

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.240 of 2007

J.Easwaran

Appellant/Plaintiff

vs.

1.P.N.Jogiah

2.J.Suresh

3.J.Ramesh

..Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgment dated 09.09.2006 in A.S.No.12 of 2006 on the file of the learned Subordinate Judge, Nilgiris at Uthagamandalam reversing the decree and judgment dated 15.11.2005 in O.S.No.23 of 2004 on the file of the learned District Munsif, Coonoor.

For Appellant : Mr.R.Subramanian

For Respondents: Mr.N.Damodaran

JUDGMENT

The plaintiff in O.S.No.23 of 2004 on the file of the learned District Munsif, Coonoor, Nilgiris District, is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the plaintiff. The trial Court decreed the suit by decree and judgment dated 15.11.2005. As against the same, the defendants filed an appeal in A.S.No.12 of 2006 on the file of the learned Subordinate Judge, Udhagamandalam. By decree and judgment dated 09.09.2006, the First Appellate Court allowed the appeal; set aside the decree and judgment of the trial Court and dismissed the suit. As against the same, the plaintiff is before this Court with this second appeal.

2. I have heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

3. The plaintiff is one of the sons of the first defendant. The defendants 2 and 3 are the other sons of the first defendant. According to the plaintiff, in a family arrangement, which took place

in the year 1990, the suit property was allotted to the plaintiff and from that date onwards, he has been in possession and enjoyment of the suit property. Originally a cow shed was on the suit property and the same was altered into a house by the plaintiff. Hence, according to the plaintiff, the defendants have got no right whatsoever over the suit property.

4. But, the defendants opposed the suit. According to them, the suit property is an ancestral property and there was no such family arrangement. The suit property was never allotted to the plaintiff and he was never in exclusive possession and enjoyment of the suit property. Thus, according to the defendants, the plaintiff is not entitled for decree of permanent injunction.

5. Based on the above materials, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 7 documents were exhibited. On the side of the defendants, the first defendant was examined as D.W.1 and no document was marked. Having considered all the above, the trial Court decreed the suit which was reversed by the First Appellate Court. That is how the appellant/ plaintiff is before this Court with this second appeal.

6. When the second appeal was admitted, this Court has framed the following substantial questions of law:-

"1. Whether in law has not the lower appellate court erred in discarding Ex.A.1 and Ex.A.2 on the ground that they do not pertain to suit property, when there is no dispute regarding correlation ?

2. Whether in law is not the lower appellate court wrong in overlooking that the family arrangement can be oral vide 2005(3) CTC 292 and the same has been acted upon as seen from revenue record."

7. The learned counsel for the appellant would submit that by virtue of the oral partition, the suit property has become the absolute property of the plaintiff. The learned counsel would further submit that Exs.A.1 and A.2 would go to show that the plaintiff has been in exclusive possession and enjoyment of the suit property. He would further submit that the First Appellate Court was not considered these facts and thus, has reversed the well considered judgment of the trial Court erroneously.

8. The learned counsel for the respondents would vehemently oppose this second appeal. According to him, there cannot be any decree for permanent injunction against the co-owner as the plaintiff has failed to prove the oral partition, as pleaded by him. The learned counsel would further submit that Exs.A.1 and A.2 would not go to prove the exclusive possession of the plaintiff. At any rate,

according to the learned counsel, there cannot be a decree for permanent injunction against the co-owner in respect of possession and hence, the First Appellate Court was right in reversing the decree and judgment of the trial Court.

9. I have considered the above submissions.

10. A perusal of the plaint would go to show that though, it is admitted that the suit property is an ancestral property, it is not specifically pleaded as to whether in whose presence and by what means, the oral partition was effected between the plaintiff and the defendants. Further, there is no evidence let in, in the suit, to prove such oral partition. Therefore, the First Appellate Court was right in holding that the plaintiff had failed to prove the oral partition.

11. So far as Ex.A.1 is concerned, it is a certificate issued by the Executive Officer of the Panchayat. The said Executive Officer has not been examined during trial. Thus, Ex.A.1 has not been proved in accordance with law. Therefore, the same ought not to have been admitted even in evidence. In such view of the matter, Ex.A.1 is liable to be rejected.

