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In the High Court of Judicature at Madras

Dated: 09.06.2016

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.43 of 2013
and M.P.No.1 of 2013

1.Thangammal
2.Bhaskar @ Ponnaiyan
3.Poomalar

.... Appellants

Vs.

1.Perumayee
2.Kirupalini
3.Parvathy
4.E.Selvam

.... Respondents

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.11.2012 of learned Principal District Judge, Namakkal made in A.S.No.20 of 2012 confirming the judgment and decree dated 29.03.2012 made in O.S.No.709 of 2001 by the learned Subordinate Judge, Namakkal.

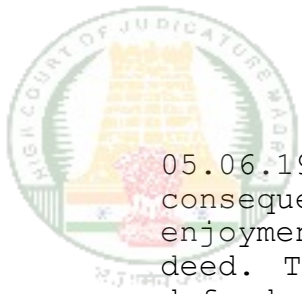
For Appellants : Mr.R.Subramanian

For Respondents : Mr.R.Kannan
for M/s.M.Aniruthan for R2 and R3

J U D G M E N T

The appellants are the plaintiffs in a suit for partition and separate possession. Their claim is that the suit properties are ancestral properties in the hands of the defendants 1 to 4 and hence, the plaintiffs are entitled to their respective share in all the suit items.

2. The first defendant is the husband of the first plaintiff and father of the second and third plaintiffs. The second defendant is the mother of the first, third and fourth defendants. The third and fourth defendants are the sisters of the first defendant and daughters of the second defendant. The fifth defendant entered into an agreement of sale with the 1st defendant in respect of one of the suit items. The contention of the defendants 1 to 4 is that one Kulanthai Gounder acquired all these properties out of his own income by doing business at Malaysia and in pursuant to the partition taken place on



05.06.1985 under Ex.B3, the family properties were divided and consequently, the respective parties are in possession and enjoyment of their respective property as per the said partition deed. Thus, it is contended by the defendants that the first defendant who was allotted 'A' Schedule under the said partition deed became the exclusive owner only in respect of the said property and hence, the plaintiffs are entitled to their share only in respect of such property allotted to the share of the first defendant under the said partition deed. Thus, it is contended that the other properties shown in the suit schedule are not ancestral properties as claimed by the plaintiffs and therefore, the plaintiffs are not entitled to a share in the same. During the pendency of the suit, the first defendant died.

3. The trial Court, after considering the facts and circumstances and the evidence let in by both parties, decreed the suit in part thereby, granting the relief of partition to the plaintiffs only in respect of A-Schedule property shown in the said partition deed. The plaintiffs filed an Appeal before the First Appellate Court challenging the denial of the share in the remaining properties. The First Appellate Court, after considering the entire merits of the matter, dismissed the Appeal. Thus, this Second Appeal is filed before this Court and listed today under the adjourned admission stage.

4. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials placed before this Court.

5. The plaintiffs are before this Court challenging the concurrent finding rendered by the Courts below on appreciation of the facts, evidence and circumstances of the case. Though the plaintiffs claim that the entire suit properties are ancestral properties in nature, it seems that they have not proved such contention by adducing any evidence. On the other hand, it is seen that the defendants 1 to 4 by marked Ex.B3-partition deed dated 05.06.1985 established that the suit properties originally belonged to one Kulandai Gounder were subsequently, partitioned between the family members of the said Kulandai Gounder and that in pursuant to such partition, the first defendant was allotted A-schedule property under the partition deed. Though the plaintiffs have contended that the defendants have purchased other properties out of the joint family nucleus, P.W.1 has categorically admitted during the cross examination that her father-in-law, namely, Kulandai Gounder went to Malaysia and did some business there and acquired the properties out of such business income. When that being her clear admission, the partition taken place on 05.06.1985 under Ex.B3 between the family members clearly proves that all those properties were acquired by Kulandai Gounder and the legal heirs of Kulandai Gounder had partitioned those properties among themselves.



Therefore, the first defendant who was allotted a share under the Partition Deed, cannot have any claim or right over the other properties which were allotted to the other sharers/ legal heirs of Kulandai Gounder. When that being the factual position, the plaintiffs cannot have any better title than the first defendant. Consequently, the trial Court as well as lower Appellate Court have rightly pointed out that the plaintiffs are entitled to only in respect of the property allotted to the first defendant under the partition deed dated 05.06.1985 and granted the decree as stated supra.

6. Therefore, I find no substantial question of law arising for consideration for entertaining this appeal. In fact, it is pointed out by the learned counsel appearing for the respondents that under the said partition deed, the first defendant was allotted two acres and 6 cents whereas the others were allotted lesser extent. Therefore, in all fairness, the plaintiffs should feel happy about the judgment and decree granted by the Courts below, instead of filing this Second Appeal. Thus, the Second Appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal District Judge,
Namakkal.

2. The Subordinate Judge,
Namakkal.

+1cc to Mr.R. Subramanian, Advocate, S.R.No.31029

+1cc to Mr.M. Aniruthan, Advocate, S.R.No.30990

SCD(CO)
EU(24/06/2016)

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