

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29- 09-2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 1268 of 2013

and

M.P. No. 1 of 2013

M.S.Balasubramanian .. Appellant/2nd Defendant

Vs.

1. M.S.Sundararaman 1 st Respondent/Plaintiff

2. Vijayalakshmi

3. M.S.Iyyappan

4. M.S.Sridharan 2 to 4 .. Respondents/Defendants 1,3,&4

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 16.11.2012 passed by the learned Subordinate Judge, Poonamallee in A.S.No.26 of 2011, confirming the judgment and decree passed by the learned District Munsif, Ambattur, in O.S. No.39 of 2007, dated 14.09.2010.

For Appellant : Mr. N.S.Sivakumar

For Respondent -1 : Mr.B.Vijay

For Respondents 2-4: Mr.G.Dineshkumar

JUDGMENT

The second defendant, who has lost before the Courts below in a suit for partition has preferred this Second Appeal.

2. The suit is filed for partition of plaintiff's 1/5 share in the suit property. The plaintiff and the defendants 2 to 4 are brothers and the first defendant is the sister, who were all born to one M.R.Srinivasan. The suit property is a house property, measuring about 3600 sq.ft in Ambattur Village. The father of the parties had also constructed a dwelling house in the suit property and all the parties have been jointly possessed of the same. As all the legal heirs of M.R.Srinivasan are entitled to equal share in the said property i.e. 1/5th share each, the suit is filed for partition. The suit came to be filed as the second defendant,

who has been in occupation of the premises on behalf of others, refused to respond the demand of other sharers.

3. The suit was assailed by the second defendant, contending that after the demise of his father M.R.Srinivasan, the suit property was possessed and enjoyed by his legal heirs. The second defendant was a marketing Engineer and had spent around Rs.5.50 Lakhs for renovation work in the suit property and the same was in possession and enjoyment of the second defendant since 1995. As the second defendant had relinquished his share in grandmother's property, he was allowed to be in possession of the suit property.

4. Before the Trial Court, the plaintiff examined himself as PW.1 and four documents were marked as Exs.A1 to A4. On the side of the defendants, the second defendant examined himself as DW.1 and one more witness was examined as DW.2 and marked the documents as Exs.B1 to B15.

5. The trial Court as well as the appellate Court, after elaborate consideration of the facts and evidence, had decreed the 1/5th share to the plaintiff. Aggrieved by the same, the above Second Appeal has been preferred by the second defendant.

6. The question that arises for consideration in the Second Appeal is as to whether there is an oral partition allotting 700 sq.ft. with the right of passage was allotted to the second defendant.

7. The fact that the suit property was originally purchased and owned by M.R.Srinivasan, father of the plaintiff and the defendants is admitted. The claim of the plaintiff's 1/5th share is admitted by the defendants 1,3 and 4 and only the appellant / second defendant is contesting the partition. Out of 3600 sq.ft, the appellant / second defendant claimed that 700 sq.ft. alone along with passage rights to an extent on East 10' x 45' and on North East by 30' x 10', totalling 1350 sq.ft. was allotted to the second defendant. He also claimed to have spent huge amount to renovate the said property. The second defendant also had produced Exs.B3 and B4, which are the electricity receipts and Ex.B5-letter sent by the Executive Engineer, Tamilnadu Electricity Board, regarding the transfer of electricity service connection in his name. Though these documents are not disputed by the plaintiff and other defendants, the question is whether the

said documents alone would suffice to prove the oral partition alleged by the appellant / second defendant.

8. The other contention of the appellant that he had enough means with which the building was renovated treating it to be his own house only based on the oral partition is also not proved by the appellant. The appellant though may be in possession of the property unless and until the oral partition alleged is proved, any improvement made in the suit property should be deemed to be on behalf of other sharers also. Therefore, the Courts below have rightly concluded that the second defendant had not established the oral partition and the alleged improvement on the suit property.

9. It is also contended by the appellant / second defendant that his sister was given Rs.2,06,000/- for relinquishment of her share in the suit property. The case of the second defendant was that the said sum was paid to his sister / first defendant, which was payable to the appellant as a share in the grandmother's property. The said share was given to the first defendant in lieu of which, the first defendant had relinquished her share in favour of the appellant / second defendant. Though the plaintiff as P.W.1 had admitted the payment of Rs.2,06,000/- in favour of the first defendant, however, denied the fact that the first defendant/ sister had relinquished her share in the suit property. There was also no convincing evidence coming from the appellant with respect to the relinquishment alleged.

10. Even presuming for a moment, that the first defendant had released her share in the suit property in favour of the second defendant, for which he claims to have given Rs.2,06,000/-, the said relinquishment should be by a registered instrument. In the absence of registered instrument for relinquishing the share of a property, which is worth more than Rs.100/- which also requires registration, the same is not valid in the eye of law.

11. Therefore, the Courts below were correct in holding that the alleged relinquishment is also not true. When the suit property is the independent property of the father, each of them are entitled to 1/5th share by devolution. In the absence of any specific allotment or any document inter vivos, the claim of the second defendant fails.

12. In view of the above discussions, the plaintiff is entitled to 1/5th share and the defendants are also entitled

to 1/5th share each. The claim of the second defendant to a larger extent in exclusion of other sharers is rejected. The question of law is answered against the appellant.

13. In the result, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below, thereby decreeing 1/5th share of the plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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srn

To

1. The Subordinate Judge, Poonamallee
 2. The District Munsif, Ambattur
 3. The Record Keeper
- V.R. Section, High Court, Madras

+1 cc to Mr.N.S.Sivakumar, Advocate(sr.53489)

+1 cc to Mr.B.Vijay, Advocate(sr.52798)

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KV(co)

cp 27/10/2015