

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM

THE HONOURABLE Mr.JUSTICE S. NAGAMUTHU

Second Appeal No.1222 of 2014
and
M.P.No.1 of 2014

G.Murugan

...Appellant/Plaintiff

-Vs-

1.G.Krishnan
2.G.Arumugam
3.Chennammal
4.Valli
5.Lekshmi
6.Kanchana.

...Respondents/Defendants

PRAYER: Appeal filed under Section 100 C.P.C., against the judgment and decree made in A.S.No.10 of 2009 dated 23.09.2014 on the file of the learned Additional District Judge, Dharmapuri allowing the appeal and by reversing the judgement and decree made in O.S.No.134 of 2006 dated 12.12.2008 on the file of the learned District Munsif, Dharmapuri.

For Appellant : M/s.A.Malath Devapriyam

JUDGMENT

The plaintiff in O.S.No.134/2006 on the file of the learned District Munsif, Dharmapuri is the appellant. The respondents are the defendants in the suit. The plaintiff has filed the said suit for partition and separate possession of his 1/7th share in the suit property.

2.The plaintiff and the defendants are the children of one Mr.Govindasamy. Mr.Govindasamy admittedly died intestate. His wife Mrs.Nanjammal died subsequently. According to the plaintiff, the suit property is the ancestral property left behind intestate by Mr.Govindasamy. According to the plaintiff, he is therefore entitled

for 1/7th share in the suit.

3.The first defendant took the plea that on 14.10.1993, the defendants 2 to 6 along with Mrs.Nanjammal had sold away 600 square feet of vacant site viz., the suit property under a registered sale deed for a valuable consideration of Rs.64,000/- in favour of one Mrs.Rani who is the wife of the first defendant. Thus, according to the first defendant, the suit property is not available for partition. The trial Court framed appropriate issues on the above pleadings.

4.During the course of trial, on the side of the plaintiff, three witnesses were examined and 6 documents were exhibited and on the side of the defendants, two witnesses were examined and two documents were exhibited. Having considered the same, the trial Court, by decree and judgment dated 12.12.2008 decreed the suit thereby granting preliminary decree for partition of 1/7th share in favour of the plaintiff.

5.Challenging the same, the first defendant filed an appeal before the First Appellate Court. By decree and judgement dated 23.09.2014 the First Appellate Court set aside the decree and judgement of the trial Court. Challenging the same, the plaintiff is before this Court with this second appeal.

6.This second appeal has come up today for admission. I have heard the learned counsel for the Appellant and I have also perused the records carefully.

7.The learned counsel for the appellant, by referring to the grounds of appeal, would submit that the sale deed dated 14.10.1993 (Exhibit-B1) has not been duly proved and therefore, the First Appellate Court ought not to have reversed the decree and judgment of the trial Court.

8.I have considered the said submissions of the learned counsel for the appellant.

9.The First Appellate Court has reversed the decree and judgement of the trial Court on the ground that the execution of the said sale deed has not been denied by way of appropriate pleading by the appellant herein. When there is no such denial of the execution of the document, according to the First Appellate Court, there is no need to prove the execution of the document by examining the Attester, Scribe, etc. In my considered opinion too, the First Appellate Court was right in holding that the execution of Ex.B.1 stands proved as neither the execution nor the genuineness of the same has been disputed by the plaintiff/appellant herein. As rightly held by the First Appellate Court, absolutely, there is no pleading

denying the execution of the sale deed. Apart from that, no action has been taken by the appellant to get the said sale deed set aside, if it is the case of the appellant that the said sale deed is void. All the other findings of the First Appellate Court are on facts. Thus, I do not find any substantial question of law involved in this appeal so as to admit this second appeal.

10.In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District Judge,
Dharmapuri.

2.The District Munsif,
Dharmapuri.

1 CC to M/s.A.Malath Devapriyam, Advocate SR.No.

सत्यमेव जयते

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TEJ (CO)

PSI (03.02.2015)

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