

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2016

PRONOUNCED ON : 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.189 of 2011

and

M.P.No.1 of 2011

Muthusamy Appellant/1st Defendant

Vs.

1.Minor Dhanraj
Rep.by next friend and
father Natarajan Chinna Gounder

2.Palanisamy

(2nd Respondent herein given up
as un-necessary party) Respondents/Plaintiff &
2nd Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.07.2010 made in A.S.No.32 of 2008 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 14.08.2008 made in O.S.No.121 of 2006 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr. S.Kolandasamy

For Respondent : Mr.S.Saravanakumar
No.1 for M/s.M.Sudhakar

JUDGMENT

The first defendant in this second appeal has challenged the judgment and decree dated 23.07.2010 made in A.S.No.32 of 2008 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 14.08.2008 made in O.S.No.121 of 2006 on the file of the Principal District Munsif Court, Namakkal.

2. The suit has been laid by the plaintiff for permanent injunction.

3. The second appeal has been admitted and the following substantial question of law is formulated for consideration in the second appeal.

Whether the judgments of the court below are vitiated in that they have decreed the suit for permanent injunction in spite of the finding that the plaintiff did not derive any title to the suit property?

4. The plaintiff's case, in short, is that the suit property, in the partition effected between Marutha Gounder and his sons orally in the year 1980, was allotted to Marutha Gounder and by virtue of the Will executed by Marutha Gounder in his favour dated 03.02.1999 bequeathing the suit property in favour of the plaintiff, according to the plaintiff, he has title to the suit property and the suit property is in his possession and enjoyment and inasmuch as the defendants, without any authority of law, attempted to interfere with his possession and enjoyment, he has been necessitated to file the suit.

5. Per contra, according to the defendants, the suit property is the ancestral property of Marutha Gounder, in which Marutha Gounder and his two sons have equal share and therefore, Marutha Gounder, as such, is not entitled to bequeath the whole of the suit property in favour of the plaintiff under a Will and it is further contended that in case, the Will is found to be true, it would be valid only to the extent of share to which Marutha Gounder is entitled to the suit property and therefore, the suit is liable to be dismissed.

6. The plaintiff is the son of Natarajan. Natarajan and the second defendant are brothers. Chinna Gounder is the father of Natarajan and the second defendant. Chinna Gounder and the first defendant Muthusamy are brothers and the sons of Marutha Gounder. There is no dispute as regards the above said relationship between the parties. According to the plaintiff, in the oral partition effected between Marutha Gounder and his two sons, the suit property has been allotted to Marutha Gounder's share. Accordingly, the documents have been filed to show that the suit property has been exclusively enjoyed by Marutha Gounder by paying house tax receipts and electricity charges which have been marked as Exs.A5 and 6. The Courts below have found that subsequent to the oral partition, the first defendant and his brother Chinna Gounder had effected partition under the partition deed dated 14.12.1981, which has been marked as Ex.A1.

Maruth Gounder is not a party to the said partition deed and it could also be seen that the suit property is not included in the above mentioned partition. Further, the courts below have also found that on 29.12.2003, the second defendant and his brother had effected partition and even in the said partition Marutha Gounder is not a party and the suit property is also not included in the above said partition. Therefore, according to the Courts below, inasmuch Marutha Gounder had already been allotted to the suit property in the oral partition effected during the year 1980, he has not been joined in the subsequent partition, effected between his sons under Ex.A1 and between his grand sons under Ex.A2. Further, as also found by the Courts below, inasmuch the suit property during the oral partition effected in the year 1980 had been allotted to Marutha Gounder, it could be seen that he had been enjoying the same as a lawful owner by paying the house tax and electricity charges in respect of the suit property.

7. Nothing has been projected by the defendants to hold that subsequent to the year 1980, the suit property had been enjoyed as joint family property amongst Marutha Gounder and his sons the first defendant and Chinna Gounder. It is contended by the defendants that the plaintiff has also included the property already conveyed under Ex.B1 in the suit and therefore, the plaintiff should not be granted the relief sought for. However, it could be seen that the courts below have found that the property covered under Ex.B1 is not related to the suit property and thereby, negatived the above contention of the defendants.

8. As found earlier, the plaintiff claims title to the suit property based on the Will executed by Marutha Gounder and the Will has been marked as Ex.A3. Based upon the testimony of the attester to the above said Will examined as PW2, the court has found that the Will executed by Marutha Gounder bequeathing the suit property in favour of the plaintiff is true and valid. Nothing has been pointed out to dislodge the above findings of the Courts below as regards the validity of the Will marked as Ex.A3. Therefore, it could be seen that the plaintiff has also established that he has valid title to the suit property under Ex.A3.

