

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.737 of 1998

Nanjammal

.. Appellant/Appellant/  
1st defendant

vs.

1.Gopal Reddy  
2.Narayana Reddy  
3.Ellamma  
4.Rathinamma  
5.Chinna Akkiayamma

... Respondents/respondents/  
Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 11.12.1996 in AS.No.143 of 1996 on the file of the Subordinate Judge, Hosur confirming the judgment and decree dated 31.1.1996 in O.S.No.370 of 1984 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.P.Subba Reddy (R2)

No representation -R1 and R3 to 5

JUDGMENT

The unsuccessful first defendant is the appellant herein. The suit was filed by the respondents herein for declaring their title to the suit property and for permanent injunction against the defendants not to interfere with the plaintiffs' possession. As per the plaint, the suit property is dry extent 2.56 acres comprised in S.No.56, Nanthimangalam Village, Hosur Taluk, Krishnagiri R.D. within the four boundaries more fully described in the suit schedule.

2.The suit was originally filed against one Nanjammal and Obli Reddy and Obli Reddy died during the pendency of the suit and the suit was contested by the plaintiffs and the first defendant, who is the appellant herein.

3.Few facts which are relevant for consideration herein are as follows : The plaintiffs 1 to 4 are the sons, widow and daughters of one Munisamy Reddy. The second defendant Obli Reddy, Munisamy Reddy and Ramaiah were the sons of one Thimma Reddy, who was the original owner of the property. The first defendant Nanjamma is the daughter of one Venkatamma, who was none else than the sister of Munisamy Reddy, Obli Reddy and Ramaiya. The plaintiffs claim the suit reliefs for exclusive title in respect of and right to be in possession and enjoyment of the suit property based on oral partition of the family

property among brothers about 50 years prior to the institution of the suit. According to the plaintiffs, while the plaintiffs' father Munisamy Reddy was allotted the whole extent of S.No.56 along with other properties, Obli Reddy and Ramaiah were allotted S.nos.57 and 58. Since the date of oral partition, the parties had been in possession and enjoyment of their respective shares by obtaining patta, by paying kist and by creating encumbrance over the same. While so, Munisamy Reddy mortgaged the suit property to one Nathappa @ Vasanthappa for Rs.100/- as early as in 1933 vide registered mortgage deed, having the second defendant as its witness and the mortgage was thereafter discharged by the same Munisamy Reddy in his capacity as owner of the property and the plaintiffs have after the death of Munisamy Reddy, succeeded to the same and continued to be in possession of the suit property. It is the further case of the plaintiffs that Obli Reddy and Ramaiah, who were allotted S.Nos.57 and 58, gifted a portion of the same to their sister Venkatamma, who is the mother of the first defendant and the same was also purchased by the 3rd Plaintiff Ellamma from the first defendant and the first defendant thereafter owned no other property. It is also their case that the cause of action for filing the suit arose when the first defendant issued a notice to the plaintiffs on 2.6.1983 alleging that Obli Reddy sold the suit property to her mother Venkatamma in 1921 and the 1<sup>st</sup> defendant has succeeded to the same.

4.The suit relief was opposed by the contesting defendant by denying the mode of allotment of the property as claimed by the plaintiffs. According to her, the ancestral property was divided between Munisamy Reddy and the second defendant Obli Reddy and no property was allotted to Ramaiah, who was taken in adoption by his uncle and who got the properties of his uncle. In pursuance of the partition, the suit property in S.no.56 was sold by Obli Reddy to Venkatamma, who is the mother of the first defendant under sale deed dated 10.3.1941 and the extent of land sold to the mother of the first defendant is 2 acres on the south, out of total extent of 2.56 acres and what was allotted to Munisamy Reddy is only 0.56 cents and the mortgage deed dated 19.10.1933 is false document and the sale deed effected by the first defendant in favour of the third plaintiff Ellamma was obtained by way of deception and after the death of the mother, the defendant has been in possession and enjoyment of the property by exercising absolute ownership over the same.

