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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.10.2021

Delivered on: 17.11.2026

CORAM

THE HONOURABLE MRS JUSTICE S.SRIMATHY

S.A.No.1514 of 2010

and M.P.No.1 of 2010

1.Vidhya
2.Nithiya
3.Sathish ...Appellants/Plaintiffs

-Vs-

1. Kailasa Gounder

2. K.Rajamani

3. K.Viswanathan

4. The District Collector,
Namakkal.

5. The Tahsildar,
Rasipuram.

6. The Commercial Tax Officer,
Rasipuram. ...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.192 of 2003 dated 28.01.2010 on the file of the Additional District Court (Fast Track Court), Namakkal confirming the decree and

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judgment passed in O.S.No.143 of 2007 dated 01.04.2003 on the file of the District Munsif Court, Rasipuram.

For Appellants : Mr.T.Dhanyakumar
For Respondents : Dr.S.Surya
Government Advocate for R4 to R6
No Appearance for R1 to R3

JUDGMENT

The second appeal has been filed by the plaintiffs in the suit against the decree and judgment dated 28.01.2010 passed in A.S.No.192 of 2003 on the file of the Additional District Court (Fast Track Court), Namakkal confirming the decree and judgment dated 01.04.2003 passed in O.S.No.143 of 2007 on the file of the District Munsif Court, Rasipuram.

2. The plaintiffs are the appellants herein and the defendants are the respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit has been filed for partition and to pass preliminary decree by dividing the entire suit property into 18 equal shares by metes and bounds against the defendants 1 to 3 and allot 7 shares out of 18 shares to the plaintiffs by passing preliminary decree along with the provisions of final decree. The plaintiffs have also prayed for restraining the defendants 4 to 6 in any way auctioning the 7/18

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share of the plaintiffs for the tax arrears of the defendants 1 to 3 to the 6th defendant by means of a permanent injunction.

4.(i) The brief facts of the case as stated in the plaint are that the suit property is a joint family property by virtue of registered partition deed dated 26.04.1954, wherein B Schedule was allotted to 1st defendant. The joint family consists of plaintiffs and defendants 1 to 3 and they are coparceners and are legally entitled to share in the suit properties. The plaintiffs are entitled to share in the property as per the Act 1/1990 which came into force on 25.03.1989. The properties are yet to be divided by metes and bounds. The plaintiffs 1 and 2 are daughters of 2nd defendant. The 3rd plaintiff minor is the son of 3rd defendant. Defendants 2 and 3 are the sons of 1st defendant. As per prevailing law of succession, the defendants 1 to 3 are entitled to 1/3rd share, out of the 1/3rd share of their father K.Rajamani the plaintiffs claim 2/3rd share in the property as per the Act 1/1990 which came into force on 25.03.1989. The 3rd plaintiff minor Sathish is entitled to ½ out of the 1/3 share of his father namely Viswanathan. Hence the plaintiffs are entitled to have 7/18th share out of the entire properties.

4.(ii). The plaintiffs 1 and 2 are married, though the 1st plaintiff is living with her husband, she often visits the suit property. The 2nd plaintiff married but divorced and is living separately along with the 3rd plaintiff minor and 3rd

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plaintiff's mother. The minor was studying in ITI and is living with his mother separately since his father is not inconsonance with the family. The plaintiffs 1 and 2 submit that the 2nd defendant / father K.Rajamani started turmeric business long ago but he failed to take care of the family and had let wayward life, addicted to liquor and all sorts of immoral and illegal life. The 2nd defendant has not done anything to the plaintiffs 1 and 2 as a normal and prudent father. The defendants 1 to 3 conjoined together has not taken care of the 3rd plaintiff. The 3rd defendant had gone to the extent of taking liquor at family home which has led the 3rd plaintiff to live separately along with his mother. Along with the 3rd plaintiff, the 2nd plaintiff is also living. Since the defendants failed to take care of the family members and family properties, in order to protect the properties, the plaintiffs demanded for regular partition and separate possession through mediators for the past six months, but the defendants were postponing. When the plaintiffs finally approached on 20.09.2001 the defendants refused for partition.

