



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.482 of 2016
and
C.M.P(MD)No.5191 of 2016

Kuzhanthaichamy .. Appellant/Appellant/4th Defendant

vs.

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

2.Arul

3.Soosai Mary .. Respondents 2 &3/Respondents 2 & 3/
Defendants 1 & 2

4.Joseph Agustin Mary .. 4th Respondent/4th Respondent/
3rd Defendant

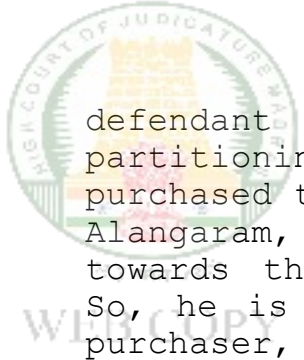
PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.35 of 2013, dated 23.01.2015 on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree made in O.S.No.214 of 2009 dated 15.12.2012 on the file of the District Munsif Court, Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

JUDGMENT

This Second Appeal has been arisen out of the Decree and Judgment passed in A.S.No.35 of 2013, dated 23.01.2015, by the Sub Court, Sivagangai, by confirming the Decree and Judgment made in O.S.No.214 of 2009 dated 15.12.2012 by the District Munsif Court, Sivagangai.

2. The first respondent herein as plaintiff has filed a suit in O.S.No.214 of 2009 for partition and separate possession of his 6/9th share in the suit property stating that the suit property absolutely belonged to one Sebastian and he died intestate leaving behind his nine children, namely Susai Mary, Vedham, Motcha Alangaram, Sesuraj, Arul, Amali, Joseph Agustin Mary, Pelominas and Packiam. The first



defendant is now trying to alienate the suit property without partitioning the property and hence the first respondent/plaintiff purchased the share from Vedham and Sesuraj and their sisters Motcha Alangaram, Amali, Pelominas and Packiam have executed a release deed towards their share in favour of the first respondent/plaintiff. So, he is entitled to get 6/9th share in the suit property. As a purchaser, he filed a suit for partition and separate possession of 6/9th share.

3. The fourth defendant has filed a written statement stating that during the life time of Sebastian, there was a partition. In the partition, the property was allotted to Vethamuthu and Sesuraj. Sebastian also executed a Inam settlement deed in favour of Vedamuthu on 27.11.1986 and another Inam settlement deed in favour of Sesuraj, dated 18.03.1993. The remaining property has been given to Arul. Arul has sold the property in favour of one Santhiyagu through his power agent. Santhiyagu sold the property to the fourth defendant on 24.11.2006. From that date onwards, he is in possession and enjoyment of the suit property. So, already the partition was taken place.

4. The trial Court, after framing necessary issues, has granted a preliminary decree of partition and separate possession of 6/9th share, disbelieving the partition alleged. The fourth defendant as appellant has preferred an appeal in A.S.No.35 of 2013. The Appellate Court has confirmed the Decree and Judgment of the Trial Court, by disbelieving the fact there was a partition during the life time of Sebastian. Against which, the present Second Appeal has been preferred at the instance of the appellant/fourth defendant.

5. Heard the learned counsel appearing for the appellant.

6. The learned counsel appearing for the appellant/fourth defendant would submit that in the document, it was specifically mentioned that there was a partition and that factum was not considered by the trial Court.

7. On perusal of the entire pleadings and typed set of papers, I do not find any substantial questions of law. The appellant says that the purchaser from co-owner is only entitled to steps into the shoes of his vendor. He is entitled to anything more. Whether there was a partition or not is only a question of fact and not a question of law. Hence, I am of the considered view that there is no substantial questions of law have arisen in the Second Appeal and altogether the present Second Appeal deserves to be dismissed at the stage of admission.

8. Accordingly, this Second Appeal is dismissed without costs at the stage of admission. If the appellant/fourth defendant wants a specific extent to be mentioned in the document, he may work out his



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remedy in the final decree proceedings and not in the Second Appeal. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif, Sivagangai.
2. The Subordinate Judge, Sivagangai.

+ 1 CC TO MR.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 27826

PS

TE/SKS-RR/SAR-III : 04/07/2016 : 3P/4C

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