5.The parties in support of their respective contentions, adduced oral and documentary evidence. The second plaintiff and his witnesses were examined as PW1 to PW4 and the first defendant and her witnesses were examined as DW1 to DW3. Exs.A1 to A11 and Exs.B1 to B5 documents were marked on both sides. The trial court on the basis of the evidence adduced before the same, arrived at a conclusion that the oral partition was among three brothers and in the oral partition, the entire extent of 2.56 acres was allotted to Munisamy Reddy and he had been in possession and enjoyment of the property and the sale deed dated 10.3.1941 executed by Obli Reddy in favour of his sister in respect of 2.00 acres in s.no.56 was without any right to do so and the gift deed executed by Obli Reddy and Ramaiah in favour of their sister Venkatamma who is the mother of the first defendant in respect of a portion of their respective properties allotted in the oral partition and the patta issued in favour of the first

defendant was without any notice to the plaintiffs and same was duly cancelled and after the purchase of the land in S.No.56 from Nanjamma by the third plaintiff Ellamma, both the lands in S.nos.56 and 57 are in possession and enjoyment of the plaintiffs as one block and the same was sought to be interfered with by the defendants. The trial court on the basis of such findings, decreed the suit as prayed for. Aggrieved against the same, the first defendant preferred AS.No.143/1996. The lower appellate court by confirming the findings of the trial court, dismissed the appeal. Hence, this second appeal by the first defendant before this Court.

6.The second appeal is admitted on the following substantial questions of law:

(a)Whether the Courts below have not erred in accepting the plea of oral partition in the absence of clear and cogent evidence?

(b)Whether the Courts below ought to have seen that the UDR patta had been issued in the name of the appellant in respect of S.No.56/2 and no objection had been raised by the plaintiff at the time of issuance and under such circumstances, whether the Courts below ought to have held that the respondents are estopped from denying title of the appellant?

7.Heard the rival submissions made on both sides and perused the records.

8.As stated above, the basis for claiming the suit reliefs is the oral partition effected among three brothers about 51 years ago. It is contended by the learned counsel for the appellant that both the courts below have committed serious error in accepting the plea of oral partition in the absence of any clear and cogent evidence. In my considered view, the plea against oral partition is liable to be rejected at the outset for the simple reason that the factum of oral partition is admitted by the first defendant and what was denied by her is the mode of partition. While according to the plaintiffs, the partition was among all the three brothers, according to the first defendant, the partition was only between two brothers. Both the courts below accepted the case of the plaintiffs regarding the factum of oral partition and the mode of partition and mode of allotment of the properties among three brothers by duly considering the following factors. The entire extent of 2.56 acres was mortgaged by Munisamy Reddy in favour of a third party and one of the witnesses in the mortgage deed was the other brother Obli Reddy and the mortgage executed under Ex.A1 mortgage deed dated 19.10.1933 was admittedly discharged by Munisamy Reddy during his life time. The contention of the plaintiffs that the lands in S.nos.57 and 58 were allotted to Obli Reddy and Ramaiah was established through Ex.A4 dated 10.12.1929 gift deed executed by them in favour of their sister Venkatamma, who inturn sold it to the third plaintiff Ellamma, under Ex.A5 sale deed dated 24.10.1967. Though the deed of mortgage executed by Munisamy Reddy and the gift deed executed by Obli Reddy and Ramaiah do not refer to any partition, the same will in no manner affect the case of the plaintiffs that it was in pursuance of the family arrangement among brothers. But for such arrangement, the brothers could not have

dealt with the property by exercising ownership over the same in their own manner and the same only probablises the case of the plaintiffs particularly in the light of admission of the first defendant regarding oral partition between the brothers.

