

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

SA.Nos.560 and 561 of 2016

S.A.No.560 of 2016

S.Jayan Appellant/Plaintiff

vs.

Umapathy (died)

1.Murugan

2.G.Veeraraghavan

S.Ramasamy (died)

3.S.Kanniappan

4.S.Ramani

5.Pattammal

6.Mahalakshmi

Sakunthala (died)

7.Navaneetham

8.R.Ravi

9.R.Thanikachalam

.... Respondents/Defendants 2,3,
5 to 8, 10 to 12.

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 31.07.2013 and made in A.S.No.75 of 2012, on the file of Subordinate Judge, Ranipet, Vellore, confirming the judgment and decree dated 31.07.2012 and made in O.S.No.104 of 2005 on the file of Learned District Munsif, Sholinghar, Vellore.

For Appellant : Mr.K.Gnanasambandan

For Respondents : Mr.R.Subramanian
for RR1, R2, R4, R5 and R6

SA.No.561 of 2016

S.Jayan ... Appellant/Defendant

vs.

1.Murugan
2.S.Ramani
3.Pattammal
4.Mahalakshmi

...Respondents/Plaintiffs

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 31.07.2013 and made in A.S.No.76. of 2012, on the file of Subordinate Judge, Ranipet, Vellore, confirming the judgment and decree dated 31.07.2012 and made in O.S.No.107 of 2005 on the file of Learned District Munsif, Sholinghar, Vellore.

For Appellant : Mr.K.Gnanasambandan

For Respondents : Mr.G.Jermiah

COMMON JUDGMENT

Both these appeals are filed by one and the same person as appellant. These two appeals are arising out of two different suits, one filed by the appellant for partition and the other one, filed by the other side for declaration and for other reliefs, however, in respect of the very same property.

2. The appellant as the plaintiff filed the suit for partition against his brothers and others by claiming that the suit property, purchased in the name of the first defendant as early as on 26.09.1974 is not his self-acquired property and on the other hand the same was purchased out of the income derived from the joint family properties. Therefore, the appellant claimed a share in the said property. On the other hand, in the other suit filed by the respondents, it was contended that the subject matter property is a self acquired property of the first plaintiff therein namely, the eldest brother. Therefore, they sought for a decree for declaration and for permanent injunction against the appellant herein as the defendant therein.

3. The trial Court tried both the suits together and by way of a common judgment and decree, dismissed the suit filed by the appellant herein and decreed the suit filed by the other side. The appellant filed two first appeals before the lower Appellate Court challenging the judgment and decree of the trial court. The first appellate Court confirmed the findings of the trial court and consequently, dismissed both the appeals. Challenging the concurrent findings rendered by the courts below in both the suits, the present appeals are filed before this court as stated supra.

4. This matter is listed before me under the caption 'adjourned admission' after issuing notice to the respondents before admission.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials placed before this Court. As the matters are listed under the 'adjourned admission' caption, this Court has to see as to whether any substantial question of law arises for consideration of this Court for entertaining these appeals for further hearing of the same on such substantial question of law.

6. It is not in dispute that the subject matter property is one and the same in both the suits and the same stood in the name of the deceased first defendant by way of sale deed dated 26.09.1974. It is also an admitted fact that the first defendant was earning through some employment in Railways. It is an admitted case of both sides that an oral partition took place in the year 1989 between them wherein the present suit property was not the subject matter. On the other hand, it is evident that oral partition was effected in respect of the other properties leaving this property knowingly. In spite of such admitted position, the appellant as the plaintiff sought to claim a share in the said property by contending that the subject matter property was left out to be included in the oral partition because it was a barren land and was not put to use for cultivation. I am unable to appreciate the said contention for the simple reason that when the oral partition has taken place in the year 1989 itself, it is expected that all the properties of the family should be brought into such oral partition and divided between the parties to the partition without leaving any property knowingly. If any such property is left out knowingly with some valid reason and with the consent of the parties to the partition for that time being to be partitioned between the parties, it is for the party who claims so to specifically plead and prove such valid reason and consent. It has not been done in this case except saying that it was left out since it is a barren land. This Court is not in a position to accept such contention in the absence of any admission to that effect by the other side. On the other hand, they filed a suit for declaration and permanent injunction by contending that the subject matter property is a self acquired property of the first defendant who was an earning member worked in Railway. Both the Courts below have concurrently found on the facts and circumstances of the case that the subject matter property is a self-acquired property of the first defendant, not available for partition.

7. Considering the above facts and circumstances and the findings of the Courts below, I find no substantial question of law arises for consideration in these appeals for entertaining the same. Accordingly, both the second appeals fail and the same are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Subordinate Judge,
Ranipet, Vellore.

2. The District Munsif,
Sholinghar, Vellore.

1 cc to Mr.R.Subramanian, Advocate, sr.36827

2 ccs to Mr.K.S.Gnanasambandan, Advocate, sr.36629,36630

1 cc to Mr.G.Jermiah, Advocate, sr.36748

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