

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.965 of 2016

Haridass

S/o Periyanna Gounder,  
residing at Gingee Taluk,  
Seeyapundi Village.

... Appellant/Appellant/2<sup>nd</sup>  
Defendant

Vs.

1.Late Kasi Gounder(died),  
S/o Late Kanna Gounder

...1st Respondent/1st  
Respondent/Plaintiff

2.Mrs.Rajathi,  
W/o Late Kasi Gounder

3.Mrs.Gandhimathi,  
D/o Late Kasi Gounder

4.Mrs.Kaarthiga,  
D/o Late Kasi Gounder

5.Ms.Anusha (Minor),  
Rep. By Mrs.Rajathi,  
D/o Late Kasi Gounder

6.Mrs.Dhanalakshmi,  
W/o Late Kasi Gounder  
All residing at Gingee Taluk, Mananthal Madura,  
Seeyapundi Village.

... Respondents 2 to 6/Respondents

Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 31.03.2016 made in A.S.No.15 of 2006 on the file of Sub Court, Gingee, confirming the judgment and decree dated 17.08.2005 made in O.S.No.42 of 2000 on the file of Additional District Munsif Court, Gingee.

For Appellant : Mr.Karianathan for  
M/s Nathan and Associates

#### JUDGMENT

The unsuccessful defendant No.2, who lost before the Courts below has filed the above second appeal raising the following substantial questions of law.

(1) Whether the Courts below are correct in granting injunction against the appellant when the appellant is in absolute possession of the suit property?

(2) Whether the sale transaction alleged to have taken place between Mr.Haridass and Late Kasi Gounder is valid when the suit property is not partitioned?

(3) Whether the Courts below are correct in holding that the respondents have got better title when the defendant/appellant himself cannot convey a valid title as the suit is jointly held by the legal heirs of Late Periyanna Gounder?

2. The defendant No.1 and the appellant/defendant No.2 are the brothers. The suit property originally belonged to their father. Under Ex.A1, the first respondent/plaintiff has purchased the suit property from defendant No.1. According to the plaintiff, there was an oral partition between the brothers as evidenced by the kur chit and in partition, the properties jointly owned by them partitioned. Documents Exs.A7 and A8 have been marked to show that the appellant has sold some of the properties in pursuant to the partition with his brother viz., defendant No.1 to third parties. These documents clearly indicate the factum of partition between them. The appellant, during his cross examination, has also admitted the sale deed in favour of the first respondent and the sale effected by him in favour of the third parties insofar as the properties allotted to him in pursuant to the partition between the brothers. Accordingly, both the Courts decreed the suit rejecting the contentions raised by the appellant.

3. The learned counsel appearing for the appellant submits that there is no proof of partition and in any case, the plaintiff has not proved the factum of possession in pursuant to Ex.A4. Therefore, the judgment and decree rendered by the Courts below is required interference.

4. Ex.A1- sale deed is of the year 1993 executed by the first defendant in favour of the first respondent/plaintiff.

Exs.A7 and A8 sale deeds are also executed in the year 1993 by the appellant/defendant No.2 in favour of various third parties. These documents viz., Exs.A1, A7 and A8, spell out the factum of partition between the appellant and his brother viz., the first defendant. Therefore, it is not open to the appellant to contend contrary to the aforesaid fact. He is also aware of Ex.A1 as seen from his evidence. He did not dispute Exs.A7 and A8. Injunction follows title. The first respondent has filed patta to show his possession. This factum is also accepted by the appellant in his evidence. Thus, on an analysis of the documents and the oral testimony of the parties, this Court is of the view that the Courts below have correctly decreed the suit as prayed for. This Court does not find any substantial question of law, much less any question of law arising in this appeal for consideration. Accordingly, the second appeal fails and the same is dismissed. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

raa  
To

- 1.The Subordinate Judge,  
Gingee.
- 2.The Additional District Munsif,  
Gingee.

+1cc to M/S.Nathan & Associates Sr.74643

S.A.No.965 of 2016

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