

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.460 of 2015 &

M.P.No.1 of 2015

K.Narayanasamy

.. Appellant /Defendant

v.

P.V.Palanisamy

.. Respondent /Plaintiff

APPEAL filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.12.2014 made in A.S.No.8 of 2014 on the file of Subordinate Judge, Mettur reversing the judgment and decree dated 07.11.2013 made in O.S.No. 78 of 2010 on the file of District Munsif Court, Mettur.

For Appellant : Mr.J.Ramakrishnan

For Respondent : Mr. P.Mani

J U D G M E N T

The above second appeal arises against the judgment and decree passed in A.S.No.8 of 2014 on the file of the Subordinate Court, Mettur reversing the judgment and decree passed in O.S.No. 78 of 2010 on the file of the District Munsif Court, Mettur.

2. The defendant is the appellant and the respondent was the plaintiff in the suit.

3. The plaintiff filed the suit in O.S.No. 78 of 2010 for declaration and permanent injunction.

4. The mother of the respondent-plaintiff and the defendant-appellant are sister and brother. Admittedly, the suit property originally belong to one Krishna Chetty. The said Krishna Chetty is the grand-father of the plaintiff and incidentally the father of the appellant. He has purchased the suit schedule property with a larger extent of 2178 sq.ft. under Ex.A1. There was a partition between him and his sons

under Ex.B2. These two documents are registered deeds.

5. According to the respondent-plaintiff, there was a oral partition between Krishna Chetty and his sons and subsequently, partitioned by a settlement deed dated 18.2.2000 under Ex.A2. Pursuant to which, the plaintiff is in possession and enjoyment of the property to an extent of 675 sq.ft. This is corresponding to old Door No.2-2-67.

6. The Lower Appellate Court, placing reliance upon the evidence of the plaintiff, which inclusive of children of the other co-owners, viz., the brother's children of the appellant and coupled with the fact that there is some tacit admission by the appellant in his evidence, reversed the judgment and decree of the Trial Court.

7. Challenging the judgment and decree of the Lower Appellate Court, the present appeal has been filed.

8. At the time of admission of the above Second Appeal, the following substantial question of law arose for consideration:-

"(i) When the plaintiff's mother herself had no right, title and possession over the suit property, whether in law Ex.A2 alleged settlement deed said to have executed in favour of plaintiff is valid in eye of law?

(ii) When the plaintiff failed to prove the alleged oral partition and having regard to the scope of sections 101 to 103 of Indian Evidence Act, whether in law the judgment and decree of the First Appellate Court in decreeing the suit by picking holes from the alleged weakness in defence version is sustainable?"

9. The learned counsel appearing for the appellant submits that the Lower Appellate Court had committed an error in picking up the holes in the evidences of the appellant as against the settled principles of law that the burden of proof is on the plaintiff to prove his case. The learned counsel further submits that section 91 of the Indian Evidence Act is applicable, since there is a registered settlement under Ex.B3 and therefore, any oral evidence controverting the same is impermissible in law.

10. The learned counsel appearing for the respondent submits that the Lower Appellate Court has correctly held that there is a tacit admission on the part of the appellant himself. The learned counsel also submits that there is discrepancy in the evidences of the appellant through D.W.3 and D.W.1. D.W.1 has accepted that what was allotted to the appellant was excluding

the suit property under Ex.B2, which is a registered partition deed. Ex.B3 actually deals with more extent and thus the reasoning of the Appellate Court, which deals with different property other than the suit schedule property, appears to be more probable, particularly, in the light of the evidences given on behalf of the appellant that admittedly, the mother of the plaintiff was in possession, though an explanation is sought to be given that it was permissible one. Hence, it is submitted that no interference is required.

11. There are two admissions made through the evidences of D.W.1 and D.W.3. D.W.1 has stated that what was allotted to the appellant was a different property. To that extent there is no dispute. D.W.3 also says that Door Number of the suit schedule property was 2-2-67 corresponding to new No.2-2-85. There is no evidence to this Door Number under Ex.B3. Under Ex.B2, the father of the appellant was given an extent of only 1224 sq.ft. However, if this measurement is taken into account, it comes to 1683 sq.ft.. The Lower Appellate Court also found on fact that there is some discrepancy in respect of the street apart from the Door Numbers. There is nothing to discredit the evidences of P.W.3 and P.W.4. These two witnesses, though being relatives of both the parties, have deposed in tune with the case of the plaintiff. Apart from the above, there is further admission regarding possession of the plaintiff's mother, though it claims to be permissive one.

12. Thus, the very basis of the claim of the appellant by relying upon Ex.B3 falls with the ground. In such circumstances, Sections 91 and 92 of Indian Evidence Act, would not come into and especially, when neither the plaintiff nor his predecessor-in-title was a party to it, in the light of the factual findings rendered by the Lower Appellate Court. The suit property is only an extent of 675 sq.ft. of land, over which a construction has been put up. The evidences would show that the respondent has been living in the said property after the demise of her mother. The settlement has been given under Ex.A2 by a registered document as early as in the year 2000. Therefore, it is not as if the said document has been created now or atleast at the time of filing of the suit. Thus looking from any angle, this court, does not find any perversity in the finding rendered by the Lower Appellate court being a final court of fact of law.

13. In such view of the matter, this court find no ground much less any substantial question of law warranting to interference with the judgment and decree of the Lower Appellate Court. Accordingly, the second appeal fails and

the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Rj

To

1. The Subordinate Judge,
Mettur
2. The District Munsif
Mettur

+1 cc to M/s.P.Mani, Advocate sr 728621
+1 cc to M/s.J.Ramakrishnan Advocate sr 72884

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