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Palani Vs. Valliammal

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Court : Chennai

Decided On : Jul-10-2013

Judge : R.S.Ramanathan

Appellant : Palani

Respondent : Valliammal

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:

10. 07.2013 CORAM THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN A.S.No.998 of 1993 1. Palani (Died) .. 1st Appellant/ 1st Defendant 2. K.P.Selvam .. 2nd Appellant/ LR. of the deceased sole appellant Vs.

1. Valliammal .. 1st Respondent/ Plaintiff 2. Murthy 3. Rani .. Respondents 2 and 3/ Defendants 2 and 3 Prayer:- Appeal Suit filed under Section 96 of Code of Civil Procedure against the Judgment and Decree dated 3.3.1993 made in O.S.No.375 of 1987 on the file of the Subordinate Court, Poonamallee. For appellant : Mr.V. Sairam For 1st Respondent : Mr. V.Raghavachari J U D G E M E N T The 1st defendant in O.S.No.375 of 1987 on the file of the Subordinate Court, Poonamallee, is the appellant.

2. The 1st respondent/ plaintiff filed the above suit for partition of her 1/3rd share in the suit property and also for mesne profits and the trial Court granted preliminary decree holding that the 1st respondent/ plaintiff was entitled to 1/6th share and the

trial Court also held that the 1st respondent/ plaintiff was entitled to claim of Rs.6,000/- towards her 1/6th share in respect of the income from 1.8.1982 to 31.7.1985 and also held that from 1.8.1985 the 1st respondent/ plaintiff was also entitled to claim of Rs.1,000/- per year till she gets possession. Aggrieved by the same, this appeal is filed.

3. The case of the 1st respondent/ plaintiff as seen from the plaint is as follows:- The appellant, 1strespondent and the mother of the respondents 2 and 3 namely Palaniammal are brother and sisters and they are the children of Madurai Thambiran. The said Madurai Thambiran died intestate in the year 1961 leaving behind the plaintiff 1st respondent herein, the 1st defendant namely the appellant herein and also the respondents 2 and 3 as his legal heirs. Originally the properties belonged to Appu Thambiran and he had two sons namely Madurai Thambiran and Arunachalam and in the year 1930 there was a partition between Madurai Thambiran and Arunachalam and the suit properties were allotted to the share of Madurai Thambiran and therefore the plaintiff and 1st defendant are each entitled to 1/3rd share and the defendants 2 and 3 are together entitled to 1/3rd share and therefore the suit was filed for partition of 1/3rd share of the plaintiff's share. It is also alleged that the rent of Rs.1000/- is received by the 1st defendant per month and therefore the plaintiff is entitled to 1/3rd share and therefore for mesne profits and also for recovery of the plaintiff's share from 1.8.1982 to 31.7.1985.

4. The 1st defendant filed the statement stating that Madurai Thambiran did not die in the year 1960 and he died prior to 1956 prior to coming into force of the Hindu Succession Act and therefore the 1st defendant alone became entitled to the suit property and the suit property was not the ancestral property in the hands of Madurai Thambiran and the 1st defendant was the only earning member and he puts up construction and therefore the plaintiff and other defendants are not entitled to any relief. The defendants 2 and 3 remained exparte.

5. On the basis of pleadings the trial Court framed the following issues and are as follows: (1)Whether the 1st defendant constructed the building in the suit property out of his own funds ?. (2)Whether the suit property is a Grammanatham

poramboke ?. (3)Whether the plaintiff is entitled to claim 1/3rd share ?. (4)Whether the plaintiff is entitled to claim arrears of rent ?. (5)Whether the 1st defendant is liable to render accounts from 1980 ?. (6)To what relief the parties are entitled ?.

6. On the side of the plaintiff four witnesses were examined and eight documents were marked and on the side of the 1st defendant four witnesses were examined and 11 documents were marked.

7. The trial Court tried Issue Nos.1 to 3 together and held that the 1st defendant failed to prove that he put up construction out of his own funds and the properties were ancestral properties in the hands of Madurai Thambiran and therefore the 1st defendant got half share and the remaining half share belonged to Madurai Thambiran and the Madurai Thambiran died only in the year 1961 and therefore the plaintiff can claim share only from the half share of Madurai Thambiran and the half share of Madurai Thambiran devolved upon the plaintiff, 1st defendant and the defendants 2 and 3 and therefore the plaintiff is entitled to 1/6th share.

8. The trial Court also presumed that there are eight portions in the suit property and each portion may fetch Rs.150/- as rent and therefore the claim of the plaintiff that Rs.1000/- is received by the 1st defendant as rent can be accepted and therefore the 1st defendant is liable to pay 1/6th share of income from 1.8.1982 to 31.7.1985 namely Rs.6000/- and the 1st defendant is liable to pay the same and answered that Issue No.4 in favour of the plaintiff. Issue No.5 was answered as unnecessary and the preliminary decree was passed and by giving 1/6th share to the plaintiff and also directed the 1st defendant to pay Rs.6000/- to the plaintiff towards 1/6th share of income from 1.8.1982 to 31.7.1985 and also Rs.1000/- per year towards future income from 1.8.1985 and the relief of rendition of accounts by the 1st defendant was rejected. Aggrieved by the same, this appeal is filed.

