

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2016
PRONOUNCED ON : 28.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.365 of 2011
and
M.P.No.1 of 2011

1.Dhanam
2.Susila
3.Sathumani
4.Minor Anbumani

Rep.by his next friend
Mother Sundari ... Appellants/Respondents/Defendants

Vs.

Palaniammal ... Respondent/Appellant/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.08.2010 made in A.S.No.54 of 2005 passed by the Subordinate Court, Ariyalur, preferred against the Judgment and Decree dated 21.02.2005 made in O.S.No.188 of 2000 passed by the District Munsif Court, Jayankondam.

For Appellants : Mr.Pugalenthir

For Respondents : Mrs.N.Mala

JUDGMENT

The defendants have preferred this second appeal, challenging the judgment and decree dated 18.08.2010 made in A.S.No.54 of 2005 on the file of the Sub Court, Ariyalur, reversing the judgment and decree dated 21.02.2005 made in O.S.No.188 of 2000 on the file of the Principal District Munsif Court, Jeyankondam.

2. The suit has been laid for partition and permanent injunction.

3. The plaintiff is the daughter of Vellaiya Padaiyachi, the defendants 1 & 2 are the daughters of Ayyasamy Padaiyachi. Vellaiya Padaiyachi and Ayyasamy Padaiyachi are the sons of Narayanan. According to the plaintiff, the suit property was owned by Narayanan and enjoyed by him and his sons and as such, it is stated that the plaintiff is in possession and enjoyment of the suit property and as the plaintiff is entitled to 1/2 share in the suit property and as her claim to amicably partition the suit property failed, it is alleged that the plaintiff has laid the suit for necessary reliefs.

4. Per contra, according to the defendants, though the relationship is admitted, it is contended that Vallaiya Padaiyachi and Ayyasamy Padaiyachi had divided the suit property and as per the partition effected between them, Ayyasamy Padaiyachi was granted share on the western side of the suit property and also, the garden lying to the north and west of the same and it is stated that Ayyasamy Padaiyachi had been enjoying the same and the defendants 1 & 2 had alienated their property to the minor son of third defendant and therefore, it is contended that the plaintiff is not entitled to seek the relief of partition and other reliefs. It is further stated by the defendants that the plaintiff is not in possession and enjoyment of the suit property as claimed by her.

5. The trial Court, on a consideration of the oral and documentary evidence adduced by the respective parties, was pleased to negative the reliefs sought for by the plaintiff holding that there has been a partition already effected as claimed by the defendants. However, on the basis of the patta, finding that in respect of the suit property, patta has been granted in favour of the plaintiff's son to a limited extent, as regards that extent, the trial Court was pleased to grant the relief of permanent injunction in favour of the plaintiff. The plaintiff preferred the first appeal and the first appellate court, on a reappraisal of the evidence adduced by the parties, held that the suit property has not been divided as claimed by the plaintiff and as such, the plaintiff is entitled to seek half share in the suit property and accordingly, granted a preliminary decree in favour of the plaintiff as prayed for. Aggrieved by the same, the present second appeal has been laid by the defendants.

6. The relationship between the parties is not in dispute. That the suit property originally belonged to Narayanan is also not in dispute. That the plaintiff's father Vellaiya Padaiyachi and the defendants 1 & 2's father Ayyasamy Padaiyachi are the sons of Narayanan is also not in dispute. Therefore, it could be seen that as such Vellaiya Padaiyachi and Ayyasamy Padaiyachi

would be entitled to equal share in the suit property. Accordingly, the plaintiff being the daughter of Vellaiya Padaiyachi has claimed $\frac{1}{2}$ share in the suit property. The above claim of the plaintiff is resisted by the defendants contending that Vellaiya Padaiyachi and Ayyasamy Padaiyachi have already divided the suit property and accordingly, shares have been allotted to them as claimed in their written statement. Accepting the above case, it appears that the trial Court has negatived the relief of partition sought for by the plaintiff.

7. As rightly found by the lower appellate court, it could be seen that the plea of partition made by the defendants is very vague and hazy. The defendants have not clearly stated, as to when and under what mode the partition was effected and what are the properties that have been allotted to the two brothers with reference to their share. They have baldly claimed that partition has been effected between the two brothers. If that be so, the defendants would have given adequate particulars regarding the partition. Therefore, the lower appellate court has rightly found that the plea of partition made by the defendants cannot be readily accepted.

8. That apart, to show that pursuant to the so called partition, the respective sharers had been enjoying their shares, no acceptable proof has been placed by the defendants other than the patta. No doubt, Ex.A1 patta in favour of the plaintiff's son and Ex.B5 in favour of the defendants have been produced. According to the plaintiff, the patta entries have not been correctly made and she has put forth her objection to the same. Be that as it may, as rightly held, patta document would not confer title. Therefore, based upon the patta documents projected in the case, as rightly found by the lower appellate Court, we cannot infer that the parties have effected partition in respect of the suit property. Further, as rightly found by the lower appellate Court, there is no reference in Ex.A1 and B5 patta that the properties mentioned therein had been allotted to the respective sharers under the partition. That apart, as adverted to earlier, the defendants have not placed any acceptable proof to show that they had been enjoying their shares of the suit property as put forth by them.

9. On the other hand, as rightly found by the lower appellate Court, DW1 examined on the side of the defendants has admitted that he has been residing in his own house situated at Melatheru. Further, he has also admitted that he has been residing in Sirukudi village for the past nine years and the second defendant has been residing in Melakudiyiruppu village near Pillaiyar Kovil. Therefore, the lower appellate court has correctly held that the plea of partition made by the defendants cannot be true. If really, any share had been allotted to

Ayyasamy Padaiyachi, the defendants 1 & 2 or their vendees would have been in possession and enjoyment of the respective shares allotted to them. Therefore, it could be seen that the lower appellate court has rightly found that the defendants are not in possession and enjoyment of any portion of the suit property and it is only the plaintiff, who has been in possession and enjoyment of the suit property as claimed by her.

10. The trial Court seems to have believed the theory of the partition put forth by the defendants, on the footing that there is a boundary recital in Ex.B1 sale deed executed by the plaintiff's father in favour of Rathina Padaiyachi mentioning that the property comprised therein is situated to the east of Ayyasamy Padaiyachi's share. On that recital, the trial Court has accepted the plea of the defendants and also, placing reliance upon the patta document. However, as rightly argued by the counsel for the plaintiff, it could be seen that the boundary recital found in Ex.B1 would not by itself lead to the conclusion that in so far as the suit property is concerned, the brothers had already effected the partition. Even the trial Court has held that the property comprised in Ex.B1 has no nexus to the suit property. Further, the boundary recital found in Ex.B1 also does not indicate that the same pertains only to the share allotted to Ayyasamy Padaiyachi in the suit property. Such being the case, the findings of the trial Court that partition had already been effected based upon the above said isolated boundary recital cannot be accepted in any manner and only termed as erroneous appreciation of the evidence.

11. In the light of the above observations, as rightly argued by the respondent/plaintiff counsel, the second appeal does not disclose any substantial question of law for consideration. In conclusion, the second appeal is found to be devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Judge,
Ariyalur.
2. The District Munsif,
Jayankondam.

+1cc to Mr.N.Mala, Advocate Sr.69397

+1cc to Mr.G.Pugalenthil, Advocate Sr.70165

S. A.No.365 of 2011
and
M.P.No.1 of 2011

pk[col
srg 06/01/2017



WEB COPY