

(2013) 07 MAD CK 0415

In the Madras High Court

Case No : S.A. No. 1281 of 2008 and M.P. No. 1 of 2008

Chinnammal

APPELLANT

Vs

Marakkal and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0415

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; T.V. Ramanujam, for Su. Srinivasan for R7 and R8, Mr. M.R. Jothimanian for R9 and R10, R6-Died, for the Respondent

Final Decision : Disposed Off

Judgement

G. Rajasuria, J.—This second appeal is focussed by the D10, inveighing the judgment and decree dated 13.09.2007 passed by the learned Subordinate Judge, Mettur in A.S. No. 22 of 2005 in confirming the judgment and decree dated 30.07.2004 passed by the learned District Munsif cum Judicial Magistrate, Omalur in O.S. No. 809 of 1996 [Sub Court, Sankari] in O.S. No. 352 of 1990. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

2. The epitome and the long and the short of the germane facts absolutely necessary for the disposal of this second appeal would run thus:

a) The plaintiff filed the suit for partition, seeking the following reliefs:

- to direct the defendants to effect division of the suit properties into 12 shares and allot one such share to the plaintiff and for costs.

(extracted as such)

b) The defendants" resisted the suit by filing the written statement.

c) Issues were set down for trial, during which, the second plaintiff examined

herself as PW1 and marked Exs. A1 to A6 and on the defendant's side, D.Ws. 1 to 4 were examined and marked Exs. B1 to B29.

d) Ultimately, the trial court passed the preliminary decree ordering the suit property to be divided into 12 shares and allotted one such share to the plaintiffs. As against which, the appeal was filed by D10, the purchaser of the property from D7, the property bearing Survey No. 61/1, Punja 1.51 acres with kist Rs. 11.78 Well with patta No. 188 [Sl. No. 2 of the second item of the property described in the schedule of the plaint] vide Ex. B25 sale deed dated 19.11.1982, claiming specifically the share purchased by her and also contending that the property purchased by D10 from D7 was the self-acquired property of D7; but that was negated by the first appellate court.

e) Challenging and impugning the judgment and decree of the first appellate court, D10 has preferred this second appeal on various grounds and also suggesting various substantial questions of law.

f) My learned predecessor at the time of admitting the second appeal, formulated the following substantial questions of law:

(i) Whether the courts below erred in law in not taking into consideration the question of res judicata especially when the findings in respect of Ex. B11 to Ex. B13 had attained finality in the light of the judgment dated 06.12.2001 made in S.A. No. 883 of 1991?

(ii) Whether the courts below erred in law in misdirecting themselves by granting the relief of partition merely on the basis of patta marked as Exs. A2 and Ex. A5 in the absence of any other oral or documentary evidence to prove her right over the suit properties?

3. Heard all concerned.

4. The learned counsel for D10 restricted his argument to the effect that D10 is only pressing this second appeal for getting adjudged in her favour to the effect that in the property referred to in Ex. B25, the sale deed dated 19.11.1982 shall be allotted to D10 as she stepped into the shoes of D7.

5. In view of the above submission made by D10, I thought fit to formulate the following additional substantial question of law to the knowledge of both sides.

Whether D10 is entitled to get allotted the property bearing Survey No. 61/1, measuring 1.51 acres, purchased from D7 allotted in her favour in the final decree proceedings?

6. The learned senior counsel appearing for R7 and R8 as well as the learned counsel appearing for R9 and R10 in unison would submit that pendente lite, except the property covered by Ex. B25, the co-sharers other than D7 alienated their respective shares, however by specifying metes and bounds their shares in favour of a third party and the property purported to have been purchased by D10 from D7, so to say, the property bearing Survey No. 61/1, measuring 1.51

acres, was not sold by them. Wherefore, their respective clients are having no objection for allotting the said property purchased by D10, in favour of D10.

7. The plaintiffs" remained absent in this second appeal.

8. The learned counsel for the D7/respondent No. 9 would submit that in view of the changed scenario, there would be no impediment on the part of the lower court at the time of passing final decree to allot to D10, the very same property purchased by her from D7 by metes and bounds.

9. At this stage, this court could only tentatively see the reasonableness in the argument of the learned counsel for D10/the appellant; but while passing the preliminary decree, the court would not be justified in allotting the shares by metes and bounds, unless there is compromise to that effect.

10. What I could discern and understand is that the respective co-sharers alienated their undivided shares in favour of a third party by specifying metes and bound excluding this property. In all probabilities there may not be any impediment in allotting to D10, the very same property purchased by her from D7; however, it is for the court, which is going to pass the final decree to see to it and preferably allot the same property to D10, if there is no legal impediment.

11. The learned counsel for the appellant/D10, by inviting the attention of this court to the direction of the first appellate court in para No. 17 of its judgment, would argue that D10 purchased the property only from D7 and not from Chella Gounder, the father of D7. Wherefore, such exposition by the first appellate court has to be erased and accordingly, it is erased.

12. D10 is at liberty to file a final decree application subject to payment of court fee and in the event of filing such application, the same shall be disposed of within a period of three months from the date of filing the same.

13. Accordingly, the substantial questions of law are answered to the following effect:

(i) In view of the ratiocination adhered to by me, the substantial question of law Nos. 1 and 2 does not arise.

(ii) The additional substantial question of law is answered to the effect that there may not be any impediment in allotting to D10 the very same property purchased by her from D7. However, it is for the court, which is going to pass the final decree to see to it and preferably allot the same property to D10.

With the above observation, this second appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.