

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.10.2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 259 of 2009

and

M.P.No.1 of 2009

Sivanandan

.. Appellant/Plaintiff

Vs.

1. Chinnasamy
2. Devendiran
3. Venkatesan
4. Arunachalam
5. The Sub-Registrar,
Kaveripattinam
6. Saraswathi ..Respondents/Defendants 3 to 7
(R6 exparte in lower Court)

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 03.12.2007 passed by the Principal Subordinate Judge, Krishnagiri, in A.S. No.54 of 2006, confirming the judgment and decree passed by the District Munsif, Krishnagiri, in O.S.No.282 of 2004 on 29.08.2006.

For Appellant : Mr. V.Raghavachari
For Respondents 1-4 : Mr.S.N.J.Hariharan
for Mr.V.Nicholas
For Respondent 5 : Served (No Appearance)

JUDGMENT

Aggrieved by the unanimous decisions of the Courts below in a suit for declaration of title and injunction, the plaintiff has preferred the above Second Appeal.

2. This is a dispute between the members of the family, wherein, the plaintiff, who is one of the sons is fighting against his parents, who are the first and second defendants and his brothers, who are the defendants 3 to 5 and the sister, who is the seventh defendant.

3. The plaintiff claims the suit properties to be the ancestral properties of the family and that there was an oral partition in the year 1991. He had also claimed that the suit properties were allotted to him in the said oral partition and he had been in possession and enjoyment of the same. As the plaintiff is a teacher, he had leased the properties to various persons. The plaintiff also in order to prove his right in the property claimed that he had mortgaged the properties to one Gopal for a period of three years. As the defendants objected to the said encumbrance, the plaintiff had filed the suit. Though the plaintiff claimed that the first and second defendants (parents) were with him, subsequently, the defendants 3 to 5 have taken along with them. As the defendants colluding against the plaintiff, the suit came to be filed. The plaintiff also has challenged the execution of the Will-Ex.14 dated 14.09.2003 as sham and nominal.

4. The suit was resisted by the defendants, denying all the facts supporting the averments in the plaint. The defendants also denied the oral partition and the other allegations that the suit properties were purchased out of the ancestral income, etc. The first defendant had purchased the said properties on 21.12.1966 and other properties are also purchased by him and he had been in possession of the same. In fact, the said properties are subject matter in S.A.No.1148 of 2003.

5. Before the trial Court, on the side of the plaintiff, the plaintiff was examined himself as P.W.1 and five more witnesses were examined as P.W.2 to P.W.6 and marked Exs.A1 to A17. On the side of the defendant, the defendant was examined himself as D.W.1 and marked Exs.B1 and B2.

6. The trial Court, after elaborate consideration of the facts and evidence had dismissed the suit as the plaintiff failed to substantiate his claim in the plaint and on first appeal, the same was confirmed. Aggrieved by the same, the above second appeal has been preferred.

7. When the Second Appeal was listed for admission on 29.09.2009, only notice was ordered and no substantial question of law was framed.

8. The learned counsel for the appellant submitted that the family members had entered into an oral partition during April 1991 in front of the Panchayatdhars, which had not been considered by the Courts below. The plaintiff also claims to be in possession, subsequent, to the said oral partition from the year 1991. The primary contention of the plaintiff is

that the suit properties were joint family properties and the same having been purchased by the first defendant in his name out of the income derived from the ancestral properties. The plaintiff has based his claim for the above contention of Exs.A7 to A11, which are the sale deeds executed between 1976 and 1979. An examination of the above said documents would go to show that the first defendant had purchased 0.54 acres in S.No.20/3 on 27.09.1963. Similarly, the plaintiff also denied the purchase of the properties under sale deeds dated 21.12.1986 from out of the own income of first defendant. It is the specific case of the plaintiff in the reply statement that the properties purchased under the sale deeds dated 27.09.1963, 21.12.1966 and 20.08.1969 were all out of the income derived from the ancestral properties sold by the first defendant as per the registered sale deeds dated 09.02.1976 under Exs.A7 and A8.

9. The properties purchased by the first defendant were in the year 1963 and 1969 under Exs.B1 and B2 (sale deeds), whereas the alleged sale and income derived from that which is utilized for the purchase were all in the year 1976. Therefore, the Courts below have rightly come to the conclusion that the plaintiff had not substantiated his claim that the properties were purchased out of joint family income based on his own reply statement.

10. The contention of the learned counsel for respondents is that the suit properties were self acquired properties of the first and second defendants were accepted by the Courts below. Though the plaintiff had examined P.W2, who is said to have participated in the alleged oral partition, it is not very useful to decide the case of the plaintiff and neither P.W1 nor PW2 were able to say the exact extent of properties allotted to each of the member of the family. Therefore, his evidence was rightly discredited by the Courts below. Other than the interested testimony of the plaintiff, there is no other independent evidence to prove the oral partition alleged by him.

11. So far as the question of possession is concerned, which is the concurrent findings of the Courts below, the plaintiff has failed to establish the same. The plaintiff had also placed his reliance on Exs.A3 and A4 to prove his possession and enjoyment of the suit schedule properties. However, the said documents had corrections and over writings, which lead the Courts below to reject the same as they were created for the purpose of the case. Therefore, even on the question of possession also, the plaintiff had failed.

12. The plaintiff having failed to establish his case as averred in the plaint, which are very vague and false and Ex.A4-Muchalika, which raised a reasonable doubt in the minds of the Court, are the reasons for the Courts below to dismiss

the suit. When the burden of proving that the suit properties were joint family properties is not discharged by the plaintiff, the Courts below were right in concluding that the suit properties were self acquired properties of the first and second defendants. The plaintiff was not clear about the partition and allotment of shares. Going by the age in the plaint, the plaintiff should have been only five years old on the date of purchase of properties under Exs.B1 and B2 (sale deeds). In view of the aforesaid findings of the Courts below are correct and there is no reason to interfere with the same. In such circumstances, there is no question of law arising for consideration in the above Second Appeal.

In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

sd/

ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

srn

To

1. The Subordinate Judge, Krishnagiri
2. The District Munsif, Krishnagiri

+1 CC to MR.V.Raghavachari Advocate. SR.NO. 57964

+1 CC to MR.V.Nicholas Advocate. SR.NO. 58206

WEB COPY

S.A. No. 259 of 2009

and

M.P.No.1 of 2009

CO-VD

JD 25/11/2015