9. The learned counsel for the appellant/ 1st defendant submitted that the trial Court erred in directing the appellant to pay a sum of Rs.6000/- towards 1/6th share of income to the plaintiff for the period from 1.8.1982 to 31.7.1985 without recording any evidence or proof about the income. He further submitted that the plaintiff has not adduced any evidence regarding income and as per Exs.C1 and C2 the portions are separately enjoyed by the parties and in a suit for partition

without directing an enquiry to be conducted with regard to the mesne profits and in the absence of any evidence the trial Court erred in holding that Rs.1000/-p.m. was received by the appellant towards rent and the plaintiff was entitled to 1/6th share in that rental income and for the period from 1.8.1982 to 31.7.1985 the plaintiff was entitled to Rs.6000/- and also Rs.1000/- per year from 1.8.1985 was erroneous and while passing a preliminary decree the trial Court ought not to have granted such relief, which can be decided in the final decree after conducting the enquiry regarding mesne profits.

10. Heard the learned counsel for the 1st respondent and the learned counsel for the 1st respondent submitted that the 1st respondent/ plaintiff claimed 1/3rd share, but the Court below granted only 1/6th share and on the basis of the Commissioner's report, the trial Court has rightly fixed Rs.1000/- as rental income per month and directed the appellant to pay a sum of Rs.6000/- towards plaintiff's share from 1.8.1982 to 31.7.1985 and also Rs.1000/- as future income from 1.8.1985 and there is no need to interfere with the said findings.

11. On the basis of the submissions of both counsel the following point for consideration arises in this appeal:- Whether the trial Court while passing preliminary decree erred in fixing the rental income at Rs.1000/- per month and directing the appellant to pay Rs.6000/- towards 1/6th share of the 1st respondent/ plaintiff to the 1st respondent from 1.8.1982 to 31.7.1985 and thereafter to pay at the rate of Rs.1000/- per year ?.

12. As stated supra, the relationship between the parties is admitted. It is the case of the 1st respondent/ plaintiff that Madurai Thambiran died in the year 1961 leaving behind the plaintiff, the 1st defendant and defendants 2 and 3 who are the children of deceased Madurai Thambiran's daughter Palaniammal. It is also the case of the appellant/ 1st defendant that the suit property was not the ancestral property in the hands of Madurai Thambiran and Madurai Thambiran died in the year 1956 and that was rightly rejected by the Court below considering Ex.A7 wherein Madurai Thambiran signed on 16.1.1961. As the properties were the ancestral properties in the hands of Madurai Thambiran and the appellant was his only son, the appellant became entitled to half share and Madurai Thambiran

became entitled to half share. After coming into force of the Hindu Succession Act and after the death of Madurai Thambiran his half share devolved upon his children namely plaintiff, 1st defendant and the defendants 2 and 3 together. Therefore the plaintiff got 1/6th share and that was rightly granted by the trial Court. As a matter of fact, the appellant also did not dispute the same and the 1st defendant did not file any cross objection.

13. However, in this appeal the appellant contended that while answering Issue No.4 the trial Court ought not to have fixed the monthly income from the properties at Rs.1000/- in the absence of any evidence to that effect. I find force in the arguments of the learned counsel for the appellant. It is seen from the discussion in Paragraph 11 of the trial Court Judgement that as per Exs.C1 and C2 the suit property has been divided into 8 portions and there was no evidence adduced regarding the income from that portions. The lower Court presumed that each portion may yield the income of Rs.150/- and accepted the case of the 1st respondent/ plaintiff without any proof regarding the same. Further, in a suit for partition while passing the preliminary decree, the trial Court ought to have directed the parties to lead evidence regarding the mesne profits and on the basis of the evidence let in, the Court can pass a decree regarding the mesne profits while passing the final decree. In this case, without any evidence and without any enquiry regarding the mesne profits the trial Court presumed that Rs.1000/- was received by the appellant and the 1st respondent/ plaintiff was entitled to Rs.6000/- towards his 1/6th share and also held that the 1st respondent/ plaintiff was entitled to Rs.1000/- per year from 1.8.1985. According to me, the finding regarding Issue No.4 in Paragraph 11 of the lower Court Judgement is erroneous and is liable to be set aside and I hold that the enquiry regarding the income from the suit property has to be ascertained during the mesne profit enquiry and till such time the same cannot be fixed by the trial Court. Hence, the clauses Nos.3 and 4 of the preliminary decree are set aside and the preliminary decree in respect of other clauses are confirmed and it is also made clear that the parties are entitled to let in evidence regarding the income from the suit property in the enquiry for mesne profits.

14. In the result, the Appeal Suit is partly allowed as indicated above. No costs. 10.07.2013 kr. Index : Yes Internet: Yes To The Subordinate Judge, Subordinate Court, Poonamallee. R.S.RAMANATHAN, J.

kr A.S.No.998 of 1993 Dated:

10. 07-2013

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