



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.70 of 2015 and M.P.No.1 of 2015

1. Marimuthu Ammal
2. P.M.Subramaniyan
3. Arumugam

.. Appellants/Defendants 3 to 5

-Vs-

1. S.Murugan
2. Solachi Ammal

.. Respondents/Plaintiff and 2nd
Defendant.

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 05.06.2014 on the file of the Principal District Judge, Villupuram in A.S.No.25 of 2011 allowing the appeal and granting the 1/12th share to the 1st appellant and 5/12th share to appellants 2 and 3 confirming the preliminary decree passed by the court of Subordinate Judge, Kallakurichi dated 28.09.2010 made in O.S.No.32 of 2005 granting 5/12th share to the 1st respondent herein.

For Appellants : Mr.V.Bhiman
For Respondents : ...

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J U D G M E N T

The defendants 3 to 5 in O.S.No.32 of 2005 on the file of the learned Subordinate Judge, Kallakurichi are the appellants herein. The 1st respondent is the plaintiff in the suit. One K.Govindan was the 1st defendant. Mr.Govindan died during the pendency of the suit and therefore, the 6th defendant, namely, Mr.Periyapillai was impleaded as his legal representative. Periyapillai (6th defendant) also died during the pendency of the suit. The 1st respondent/plaintiff filed the said suit for partition and for separate possession of 5/12th share in the suit properties. The trial court by decree and judgment dated 28.09.2010 passed a preliminary decree for partition thereby allotting 5/12th share in the suit properties to the plaintiff. Challenging the same, the appellants herein filed an appeal in A.S.No.25 of 2011 before the learned Principal District Judge, Villupuram. By decree and judgment dated 5.6.2014, the lower appellate court allowed the appeal and modified the decree thereby declaring that the 1st appellant/3rd defendant is



entitled for 1/4th share and the appellants 2 and 3 (Defendants 4 and 5) are entitled for 5/12th share in respect of the share of the deceased 1st defendant, namely, Govindan and his wife 6th defendant, namely, Periyapillai and the lower appellate court also held that the appellants are entitled to work out their remedies subject to equity at the time of passing of final decree. In all other aspects, the decree and judgment of the trial court was confirmed. As against the same, the appellants are before this Court with this Second Appeal.

2. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

There was a common ancestor by name Kulanda Moopper. He died several decades before. According to the plaintiff, he died 45 years before whereas according to the defendant, he died 60 years before. At any rate, the date of death of Kulanda Moopper has not been established by either parties and the same is not much material in this case. Kulanda Moopper had two wives by name Periyapillai and Chinnapillai. So far as the second wife Chinnapillai is concerned, she had one son and two daughters. Her son name is Sadayandi Moopper. The defendants 2 and 3 are her daughters. Sadayandi died leaving behind the plaintiff as his legal representative. Periyapillai and Chinnapillai, the wives of Kulanda Moopper were also passed away. Kulanda Moopper died intestate. According to the plaintiff, he is entitled for preliminary decree as prayed for in the plaint.

4. As I have already stated, the 1st defendant died and the 6th defendant, who is the sole legal representative of Periyapillai, also died. The appellants herein alone contested the suit. According to them, some of the properties were purchased by the defendants 4 and 5 from one Govinda Moopper, the 1st defendant. According to the appellants, there was an oral partition between Sadayandi Moopper, the father of the plaintiff and his brother Govinda Moopper several decades before. As per the oral partition, they are enjoying the respective properties. Therefore, according to the appellants, the plaintiff is not entitled for partition in respect of the properties purchased and held by them.

5. The trial court framed appropriate issues on the above pleadings. On the side of the plaintiff, 3 witnesses were examined and as many as 4 documents have been exhibited. On the side of the defendants, 2 witnesses were examined and as many as 13 documents have been exhibited. Having considered all the above, the trial court decreed the suit as prayed for which was modified by the lower appellate court. That is how the appellants are before this Court with this Second Appeal.



6. In this appeal, the learned Counsel for the appellants would submit that the courts below were not right in holding that there was no oral partition between Sadayandi Moopper and Govinda Moopper. The learned Counsel would further submit that there is evidence to prove the oral partition and therefore, the lower appellate court ought not to have granted decree.

7. In my considered opinion, this contention cannot be accepted at all for more than one reason. First of all, it is a question of fact. The courts below have appreciated the evidence available on record and come to a conclusion that the defendants have failed to prove the oral partition between Sadayandi Moopper and Govinda Moopper. Unless the said conclusion arrived at by the courts below, which is concurrent, is found to be in any manner perverse, it is not possible for this Court to interfere with the same. Apart from that, in the said argument, there is no question of law at all. Thus, I do not find any reason to interfere with the findings of the courts below that there was no oral partition between Sadayandi Moopper and Govinda Moopper. If once the said conclusion is arrived at as a corollary, it has to be held that the plaintiff is entitled for a share.

8. So far as the quantum of share allotted to the plaintiff is concerned, the defendants 4 and 5 cannot have any grievance. They are only purchasers. The courts below have held that they are innocent purchasers for value and therefore, they are entitled to work out their remedies on the ground of equity at the time of passing of final decree. Thus, the right and interest of the defendants 4 and 5 have been adequately protected by the courts below.

9. So far as the 1st appellant is concerned, she does not claim any right over the suit property and she appeared only as a formal party. During the course of argument, the learned Counsel for the appellants did not canvass any point in favour of the 1st appellant. Thus, in this Second Appeal, I do not find any question of law much less a substantial question of law warranting admission of the Second Appeal.



10. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

tsi

s/d-
Assistant Registrar(CS-III)
Dt:3/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge, Villupuram.
2. The Subordinate Judge, Kallakurichi.

+ 1 cc to Mr.V.Bhiman, Advocate SWR 8769

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S.A.No.70 OF 2015