

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2016

PRONOUNCED ON : 30.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal Nos.153 and 154 of 2008 and
M.P.No.1 of 2008 in S.A.No.153 of 2008

R.Mani ...Appellant/Plaintiff/Appellant in
both Second Appeals

Vs

1.Sivaprakasam

2.Madhanraj ... Respondents/Defendants/Respondents in
both Second Appeals

Prayer in S.A.No.153 of 2008:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 28.04.2006 in A.S.No.63/2005 on the file of the Subordinate Court, Chidambaram reversing the judgment and decree dated 29.04.2005 in O.S.No.240/2004 on the file of the learned Additional District Munsif, Chidambaram.

Prayer in S.A.No.154 of 2008:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 28.04.2006 in A.S.No.65/2005 on the file of the Subordinate Court, Chidambaram reversing the judgment and decree dated 29.04.2005 in O.S.No.240/2004 on the file of the learned Additional District Munsif, Chidambaram.

For Appellants
in both S.As : Ms.A.L.Gandhimathi

For R.1 : Ms.Hema Sampath, Senior Counsel
in both S.As for R.Meenal

For R.2
in both S.As : Mr.R.Kannan

COMMON JUDGMENT

The plaintiff is the appellant. The suit is filed for declaration and possession of vacant land removing the superstructures put up by the defendants. The suit property is 55 cents of land in the suit village.

2.The case of the plaintiff is that he joined as a Watchman at the Tamil Nadu Civil Supplies Corporation during the year 1975 and in the year 1982, he purchased the suit property vide registered sale deed - Ex.A.1. Though, he has purchased the suit property, he allowed his father and brothers to enjoy the property. After the death of his father, his brothers who are the defendants are trying to grab the property from the plaintiff. In the year 2002, the defendants along with his men forced the plaintiff to sign certain documents under threat and later, he came to know that it is the partition deed of the suit property. Again in the year 2003, the defendants tried to trespass into the suit property hence, he issued notice to the defendants not to disturb his peaceful possession. However, after issuing reply notice, the first defendant with the help of his men forcibly trespassed into the suit property and dispossessed the plaintiff. Hence, the suit for declaration and recovery of possession after removal of superstructures has been filed by the plaintiff.

3.The defendants in the written statement, contended that their father Mr.Ramdev Padayachi migrated from Vallam Padukai Village along with his family in the year 1960 and settled at the suit village C.Mutlur being his father-in-law's village. He sold his ancestral property at Vallam Padukai village and with that money and out of his own earnings, he started purchasing properties. The suit property was purchased in the name of the plaintiff to show him as a 'man of means' with the intention to get good bride.

4.Mr.Ramdev Padayachi also purchased few other properties in his name and in the name of the first defendant. Mr.Ramdev Padayachi conducted his daughter's marriage, out of his earning. He is an Indian Army pensioner and had enough source of income to purchase properties. The plaintiff who is only a 'name lender', had no sufficient means at the time of purchasing the property in the year 1982. During the lifetime of his father, Mr.Ramdev Padayachi, there was oral partition between them on 29.06.1994 and all the three sons have shared their joint family properties as per the oral partition and later, in order to make

small alteration in the family arrangement, another deed was executed on 14.12.2002.

5.The trial Court, on appreciating the evidence let in by the parties, partially allowed the suit for declaration except the portion where the defendants put up superstructures.

6.Aggrieved by the judgment of the trial Court, both the plaintiff and the defendants have preferred independent appeals before the Subordinate Court, Chidambaram. The plaintiff filed appeal against the dis-allowed portion whereas, the defendants preferred an appeal as against the declaration granted in favour of the plaintiff, in respect of the remaining portion.

7.The First Appellate Court, after considering the fact that Ex.B.1, a memorandum of oral partition being written in past tense held it squarely falls under the category of document, evidencing the family arrangement already entered and it does not require any registration. Holding so, the First Appellate Court set aside the trial Court judgment and decree in toto. As a result, the suit filed by the plaintiff got dismissed in toto. Aggrieved by that, the plaintiff has filed the present Second Appeal raising the following substantial questions of law:-

"(i)Whether the Lower Appellate Court is correct in dismissing the suit on the basis of Ex.B.14, the validity of which has not been established ?

(ii)Whether the First Appellate Court is correct in finding that Ex.B.14 is an instrument which records an earlier partition ?

(iii)Whether the First Appellate Court is correct in finding that the suit property belongs to the defendants without considering Ex.A.1, the registered Sale Deed ?

(iv)Whether the judgment of the First Appellate Court is vitiated by non-appreciation of the relevant materials on record ?"

8.The learned counsel for the appellant vehemently argued that the First Appellate Court has dismissed the suit based on Ex.B.14, which is inadmissible in evidence and further, he contended that Ex.B.1, the so called oral partition among the family members has been obtained by threat and force hence, it cannot be relied upon.

9.The learned Senior Counsel appearing for the first respondent submitted that dehors Ex.B.14, the factum of oral partition is well proved and established through Ex.B.1 and other witness. During the year 1982, the plaintiff had no means to purchase property. He was only a name lender to Ex.A.1. The First Appellate Court has properly appreciated the evidence available both oral and documentary and has come to the right conclusion which needs no interference.

10.Perusal of the judgments of the Courts below, this Court finds that the trial Court has partially allowed the suit solely depending upon Ex.A.1 registered sale deed in favour of the plaintiff. Apart from that document, the plaintiff has relied upon the kist receipts issued for the fasli year 1412 ie., for the year 2002. The remaining two documents which are marked as Exs.A.3 and A.4 are the Lawyer notice issued by the plaintiff and reply notice by the defendants Lawyer.