4.(iii). While that being so, the plaintiff came to understand that the defendants 1 to 3 ought to pay a sum of Rs.16,02,400/- towards tax for the alleged business for the assessment years 1984-1985 and 1985-1986. But the plaintiffs are no way connected with the said business, they never derived any income from the said business and not liable to pay tax, hence their share of 7/18th cannot be made liable. The plaintiffs came to understand that the 6th defendant have fixed the date

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of auction on 25.09.2001 for the said sum. The plaintiffs came to know about the auction on 24.09.2001 and persuaded the 6th defendant to defer the auction, but the 6th defendant declined the request. Hence the plaintiffs have come up with the present suit for partition and permanent injunction against the defendants 4 to 6.

5. The 6th defendant has filed written statement wherein the 6th defendant denied the partition dated 26.04.1954, denied that the property is a joint family property and denied the plaintiffs have any share in the property and also denied the applicability of Act 1 / 1990 and the limitation plea raised by the plaintiffs. The 6th defendant further stated that the defendants 1 to 3 was jointly running Athanur Amman Manjal Mandi and are liable to pay commercial tax for the assessment year 1984-1985 to the tune of Rs.89, 603/- and for the assessment years 1985-1986 to the tune of Rs.16,02,797/-, totally for a sum of Rs.16,92,400/-. The 6th defendant has already issued a notice to the defendants 1 to 3 regarding the payment of tax. Even after the notice, the defendants have not paid the tax and therefore, a charge is created on the suit properties in the year 1984-1985. The 6th defendant has also stated even prior to the Act 1/1990, the liability under the commercial tax has already accrued and the defendants 1 to 3 are liable to pay the tax. Since the tax accrued prior to the right of the plaintiffs, the plaintiffs cannot restrain the auction sale. However, if the defendants 1 to 3 is paying the tax liability the 6th defendants would not continue with the auction sale. But in order to avoid payment of accrued

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tax, the defendants 1 to 3 have instigated the plaintiffs to file the present suit. Hence the suit is liable to be dismissed.

6. After hearing the rival submissions, the trial court has framed the following issues:

(i)whether the suit property is a joint family property?

(ii)whether the commercial tax liability will affect the plaintiff's right?

(iii)whether the plaintiffs are entitled to 7/18 share?

(iv)whether the plaintiffs are entitled to permanent injunction?

(v)whether the plaintiffs are entitled to any other relief?

The 1st plaintiff was examined as PW1 and one Kandasamy was examined as PW2 and they have marked Ex.A1 and Ex.A2 as documents. The defendants 1 to 3 and 4 to 6 have not marked any documents nor deposed before the court. The trial court has dismissed the suit with cost.

7. Aggrieved over the same, the plaintiffs had preferred an appeal in A.S.No.192/2003 on the file of the District and Sessions Court, Namakkal. The appellate court along with the issues has framed two additional issues as under:

(i)whether the enforcement of charge is barred by limitation?

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(ii)whether this appeal is maintainable?

The Appellate Court has partly allowed the appeal, wherein it is held that the plaintiffs are entitled to partition for 7/18th share, however the same is subject to tax liability payable by the defendants 1 to 3 and granted preliminary decree to plaintiffs. But the suit as far as permanent injunction and other reliefs the appeal was dismissed.