12. So far as Ex.A.2 is concerned, they are house tax receipts numbering 8 pertaining to the suit house. A perusal of the description of the property in the plaint would go to show that there was no house mentioned as the suit property. Therefore, it is doubtful whether these receipts pertain to the suit house or not. The First Appellate Court has rejected Ex.A.2 tax receipt series, stating that there is no connection between the suit house and these receipts. In these findings, I do not find any infirmity. Accordingly, the first question of law is answered.

13. So far as the second question of law is concerned, since, the oral partition has not been proved by means of proper pleading, the First Appellate Court was right in rejecting the same. Accordingly, the second question of law is also answered.

14. Though, this Court concurs with the finding of the First Appellate Court, it should not be mis-construed as though the dismissal of this second appeal will be a bar by means of res judicata for the plaintiff to work out his remedies by filing appropriate suit either for partition or for declaration of title and for consequential relief. Except making this clarification, I am not in a position to interfere with the well considered decree and judgment of the First Appellate Court.

15. In the result, the second appeal fails and accordingly, the same is dismissed. The decree and judgment of the First Appellate Court and confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost.

jbm

Sd/-
Assistant Registrar (CS-IV)

/True Copy/

To Sub-Assistant Registrar

1. The Subordinate Judge,
Nilgiris at Uthagamandalam.

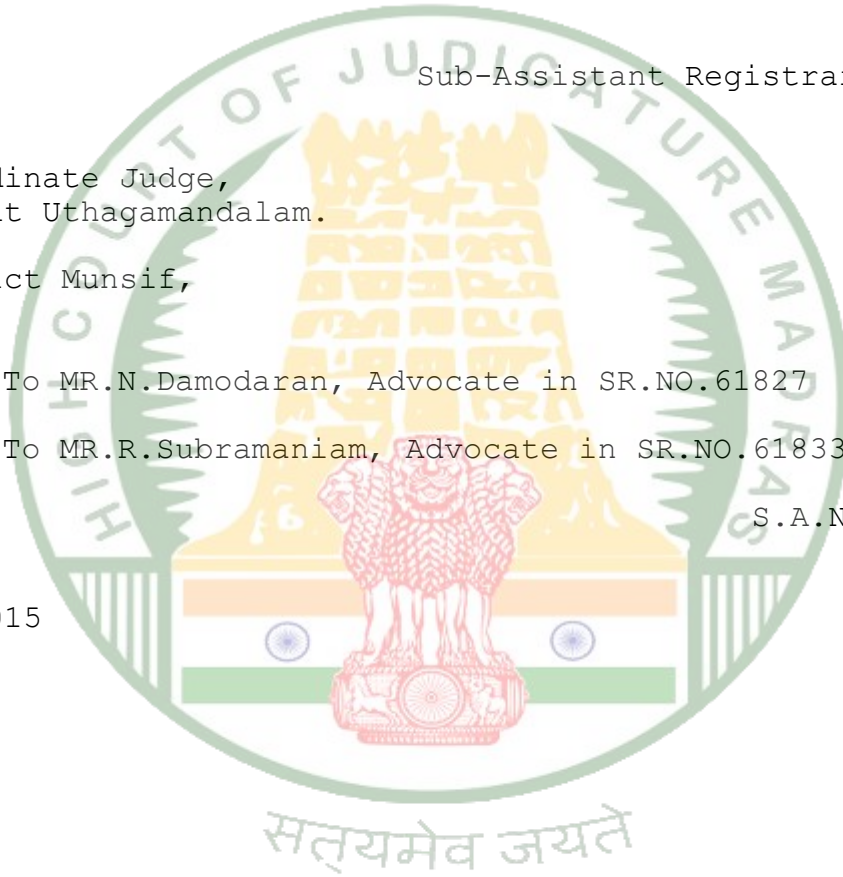
2. The District Munsif,
Coonoor.

+1 C.C. To MR.N.Damodaran, Advocate in SR.NO.61827

+1 C.C. To MR.R.Subramaniam, Advocate in SR.NO.61833

S.A.No.240 of 2007

JSV(CO)
sd : 30/12/2015



WEB COPY