and 2, the issue raised now could not have been adjudicated because the plaintiffs as they were not parties to the said suit.

11. The appellants/plaintiffs have also sought their relief to declare the decree obtained by the defendants 4 and 5 in O.S.No.553 of 2010 as null and void. Hence, the opportunity should be given to all the parties concerned to agitate before the trial Court by filing their respective pleadings. So, in the interest of the justice, I feel that the suit should be remanded to the trial Court with the above directions.

12. In the result, the judgment and decree made in O.S.No.136 of 2013 dated 31.01.2017 is set aside and the suit is remanded to the trial Court for fresh disposal. The learned trial judge shall grant an opportunity to the defendants to file written statement and the plaintiffs to file amendment petition to include the entire properties for partition. The learned trial Judge is directed to dispose of the suit as early as possible. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

The I Additional District Judge, Madurai.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-9113[F]
dated 01/03/2022)

+1 CC to M/s.A.GOPAL, Advocate (SR-9155[F] dated 01/03/2022)

A.S(MD).No.105 of 2017

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SE(CO)

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