8. Aggrieved over the same, the plaintiffs have preferred the second appeal. While admitting the appeal, this Court has framed the following substantial question of law:

> *(i) Whether the claim of the respondents 4 to 6 is barred by limitation?*
>
> *(ii) Whether the relief of permanent injunction is barred in view of Section 59 of the Tamil Nadu Revenue Recovery Act, 1864 and Section 50 of the Tamil Nadu General Sales Tax Act, 1959?*
>
> *(iii) Whether the Lower Appellate Court is correct in holding that the Tamil Nadu Revenue Recovery Act does not prescribe any period of Limitation?*

9. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

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10. The first substantial question of law is whether the claim of the respondents 4 to 6 is barred by limitation. In order to consider the same, the Commercial Tax Act ought to be perused. It is seen under Commercial Tax laws (including the Tamil Nadu Value Added Tax Act, 2006 and the Goods and Services Tax Act, 2017), there is no fixed statutory limitation period within which a sale must be conducted especially from the date a charge is created on a property. Once a statutory charge attaches to a defaulter's property, it remains valid as an encumbrance until the tax arrears are fully recovered or the demand is set aside. However, the Courts have held that the sale ought to be conducted within reasonable time. When a statute creates a charge over a property for commercial or sales tax arrears without specifying a strict limitation period to conduct the sale, the Commercial Tax Department must enforce that charge and bring the property to sale within a “reasonable time”. The department ought to have shown that it had taken steps to bring the property to sale from the date of creating charge. In the present case, even though the charge was created on 21.08.1988, the property was brought to auction sale only on 28.09.2001. Generally, 12 years was the limitation period prescribed for recovery of money and in the present case it is beyond 12 years. The defendants 4 to 6 have not submitted any evidence to show that they have steps to sell the property from the date of creating charge.

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11. Further it ought to be taken note of that the department charges interest until the amount is collected. On the one hand, the department is not bringing the property for sale within reasonable time. On the other hand, the department is charging interest that too levying high interest rate. Hence the department is having undue advantage position, but the assessee is on disadvantage position, therefore it is necessary to strike a balance. Therefore, this Court is directing the defendants to collect the principal amount from the plaintiffs and not the interest levied for non-payment of tax. The first substantial question of law is answered partly in favour of the plaintiffs.

12. The second and third substantial question of law is whether the relief of permanent injunction is barred in view of Section 59 of the Tamil Nadu Revenue Recovery Act, 1864 and Section 50 of the Tamil Nadu General Sales Tax Act, 1959, whether the Lower Appellate Court is correct in holding that the Tamil Nadu Revenue Recovery Act does not prescribe any period of Limitation. In order to consider the same, the Section 59 of the Tamil Nadu Revenue Recovery Act,1864. The Section reads as under:

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"Section 59 - Suits by persons aggrieved by proceedings.-Limitation

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act except as hereinbefore provided, from applying to the Civil Courts for redress: provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose."

Section 50 of the Tamil Nadu General Sales Tax Act, 1959 is extracted hereunder:

"Provided that civil courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six month from the time at which the cause of action arose."

Both the section provides that the suit has to be filed within six months from the date of cause of action. The plaintiffs have challenged the auction sale fixed on 28.01.2001 and the suit is filed on 26.09.2001. The suit ought to be filed within six months from the date of auction sale, then the suit ought to be filed before July 2001 i.e. on or before 28.07.2001, but the suit has been filed in the month of September 2001. Therefore, the suit is filed beyond limitation. The second and third substantial question of law is answered against the plaintiffs.

13. Even though the first substantial question of law is held against the plaintiffs, this Court is granting the relief by striking a balance by protecting

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the interest of both the plaintiffs and the department.

14. For the reasons stated supra, this Court is holding that the plaintiffs are liable to pay the principal tax liability and not the interest for the said liability. However, the department is entitled to collect the principal and interest from the assessee. The plaintiffs are entitled to partition decree for their 7/18 share and the charge over the property is only for principal amount alone. The judgment and decree of the Appellate Court is modified as stated supra. Therefore, the second appeal is party allowed as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes/No
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To

1. Additional District Court (Fast Track Court),
Namakkal.

2. District Munsif Court,
Rasipuram.

3.Section Officer,
VR Section,
Madras High Court,
Chennai.

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Order QR

S.SRIMATHY.J

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