

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.233 of 2016

Thandavarayan

... Appellant/Defendant

vs.

Govindasamy Pillai

...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Subordinate Judge, Kanchipuram dated 24.03.2015 in A.S.No.52 of 2013 confirming the judgment and decree passed by the learned District Munsif cum Judicial Magistrate, Uthiramerur, in O.S.No.114 of 2010 dated 25.07.2013.

For Appellants : Mr.R.Selvakumar
For Respondent : Mr.K.C.Karlmarx

J U D G M E N T

The appellant is the defendant in a suit for partition. The respondent as the plaintiff filed the suit claiming half share in the suit property. The parties are brothers.

2.The case of the plaintiff is as follows:

The suit property is ancestral property, which was allotted to the share of the mother of the plaintiff and defendant under a deed of partition dated 19.11.1996 marked as Ex.A1, while 'A' and 'B' schedule under the said partition were allotted to the respective parties to the present suit. The mother was given life interest in respect of the suit property and after her life time, both the plaintiff and the defendant would divide and enjoy the same equally.

3.On the other hand, the defendant, though admitted the partition that had taken place on 19.11.1976 and allotment of the present suit property to the share of his mother, has however contended that after the death of the mother, the plaintiff orally sold his share in the suit property to the defendant. Therefore, the defendant contended that the plaintiff cannot seek for partition.

4.The trial court after careful consideration of the facts and circumstances, the pleadings of the parties and the evidence let in by them, decreed the suit as prayed for by holding that the oral sale alleged by the defendant is not true and legally valid.

5.The appeal preferred by the defendant came to be dismissed by the lower appellate court by confirming the judgment and decree of the trial court. Challenging the concurrent findings, the present second appeal is filed before this court.

6.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this court.

7.It is not in dispute that there was a partition in the family as early as on 19.11.1976 wherein the present suit property was allotted to the share of the mother of the plaintiff and the defendant. It is also not in dispute that the mother was given only life interest and thereafter, the plaintiff and the defendant would get the suit property equally among themselves. When such being the admitted position of fact, it is for the defendant to prove that the plaintiff sold his share to the defendant after the death of their mother. Both the courts below have concurrently found that the defendant failed to prove such sale. Moreover, when the defendant has only pleaded oral sale that too, in respect of the property valued more than 100 rupees, the question of considering the plea of oral sale does not arise. Both the courts below have concurrently found against the defendant in respect of his claim over the suit property and accordingly decreed the suit by granting half share to the plaintiff. I find no infirmity or illegality in the concurrent findings rendered by the courts below especially, when I do not find any substantial question of law arising for consideration in the second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vri

To

1.The Subordinate Judge, Kanchipuram.

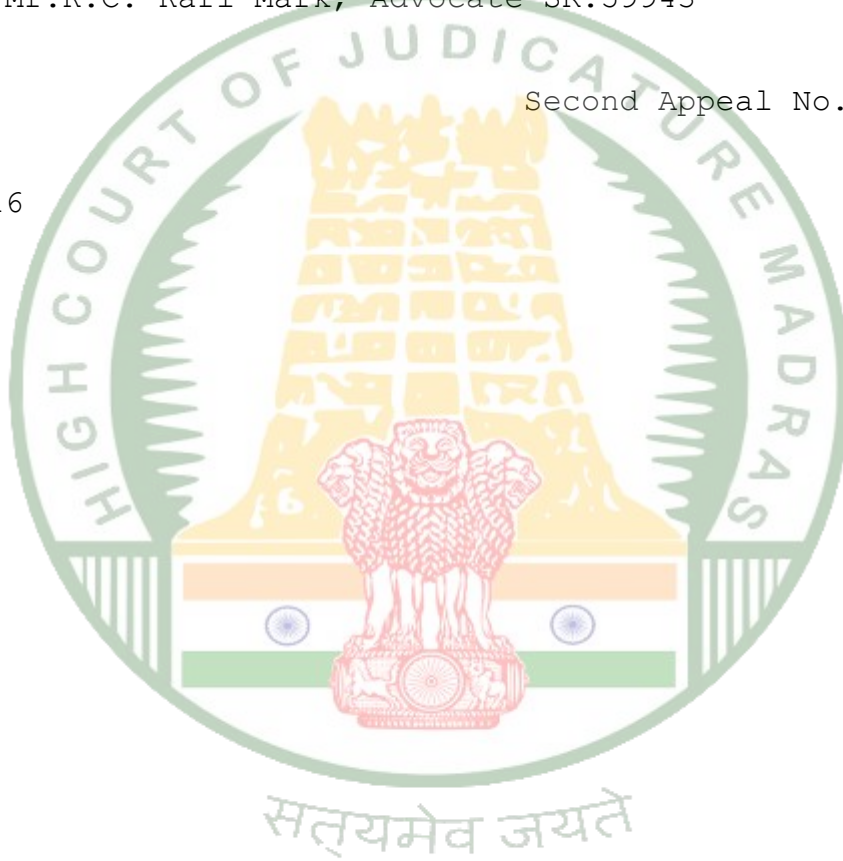
2.The District Munsif cum Judicial Magistrate,
Uthiramerur.

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

+ 1 cc to Mr.K.C. Karl Mark, Advocate SR.59943

Second Appeal No.233 of 2016

RJ(CO)
Eu 19.12.16



WEB COPY