9. As already adverted, the plaintiff has established that it is only Marutha Gounder, who had been enjoying the suit property as full owner thereof by paying house tax and electricity charges and based upon the same, the courts below have also found that the property was enjoyed by Marutha Gounder and also subsequently by the plaintiff. The house tax receipts and electricity bills also in the name of the plaintiff have

been marked as EX.A7 to 9. The courts below, based upon the same have found that it is only the plaintiff, who is in possession and enjoyment of the suit property. It could also be seen that to establish that the defendants are in possession and enjoyment of the suit property in any capacity, no document whatsoever has been placed by the defendants.

10. In the light of the above discussions, it could be seen that on facts and based upon the evidence adduced by the parties, the courts below have found that the suit property has been allotted to Marutha Gounder and by virtue of the Will executed by Marutha Gounder marked as Ex.A3, the plaintiff has title to the suit property and also found that it is only Marutha Gounder and thereafter, the plaintiff, who have been in possession and enjoyment of the suit property. In such circumstances, the courts below have rightly found that the plaintiff's possession and enjoyment of the suit property should not be interfered with by the defendants and accordingly, granted the relief sought for by the plaintiff. The decision relied upon by the appellant reported in 2011-1-L.W.388 (B.V.Nagesh & Anr V. H.V.Sreenivasa Murthy), as rightly argued, would not be applicable to the facts and circumstances of the present case as the lower appellate court had dealt with the issues between the parties by analysing the evidence in detail by formulating the main point for determination and nothing has been shown that by the above said approach, the lower appellate court has misdirected itself and erred in deciding the issues wrongly affecting the merits of the case. In this connection, a useful reference may also be made to the section 99 of the code of Civil Procedure.

11. In such view of the matter, the contention that the courts below have upheld the case of the plaintiff without giving a finding that the plaintiff has title to the suit property is unacceptable. Hence, the substantial question of law formulated is answered against the appellant and in favour of the first respondent.

At the end, the second appeal is found to be devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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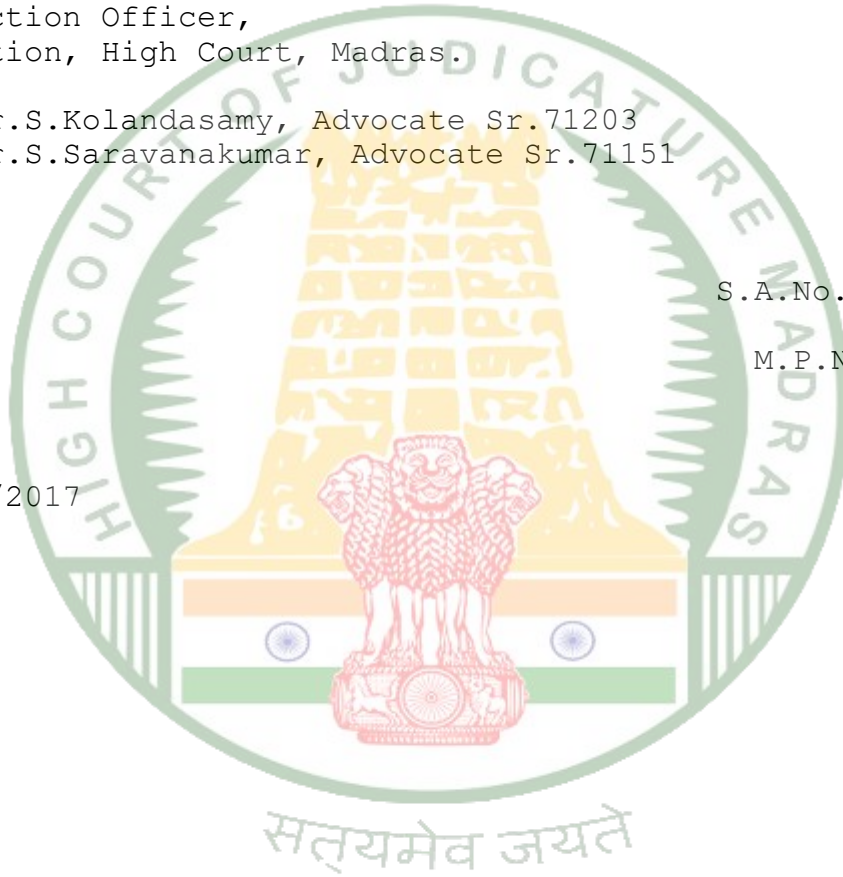
1. The Principal District Court,
Namakkal.
2. The Principal District Munsif Court,
Namakkal.
3. The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.S.Kolandasamy, Advocate Sr.71203

+lcc to Mr.S.Saravanakumar, Advocate Sr.71151

S.A.No.189 of 2011
and
M.P.No.1 of 2011

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