

(2010) 09 MAD CK 0330

Madras High Court

Case No: C.R.P. (PD) No. 34 of 2010 and M.P. No's. 1 and 2 of 2010

Nallathambi, Govindan,
Zhavammal, Rajendran,
Natarajan, Kesavan and
Pandurangan

APPELLANT

Vs

Adimoolam, Ramachandran,
Krishnan, Kuppammal,
Periammal, Kiliammal,
Kuppuswami, Shanmugam,
Rathinambal, Suseela,
Dhanalakshmi, Padmavathi,
Sankar, Renuka,
Chandrasekaran, Rajasekar,
Rajalakshmi

RESPONDENT

Date of Decision: Sept. 14, 2010

Citation: (2010) 5 CTC 513

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: S. Krishnasami for P. Madhan, for the Appellant; N. Suresh, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan, J.

The Legal Representatives of the Defendants in O.S. No. 290 of 1961 on the file of the District Munsif, Tirukoilur are the Revision Petitioners. One Sevi Koundan filed the above Suit for declaration and possession or in the alternative for redemption of the suit property and in that Suit the Defendant was one Vendayi Koundan. The Suit was decreed and preliminary decree for redemption in respect of B schedule properties on condition of the Plaintiff depositing Rs. 300/- was passed. Against the said decree and judgement, the Defendant filed an Appeal in A.S. 322 of 1962 on the file of the Sub-Court, Cuddalore and the learned Sub-Judge modified the decree and

specified a sum of Rs. 112.50 instead of Rs. 300/- and passed a decree for partition in favour of the Plaintiff and the redemption of 3/4 share in the "A" schedule property on depositing Rs. 112.50 into Court. That decree was passed in the Appeal on 13.9.1963 and against the same, the Second Appeal was filed before the Hon"ble Court in S.A. No. 373 of 1964 and the Second Appeal was also dismissed and the decree passed by the Sub-Court, Cuddalore in A.S. No. 322 of 1962 was confirmed. Thereafter, the legal heirs of the Plaintiff in O.S. No. 290 of 1961 filed O.S. No. 148 of 1995 for declaration of the right over the suit property and that was dismissed and against the same, they filed A.S. No. 40 of 2003 on the file of the Sub-Court, Villupuram and that was also dismissed and thereafter, the Legal Representatives of the Plaintiff filed I.A. No. 968 of 2006 for passing final decree in O.S. No. 290 of 1961 as per the modification of the decree passed in A.S. No. 322 of 1962. That was allowed and aggrieved by the same, the Legal Representatives of the Defendants filed this Revision Petition.

2. Mr. S. Krishnasamy, learned Counsel for the Petitioner submitted that though the Appellate Court modified the decree on 13.9.1963, which was confirmed by the High Court in the Second Appeal, for more than 40 years, no steps have been taken by the Legal Representatives of the Plaintiff to file Petition to pass final decree and hence the decree has to be construed only as a decree on redemption and therefore, Article 137 of the Limitation Act will apply as the Respondents have failed to apply within a period of three years, their right to claim for redemption is barred under the Limitation Act and therefore, they are not entitled to redeem the property. It is further submitted by the learned Counsel for the Revision Petitioners that after the passing of the preliminary decree in A.S. No. 322 of 1962, the legal representatives of the Plaintiff filed O.S. No. 148 of 1995 on the file of the Munsif Court, Ulundurpet for declaration in respect of the suit property and the Suit was dismissed and the Appeal filed in A.S. No. 40 of 2003 on the file of the Sub-Court, Villupuram was also dismissed and hence they are not entitled for the relief prayed for in the Application filed by them.

3. On the other hand Mr. N. Suresh, the learned Counsel for the Respondent submitted that in A.S. No. 322 of 1962, the First Appellate Court has passed a decree for declaration and this Court has passed a decree for partition and when a preliminary decree was passed, there is no question of limitation for passing final decree and therefore, the Application filed by the Legal Representatives of the Plaintiff for passing a final decree is maintainable and the Lower Court has rightly allowed the Application. In support of his contention, learned Counsel for the Respondent relied upon the Full Bench decision of this Hon"ble Court in [Babburu Basavayya and Others Vs. Babburu Guravayya and Another](#), in [K.S. Doraiswami Nadar \(Died\) and Others Vs. Vinayaka Ratnaswami Nadar and Others](#), and [A.R. Veerappa Gounder Vs. Sengoda Gounder](#),

4. Heard both the Counsel.

5. It is seen from the judgement in O.S. No. 290 of 1961 that the Suit was filed for declaration and possession or in the alternative for redemption. The learned District Munsif passed a decree of redemption in respect of "B" Schedule property on condition of depositing Rs. 300/- and in the Appeal filed by the Defendants in A.S. No. 322 of 1962, the decree passed by the Lower Court was modified and a preliminary decree for partition and redemption of 3/4 share of the Plaintiff was passed and the amount was also reduced from Rs. 300/- to Rs. 112.50. Therefore, it is seen from the decree passed by the First Appellate Court in A.S. No. 322 of 1962 that a preliminary decree for partition and redemption of 3/4 share in "A" schedule property on condition of depositing Rs. 112.50 was also passed. Therefore, when the Suit was decreed treating the same as a partition Suit and preliminary decree was passed as held by the Full Bench decision of this Court reported in [Babburu Basavayya and Others Vs. Babburu Guravayya and Another](#), , and in [K.S. Doraiswami Nadar \(Died\) and Others Vs. Vinayaka Ratnaswami Nadar and Others](#), there is no question of limitation in filing the Application for passing final decree. As a matter of fact, in the judgment reported in [Sivan Pillai Vs. Anbayyan and Others](#), in the matter of the Hon"ble Bench of this Court had held that in a Suit for partition, Courts have to pass preliminary decree in the first instance and thereafter filing of an Application for final decree is not an Application in execution of the decree, but it is only an application in the pending Suit. Therefore, when a preliminary decree is passed for partition, the Suit is pending till the final orders are passed and till the final decree is passed. Hence, the Lower Court has correctly applied the principles and allowed the Application.

6. Therefore, I do not find any reason to interfere with the order passed by the Lower Court. Hence, the Civil Revision Petition is dismissed. No costs. It is submitted by the learned Counsel for the Petitioner that the amount of Rs. 112.50, was not deposited by the Legal Representatives of the Plaintiff and if the amount is not deposited as contended by the learned Counsel for the Petitioner, I hereby direct the Respondents to pay the said amount with interest at the rate of 12% per annum from the date of decree passed in A.S. No. 322 of 1962, within a period of twelve weeks from the date of receipt of the copy of this order. Connected Miscellaneous Petitions are closed.