

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14 - 07 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 513 of 2015

and

M.P. No. 1 of 2015

P. Veeramuthu

.. Appellant/Plaintiff

Vs.

1. E. Sivaraj

2. E. Selvakumar

3. E. Thirunam

4. E. Thirusangu

... Respondents/Defendants

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.03.2013 passed by the Subordinate Judge, Tambaram, in A.S. No. 125 of 2009 confirming the judgment and decree passed by the District Munsif, Alandur, in O.S. No. 305 of 1997 on 27.09.2006.

For Appellant : Mr. A. Ramalingam

For Respondents : Mrs. T. Jayalakshmi
for M/s Paul & Paul

JUDGMENT

The plaintiff who was non-suited by the concurrent findings of the Courts below as regards his prayer for partition and permanent injunction restraining the defendants from constructing any building on the suit property before effecting partition, challenge the same by way of the present Second Appeal.

2. The claim of the plaintiff is that his father and the defendants' father were brothers born to one Sundarammal, who was the original owner of the suit property having purchased the same in the year 1946. After the demise of Sundarammal and also till the death of both the plaintiff and the defendants' father, there was no partition of the property. Hence, the suit was filed.

3. According to the defendants, the partition was effected by way of family settlement during the lifetime of their father and mutation of documents was also effected in their respective names. Hence, they sought for dismissal of the suit.

4. The trial Court, before which the parties were examined and documents were marked, on consideration of the materials, dismissed the suit holding that the plaintiff has not established his case and the appeal against the same was also dismissed by the Lower Appellate Court. Questioning the same, the plaintiff has filed the present Second Appeal.

5. The only point that arises for consideration in this Second Appeal is whether the concurrent finding of the Courts below needs to be interfered with.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the defendants and perused the records.

7. To substantiate the contention that there was a family settlement, Ex. B.1 Partition Deed (koorchit) was produced by the defendants as per which, on 19.8.1985, there was a partition between Perumal and Elumalai signed by both parties witnessed by Panchayatdars. Ex. B.5 is joint patta in the name of the defendants. Exs. B.6 and B.7 are chitta and adangal extracts respectively in the name of the defendants' father. Exs. B.8 and B.9 are kist receipts relating to the suit property in the name of the defendants' father. While the defendants, who alleged earlier partition, had substantiated the same by producing the above documents, the plaintiff who has come up with the specific case of partition, has not proved that the properties were in tact till the date of suit.

8. The Courts below have more particularly relied on the admissions of P.W.1 and P.W.2. It is seen that P.W.1, in his cross-examination, had specifically admitted that S. No. 335/1 had been divided between the parties and they are enjoying the same accordingly. As regards S. No. 331/1 also, the total extent of 56 Cents has been divided between them. Further more, P.W.2, who had attested the document Ex. B.1, had categorically admitted that there was a partition earlier which was reduced to writing on which he had attested as witness. Based on the above documents and evidence, the Courts below had dismissed the suit.

9. Learned counsel appearing for the appellant submitted that Ex. B.1 is inadmissible in evidence as the same is not registered and that it can be admitted only for collateral purpose. The said submission is only to be rejected for the reason that independent of Ex. B.1, the defendants have established the partition earlier by the admissions made by P.W.1 and P.W.2 besides producing Exs. B.2 to B.9.

10. In view of the above factual position, in my opinion, since the Courts below have clearly recorded a finding on facts, in this Second Appeal filed under Section 100 C.P.C. against the concurrent

judgments, no substantial question of law would arise for consideration. The point is answered accordingly.

For the foregoing reasons, the Second Appeal fails and the same is dismissed and the judgment and decree passed by the learned District Munsif, Alandur, in O.S. No. 305 of 1997 on 27.09.2006 as confirmed by the judgment and decree dated 28.03.2013 passed by the learned Subordinate Judge, Tambaram, in A.S. No. 125 of 2009, are affirmed. In view of the relationship between the parties, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gri
To

1. The District Munsif
Alandur
2. The Subordinate Judge
Tambaram

+1cc to M/s. Paul & Paul, Advocate, S.R.No.35769

NM(CO)
EU(05/08/2015)

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