

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.982 of 2015

1.Thanjammal
2.Munusamy

... Appellants

Vs.

1.Munivel
2.Manickavel

... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 22.01.2014 on the file of the learned Subordinate Judge, Vellore in A.S.No.118/2012 confirming the judgment and decree rendered by the learned District Munsif, Katpadi in O.S.No.876 of 2009 dated 28.02.2012.

For Appellants : Mr.D.Rajagopal

JUDGEMENT

The plaintiffs in O.S.No.876 of 2009 on the file of the learned District Munsif, Katpadi, Vellore District, are the appellants herein. The respondents are the defendants in the suit. The plaintiffs filed the said suit for declaration of title and for permanent injunction to restrain the defendants from in any manner interfering with the plaintiffs' alleged peaceful possession and enjoyment of the suit properties. The trial court by decree and judgment dated 28.02.2012, dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.118/2012 on the file of the learned Subordinate Judge, Vellore. By decree and judgment dated 22.01.2014, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants are before this Court with this second appeal.

2.This second appeal has come up 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 plaintiffs is as follows:-

The plaintiffs are mother and son respectively. The husband of the first plaintiff and the father of the second plaintiff was one Mr.Goundappa Gounder. The father of the defendants was one Mr.Munusamy Gounder. Mr.Goundappa Gounder and Mr.Munusamy Gounder were brothers. The suit properties and few more properties were the ancestral properties of Mr.Goundappa Gounder

and Mr.Munusamy Gounder. It is the further case that during their life time, i.e., 40 years prior to the suit, there was an oral partition between Mr.Goundappa Gounder and Mr.Munusamy Gounder in which, the suit properties were allotted to the share of Mr.Goundappa Gounder. After the demise of Mr.Goundappa Gounder, the plaintiffs have inherited the same and they have been enjoying the suit properties as absolute owners. Hence, according to the plaintiffs, the defendants have got no right whatsoever over the suit properties.

4.The defendants disputed the said claim made by the plaintiffs. According to the defendants, there was no such partition between Mr.Goundappa Gounder and Mr.Munusamy Gounder. Thus, the suit properties remained to be joint family properties of the plaintiffs and the defendants and therefore, according to the defendants, they are entitled for half share in the suit properties. Thus, according to the defendants, the claim of the plaintiffs that they have got absolute title for the suit properties and they are in exclusive possession of the same is not correct.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, four witnesses were examined and as many as 6 documents were exhibited. On the side of the defendants, three witnesses were examined and no document was marked. Three documents were marked as Court documents as Ex.C.1 to C.3 which are the Commissioner's report; Commissioner's plan and the Surveyor's plan. Two documents were exhibited as third party documents as Exs.X.1 and X.2 which are a xerox copy of 'A' register and chitta for the suit property and a xerox copy of the Adangal for the suit property from Fasali 1398 - 1419. Having considered all the above, the trial Court dismissed the suit and the same was confirmed by the First Appellate Court. That is how the appellants are before this Court with this second appeal.

6.The learned counsel for the appellants would submit that the Courts below have erred in holding that there was partition between Mr.Goundappa Gounder and Mr.Munusamy Gounder. The learned counsel would further submit that by means of oral evidence and also by means of the subsequent documents such as patta and other revenue records standing in the name of the plaintiffs, they have proved that there was partition. In my considered view, these questions are purely on facts and there is no question of law much less a substantial question of law involved in the same. I find no perversity in the judgments of the Courts below. The Courts below have referred to the plaint averments and have said that except making a vague statement that there was oral partition between Mr.Goundappa Gounder and Mr.Munusamy Gounder, absolutely, there is no pleading as to when, where, in whose presence and by what means such partition was effected. It is not even stated as to what are all the properties allotted to Mr.Munusamy Gounder in the alleged partition. There is a single line averment in the plaint that the suit properties were allotted to Mr.Goundappa Gounder in the partition. There is no acceptable evidence to prove the said

partition also. It is only on these defects in the case of the plaintiffs, the Courts below have dismissed the suit. The Courts below have appreciated both oral as well as documentary evidences and have come to the conclusion on facts that there was no such partition between Mr.Goundappa Gounder and Mr.Munusamy Gounder. In that finding, since, I do not find any infirmity and since, I do not find any substantial question of law involved, I am not inclined to admit this second appeal.

7.The learned counsel for the appellants would however submit that it may be clarified that the plaintiffs' right to file a suit for partition would not be deprived by the dismissal of this second appeal. In respect of the said submission, I find every justification. This suit has been dismissed only on the ground that there was no oral partition and since, the same has become final, the plaintiffs are all entitled to file a suit for partition of all the joint family properties held by Mr.Goundappa Gounder and Mr.Munusamy Gounder and for other reliefs for which they are legally entitled to.

8.In view of the foregoing discussions, I do not find any merit at all in this second appeal. The second appeal fails and accordingly the same is dismissed and the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Vellore.

2.The District Munsif,
Katpadi.

+ 1 cc to Mr.D. Rajagopal, Advocate SR.62762

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