



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2016

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

S.A.(MD)No.240 of 2016
and
C.M.P.(MD)No.3383 of 2016

Mottaiyan ... Appellant/Appellant/Plaintiff

Vs.

1.Subbiah, S/o.Subramanian
2.Pechiammal
3.Subbiah, S/o.Ayyappan
4.Subramanian
5.Muthusamy
6.Chelliah

... Respondents/Respondents/Defendants

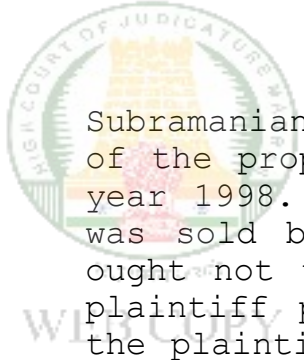
Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 15.12.2005 made in A.S.No.24 of 2005 on the file of the Subordinate Court, Kovilpatti, confirming the judgment and decree in O.S.No.120 of 2003 dated 10.11.2004, on the file of the District Munsif Court, Kovilpatti.

For Appellant : Mr.P.Senthurpandian

JUDGMENT

This appeal is filed against the judgment and decree dated 15.12.2005 made in A.S.No.24 of 2005 on the file of the Subordinate Court, Kovilpatti, confirming the judgment and decree in O.S.No.120 of 2003 dated 10.11.2004, on the file of the District Munsif Court, Kovilpatti.

2.The appellant is the plaintiff and the respondents are the defendants in the suit filed by the plaintiff in O.S.No.120 of 2003 on the file of the District Munsif Court, Kovilpatti. It is stated in the plaint that the plaint schedule property originally belonged to one Yagammal. Thereafter, the same was sold to Subbiah on 10.08.1950. The said Subbiah died leaving behind his sons Subramanian, Ayyappan, Mottaiyan and Madasamy. Thereafter the property was partitioned and shares were allotted to Ayyappan, Subramanian and Madasamy and they enjoyed their possession separately. The said Ayyappan died before 20 years of the filing of the suit. The said Subramanian died leaving behind the first and second defendants and both of them are enjoying the said portion of



Subramanian jointly. Disturbance was caused stating that the portion of the property in dispute belongs to the fifth defendant, from the year 1998. It was learnt that the disputed portion of the property was sold by the said Subramanian to the sixth defendant, which he ought not to have made. Hence the above suit has been filed by the plaintiff praying to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the disputed 33 cents of the property, and for permanent injunction. Written statement was filed opposing the plaint, pleading that the suit has to be dismissed.

3. Before the Trial Court, on the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A4 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B4 have been marked.

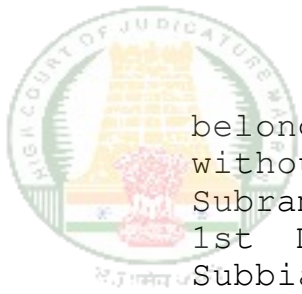
4. The Trial Court has framed the issues and after analyzing the oral and documentary evidence, dismissed the suit. Aggrieved over the judgment and decree of the Trial court, the plaintiff preferred an appeal before the Subordinate Judge, Kovilpatti, in A.S.No.24 of 2005. The Lower Appellate Court dismissed the appeal, confirming the findings of the Trial Court.

5. Challenging the concurrent judgments of the Trial Court and the Lower Appellate Court, the appellant / plaintiff has filed this second appeal, raising the following substantial questions of law:

1. The contesting respondent/ 1st defendant having accepted that the Original owner was Subbiah and having accepted earlier oral partition between his vendors and his brother's son of Subbiah and asserted allotment of the schedule property in favour of their vendors and having not proved it, whether the Courts below are legally right in dismissing the suit for injunction?

2. The Appellant/Plaintiff having produced and proved by Ex.A5 Tax Receipt in the name of Subbiah, the original Owner, Ex.A6 in the name of Subramanian his son, Ex.A7 Tax Receipt in the name of Muthusamy, son of Ayyappan, son of the original owner Subbiah and thus proved partition effected already and allotment given, whether the Courts below are legally right in dismissing the suit for injunction?

3. Whether the Courts below are legally right in dismissing the suit inspite of the Appellant/Plaintiff having produced Tax Receipt Ex.A in the name of Original Owner Subbiah. Tax Receipt Ex.A6 in the name of Subramanian one of the sons of the Original owner Subbiah and Ex.A7 in the name of Muthusamy grand son of the Original Owner Subbiah and the admitted case of both parties was that the schedule property originally



belonged to Subbiah through a Registered Sale Deed Ex.A1 without the contesting defendant/Respondent proving that Subramanian son of the Original Owner Subbiah and the 1st Defendant Grand Son of the Said Original Owner Subbiah alone had the exclusive right to execute the sale deed for the entire property without the participation of the sons and grandsons including the Appellant/Plaintiff of the Original Owner Subbiah and thus the Appellant/Plaintiff having proved that Ex.A2 sale deed was void as against the schedule property and whether the courts below are right in dismissing the suit on the ground that the sale deed Ex.A2 was not set aside instead of ignoring it as void abinitio?