11.The First Appellate Court relying upon the judgment of this Court in A.C.Lakshmipathy v. A.M.Chakrapani Reddiar & others (2001 (1) L.W 257) has held that Ex.B.1, dated 29.06.1994, is the outcome of oral partition among the brothers. During the life time of their father Mr.Ramdev Padayachi and after his demise, certain alterations in the family partition have taken place which resulted in Ex.B.14. The First Appellate Court has not in fact relied upon Ex.B.14 to arrive at the conclusion. It has only commented upon the conduct of the plaintiff that, if Ex.B.14 was obtained under force, why the plaintiff did not question it at the earliest point of time. Further, the First Appellate Court has categorically and clearly held that Ex.B.14, is inadmissible in evidence though P.W.1 has admitted his signature in Ex.B.14. Therefore, it is incorrect to say that the First Appellate Court has relied upon Ex.B.14 to arrive at the conclusion. Ex.B.14 is the photocopy of the partition agreement dated 14.12.2002. It has been signed by all the three sons of Mr.Ramdev Padayachi, who are the parties in the suit. Even at the time of marking this document, the plaintiff has objected it. While so, in the course of argument, the learned counsel for the appellant tried to read a portion of the recital on Ex.B.14 to show, till the date of execution of Ex.B.14, there was no partition effected among the brothers. The specific case of the plaintiff is that he was employed as Watchman in Civil Supplies Corporation and he had sufficient means to purchase the suit property vide Ex.A.1 for a sale consideration of Rs.9,625/-.

12.The further case of the plaintiff is that, his father Mr.Ramdev Padayachi was not a man of means or income. In the cross examination, when it was suggested to him that his father

was a retired Indian Army man and drawing pension, he has categorically feigned ignorance of that. In fact, Ex.B.12, the pension document in favour of Mr.Ramdev Padayachi indicates that during the year 1977 itself, he was drawing a pension of Rs.75/- pm whereas, during cross examination, when the plaintiff was precisely asked for his salary details, though he claims he was earning Rs.3,000/- per month in the year 1982, he has not produced even a piece of paper to substantiate the said claim. The defendants have clearly established through documentary evidence as well as oral evidence that their father Mr.Ramdev Padayachi had three sons and during his life time itself, he had acquired properties in his name and his sons name, out of joint family exertion and during his life time itself, he has partitioned the property among the sons and the same has been reduced into writing vide Ex.B.1. The kist receipts also indicates that the parties were enjoying the respective properties allotted under Ex.B.1 after the oral partition.

13.In M.Kothai Achi v. PL.Manickam (2009(5) CTC 1), after discussing the provisions of Sections 17 & 49 of the Indian Registration Act; the judgments rendered by this Court and the Apex Court regarding oral partition among the family members, it has been held that "in the judgment A.C.Lakshmipathy and another v. A.M.Chakrapani Reddiar and Five others, (2001 (1) CTC 112), the Hon'ble High Court has held that it is permissible to have a family arrangement orally but when a family arrangement is made in writing for the first time, then it must be properly stamped and duly registered in accordance with the Stamp Act and Indian Resitration Act. The Hon'ble High Court has also held that when a document is in the nature of memorandum evidencing the earlier oral partition and when the same has been prepared only for recording the same, it need not be stamped or registered. Therefore, the said judgment of the Division bench also does not support the case of the appellant". So in order to appreciate the actual possession, the Court has to go into the content of Ex.B.1. The very opening paragraph of Ex.B.1 reads as follows:-

“சிதம்பரம் தாலுக்கா சி முடலுரா கிராமம் திரு.சிராமதேவன்
INA அவர்களில் குமாரர்களாகிய திரு.விகே.மணி, திரு.ஆர்.சிவபிரகாசம்,
திரு.ஆர்.மதன்ராஜ் ஆகிய மூவரும் ஒற்றுமையுடன் மனம் ஒத்து
நிலம் மற்றும் மனைகளை பங்கு பிரித்துக் கொண்டோம். விவரம்
பின் வருமாறு.”

14.From this, it is very clear that Ex.B.1 is a memorandum of past event and therefore, there is no necessity for registration. The subsequent alteration in the family arrangement will not vitiate the earlier partition. It is pertinent to point out that the plaintiff though claims that under threat, partition deed was obtained from him, there is no

whisper till the filing of the present suit after several years. Particularly, he has come out with the suit to take advantage of Ex.A.1 (sale deed) after the demise of his father. While his father himself was a witness to Ex.B.1.

15.In the said oral partition, the suit property purchased in the name of the plaintiff was allotted to Mr.Sivaprakasam and the property which was in the name of their father was allotted to the plaintiff. The said oral partition was given effect and acted upon.

16.In the result, this Court finds no substantial question of law to interfere the judgments of the First Appellate Court and the trial Court. Hence, both the Second Appeals are dismissed and the judgments and decrees passed by the First Appellate Court are confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Munsif,
Chidambaram.

2.The Subordinate Court,
Chidambaram.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.R.Kannan, Advocate Sr.70477
+2cc to M/S.R.Meenal, Advocate Sr.70689
+2cc to M/S.A.C.Gandhimathi, Advocate Sr.70842

Second Appeal Nos.153 & 154 of 2008

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srg 30/01/2017