9. Another factor to be looked into herein is that Obli Reddy was one of the witnesses in the mortgage deed executed by his brother in respect of S.No.56. There is absolutely no explanation on the part of the second defendant for his having figured as one of the witnesses in the same. At this juncture, it is useful to refer to the decision of our High court in the judgment reported in 1971 (I) MLJ 392 (Ramaswamy Gounder and another v. Anantapadmanabha Iyer), wherein, this court has also referred to the earliest decision of the Privy Council reported in (1880) 5 Cal. LR 439 at 447 (Vadrevu Ranganayakamma v. Vadrevu Bulli Ramaiya) and other judgments reported in (1912) I.L.R 36 Mad. 564 (Kandasami v. Nagalinga); 25 MLJ 219 (Narayana v. Rama); (1919) 50 IC 274 (Gurudayaldas v. Nathu) and (1924) 20 LW 222 (Nayakammal v. Munnaswamy Mudaliar). In all the cases referred to above, the presumption raised is that if the attesor in the document has an existing interest in the property dealt with in the document, it has always been the case that his attestation has been taken in order to bind him as to the correctness of the recital therein and when an adult man of full mental capacity attests a deed and when such a man has admittedly a tangible interest in the property affected by the deed, that his attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attesor did not know all the recitals in the deed and did not consent to the alienation made by the deed, to prove the contrary. It is further observed therein that it is the commonest thing in this country for attestations to be obtained from persons having a possible interest in the property with the object of binding them later on. Our High court has further observed that only rarely the person having an interest present or contingent in the property attested the deed, without enquiring into its contents. The presumption so raised is after taking note of the practice prevailing in the Madras Presidency and the normal course of conduct of the people concerned.

10. It is specifically averred so in the plaint and the same stand was also reiterated by the plaintiff side witnesses, however, there was no denial or cross examination on this aspect on behalf of the contesting first defendant either in the written statement or in the witness box as DW1. In this context, the principle to be applied is the observation of this Court in the decision reported in 2002 (4) CTC 602 (Yasodai Ammal and 3 others v. Chinnathambi Pillai and 15 others) and in 1996 Notes of Recent Cases at page 10 (D.Pattammal v. K.Kalyanasundaram) which is to the effect that non cross examination of witness on specific point leads to acceptance of evidence on that point.

11. In view of the above legal position, the factum of the second defendant having been cited as one of the witnesses in the mortgage deed solely executed by Munisamy Reddy and discharge of the same by Munisamy much after the execution of the sale deed by Obli Reddy in respect of his property in favour of his sister assumes greater

importance. Further, the manner in which the parties dealt with the property, during the life time of all the brothers would only support the plaintiffs' case. In that event, Obli Reddy, who was not allotted S.no.56 had no right to execute Ex.B1 sale deed in respect of 2.00 acres out of 2.56 acres in favour of his sister and no right was also conveyed to the purchaser under Ex.B1 and the first defendant who is the daughter of the purchaser, cannot be now permitted to raise any claim in respect of the property in question. Excluding the document, other documents relied upon by the first defendant to claim exclusive right over the suit property are chitta, patta and adangal which are not given due importance by the courts below for the reasons recorded in the judgment. As a matter of fact, the patta issued to the first defendant is subsequently transferred in the name of the second plaintiff by the competent authority. Even otherwise, the patta originally granted was only joint patta and no patta was issued exclusively in the name of the first defendant in respect of the suit property and the patta issued in the name of the first defendant was rejected on the ground that it was issued after sub division and the patta issued was for excess extent than what was claimed by the first defendant. Kist receipts is also not taken into consideration by saying that the kist receipts do stand in the name of the first defendant only on the strength of patta issued in her name. As rightly argued by the learned counsel for the respondents, both the courts below were not inclined to accept the first defendant's claim for title to the suit property on the strength of patta and kist receipts for well considered reasoning and no ground at all is made out before this court to disagree with such reasoning and also the judgment rendered based on such reasoning by the courts below. In short, the judgments of the courts below are based on sufficient materials and supported by proper reasoning and the appellant has not made out any ground much less valid ground, to interfere with the same by this Court and the substantial question of law are answered against the appellant.

12.In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Hosur.

2.The District Munsif Court, Hosur.

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

+2ccs to Mr.V.Raghavachari, Advocate, S.R.No.28522, 18284

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.28903

PUR(CO)

EU(10/08/2015)

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