



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

S.A.No.28 of 2015
and M.P.No.1 of 2015

M.S.Chinnusamy ... Appellant/Appellant/Defendant

vs.

1.S.Jayalakshmi
2.K.Krishnaveni ... Respondents/Respondents/Plaintiff

Second Appeal against the judgement and decree dated 25.7.2014 passed by the Principal District Judge, Erode, in A.S.No.16 of 2014, confirming the judgement and decree dated 22.10.2013 passed by the II Additional Sub Court, Erode, in O.S.No.218 of 2011.

For appellant :: Mrs.Zeenath Begum

For Respondents :: M/s.V.S.Kesavan
Mr.B.Singaravelu
for R1 and R2

JUDGEMENT

The defendant in O.S.No.218 of 2011 on the file of the II Additional Subordinate Judge, Erode, is the appellant herein and the respondents are the plaintiffs in the suit. The said suit was filed for partition and for separate possession of 1/9 share to the first plaintiff and 4/9 share to the second plaintiff. The trial Court, by judgement and decree dated 22.10.2013, decreed the suit in part, thereby allotting 1/6 share to each plaintiff. As against the same, the appellant/defendant filed an appeal in A.S.No.16 of 2014, before the Principal District Judge, Erode. By judgement and decree dated 25.07.2014, the lower appellate Court dismissed the appeal, thereby confirming the decree and judgement of the trial Court. As against the same, the appellant/defendant is before this Court with this second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant and the learned counsel appearing for the respondents, who has made appearance by way of caveat. I have also perused the records carefully.



WEB GATES

4. The case of the plaintiffs is as follows:

The suit properties are the ancestral properties of one Mr.M.K.Sivasubramaniam. The first plaintiff is the wife of Mr.M.K.Sivasubramaniam and the second plaintiff is his daughter. The defendant is the son of Mr.M.K.Sivasubramaniam. Mr.M.K.Sivasubramaniam died in the year 2002 intestate, leaving behind the plaintiffs and the defendant as his legal heirs. The properties have been jointly enjoyed by all the three parties. Since the defendant had not come forward to partition the properties, the plaintiffs were forced to file the said suit, it is contended.

5. The case of the defendant is that the relationship between the parties is admitted. But, the plaintiffs had relinquished their right over the suit properties orally and thus, they are not entitled for partition.

6. Based on the above pleadings, the trial Court framed appropriate issues.

7. On the side of the plaintiffs, two witnesses were examined and four documents were exhibited. On the side of the defendant, four witnesses were examined and no document was marked.

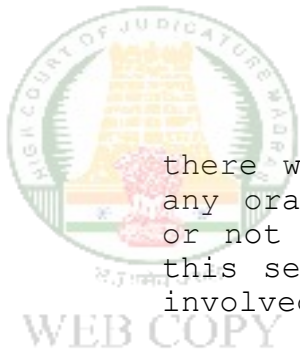
8. Having considered the said evidences available, the trial Court decreed the suit in part, which was confirmed by the lower appellate Court. That is how the appellant/defendant is before this Court with this second appeal.

9. In this second appeal it is contended that the oral relinquishment made by the plaintiffs has not been properly appreciated by the Courts below. It is further contended that the very fact that the suit for partition was filed long after the succession had opened, by itself will go to prove the oral relinquishment.

10. The learned counsel for the respondents/plaintiff would however submit that it is a pure question of fact and there is no substantial question of law at all is involved in this second appeal. According to him, the oral relinquishment is not valid in law. Therefore, the learned counsel for the respondents submits that the appeal is liable to be dismissed.

11. I have considered the above submissions.

12. As rightly contended by the learned counsel for the respondents/plaintiffs, oral relinquishment is not valid in the eye of law. Above all, there is no proof for that oral relinquishment also. Simply because, the suit was filed belatedly after the demise of Mr.M.K.Sivasubramaniam, it cannot be even remotely inferred that



there was such oral relinquishment. At any rate, whether there was any oral relinquishment or not and whether the same is valid in law or not are all pure questions of fact, which cannot be canvassed in this second appeal. There is no substantial question of law at all involved in this second appeal.

13. So far as the quantum of share allotted to the plaintiffs, though the plaintiffs claimed more quantum, the Court below had rightly calculated the share of the plaintiffs as $1/6$ each. It is needless to point out that as per the Central Amendment Act of 2005, amending the provisions of the Hindu Succession Act, though there was no partition effected between Mr.M.K.Sivasubramaniam and the defendant, it shall be deemed that there was partition between them. So, as per the deemed partition, the defendant is entitled for $1/2$ share, which according to the provisions of the amended Act, is his self-acquired property.

14. So far as the other $1/2$ share, deemed to have been allotted in favour of Mr.M.K.Sivasubramaniam, it is certainly the ancestral property, in which, the plaintiffs and the defendants are entitled equal share, i.e. $1/2 \times 1/3 = 1/6$ share. This is what has been decreed by the Courts below in favour of the plaintiffs. Thus, the Courts below were right in partly decreeing the suit, thereby allotting $1/6$ th share to each plaintiff.

15. It is needless to point out that the defendant is entitled for $1/2$ share as per the deemed partition, and $1/6$ share out of the share deemed to have been allotted to Mr.M.K.Sivasubramaniam. Thus, his total share comes to $4/6$ i.e equal to $2/3$ share. Thus, in the matter of quantum, I do not find any infirmity in the judgements and decrees of Courts below. I do not find any merit at all in this second appeal, more particularly, I do not find any substantial question of law, warranting admission.

16. In the result, the appeal fails and the same is accordingly dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar



To

1. The Principal District Judge, Erode

2. The II Additional Sub Court, Erode

+1 cc to Mr.T.Muruga Manickam, Advocate, SR.15297

+1 cc to Mr.v.S.Kesavan, Advocate, SR.15234.

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