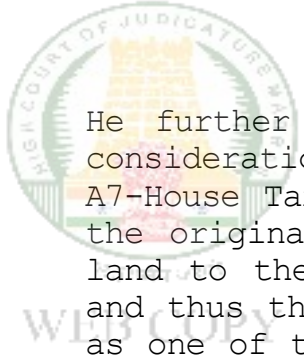
4. Whether the Courts below are legally right in dismissing the suit inspite of Ex.A5 to A7 standing in the name of the sons and Grand sons of the Original Owner Subbiah Tax Receipts proving earlier Oral Partition and allotment of share and construction of Houses by the respective Sharers in their respective land and thereby proving that the schedule property was allotted to the Appellant/Plaintiff in the earlier oral partition?

5. Whether the Courts below are legally right in ignoring the material documents produced by the Appellant/Plaintiff Ex.A5 to A7 House Tax Receipts standing in the name of the sons and grandsons of the admitted Original Owner Subbiah and their impact on the question of the earlier oral partition among the sons of the Original Owner Subbiah and the allotment of the schedule property to the Appellant / plaintiff and his entitlement for injunction?

6. Whether the courts below are legally right that without filing a suit to set aside the sale deed Ex.A2 the suit for declaration of title and in the alternative for partition was not maintainable without this Appellant not being a enominiee party to the document and the sale deed was void and not voidable?

7. Whether the Courts below having found that the title deed of the schedule property of 98 cents Ex.A1 stood in the name of the original owner Subbiah and only one of his sons namely Subramanian?

6. The learned counsel for the appellant/plaintiff submitted that the Courts below have failed to take into consideration the material fact that the sixth respondent, having purchased the schedule property of 98 cents from Subramanian, the father of respondents 1 and 2, who is one of the sons of the original owner Subbiah, the said Subbiah did not purchase 98 cents without indicating the side and the total extent through Ex.A1.



He further submitted that the Courts below have failed to take into consideration that the appellant / plaintiff having proved by Exs.A5 to A7-House Tax Receipts standing in the name of the sons and grandsons of the original owner Subbiah, proved oral partition and allotment of the land to the respective shares, constructions of houses therein by them and thus the plaintiff proved that he was allotted the schedule property as one of the sons of the original owner Subbiah and therefore entitled for injunction. The learned counsel for the appellant has raised further grounds and finally submitted that the judgments and decree of the Courts below are incorrect, improper, unjust and unsustainable in law and hence the same are liable to be set aside.

7.Heard the learned counsel for the appellant and perused the materials available on record, carefully and meticulously.

8.The Trial Court has considered the matter in detail and on a perusal of evidence, held that the suit property has been partitioned and has been allotted to the said Subramanian and further the said Subramanian, sold his share to the sixth defendant and the sixth defendant is in possession and enjoyment of the same. Hence the Trial Court held that the plaintiff is not entitled for the relief of partition of 1/3rd of the suit property by the defendants.

9.Further, it is seen from the judgment of the Trial Court that the Trial Court has considered the matter in an elaborate manner and rendered the judgment. The entire judgment of the Trial Court is based upon facts. The Trial Court is a fact finding authority and it has dealt with the matter in detail, and came to the conclusion that the plaintiff is not entitled to the relief as claimed by him, and the Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the appeal. The reasons given by the Courts below are clear, cogent, convincing and acceptable.

10.In my considered view, the trial Court as well as the appellate Court considered the case projected by the parties, taking into account the respective pleadings, oral evidence adduced as well as the documentary evidence exhibited on either side and after analysing the whole matter, came to a categorical conclusion that there is no merit in the contention of the appellant and dismissed the suit. The entire case rests on facts and this Court cannot re-appraise the facts.

11.The trial Court as well as the first appellate Court considered the material evidence placed before it in their proper perspective and rejected the plea put forward by the appellant. In a case where from a given set of circumstances, two inferences on fact are possible, one drawn on by the Lower Appellate Court will be preferred and the High Court, in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, is not justified in interfering with those findings. It is only when the conclusion drawn by the first appellate Court is found to be contrary to the mandatory provisions of law applicable to a particular matter or is



against the settled position on the basis of decisions of the Apex Court or is based upon inadmissible evidence or arrived at by ignoring material evidence that the High Court is expected to interfere in the findings of the Court below.

12.The judgment of the trial Court as well as the first appellate Court are found to be perfectly correct and the findings cannot be termed to be erroneous either in law or on facts requiring interference in the second appeal. As such, this Court finds no merit in the contention of the appellant and the appeal is nothing but a futile exercise and no question of law much less substantial question of law arises in the present appeal and as such, the appeal is liable to be dismissed.

13.In the result, the Second Appeal fails and the same is, accordingly, dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Kovilpatti.

2.The District Munsif, Kovilpatti.

+One cc to Mr.P.Senthurpandian, Advocate, SR.No.20728

KM

RL/4C/5P/PEK/SARIII/1/6/2016

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