



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.505 of 2016

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1.Jeyaraj (died)
2.Xavier
3.Irudhaya Mery
4.A.Alice Mary
5.Josephine Sheeba
6. Peeter Leo Deepak
(Appellants 4 to 6 brought on record as
LRs of the deceased 1st appellant vide order
dated 28.4.2016 in C.M.P.(MD)No.4967/16)

..Appellant/Appellants/Plaintiffs

vs.

1.Arputham @ Arputha Mery
2.Sebasthiyan
3.Amalraj
4.Ponnammal
5.Mariyammal
6.Kulandaichamy
7.Rajasekaran
8.Sandiyagu
9.Arockya Raj

..Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree passed in A.S.No.72 of 2010, on the file of the Subordinate Court, Sivagangai, dated 24.07.2013, confirming the judgment and decree in O.S.No.165 of 2008, on the file of the District Munsif Court, Sivagangai, dated 31.03.2010.

For Appellants

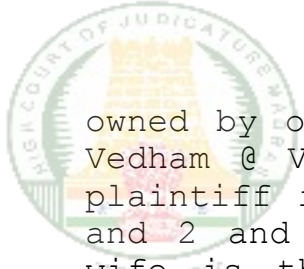
: Mr.H.Thayumanaswamy

JUDGMENT

The plaintiffs, who lost the legal battle in both the Courts, have come forward with the Second Appeal, challenging the Decree and Judgment passed in A.S.No.72 of 2010, dated 24.07.2013 by the Subordinate Judge, Sivagangai by confirming the Decree and Judgment made in O.S.No.165 of 2008, dated 31.03.2010 by the District Munsif, Sivagangai.

2. Heard the learned counsel for the appellants and perused the materials available on record.

3. The appellants as plaintiffs filed a suit in O.S.No.165 of 2008 for declaration of title and injunction in respect of three items of property by stating that the properties were originally

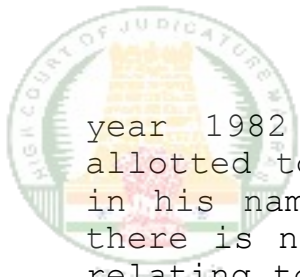


owned by one Chinniah @ Chinnappan, who is having four sons viz., Vedham @ Vedhamuthu, Kuzhandhai, Sandhiyaghu and Arul. The third plaintiff is the wife of Vedham @ Vedha Muthu and the plaintiffs 1 and 2 and the defendant No.9 are their children and Kuzhandhai's wife is the first defendant and the defendants 2 to 6 are the children of Kuzhandhai and the defendants 7 and 8 are the subsequent purchasers. Chinnaiah @ Chinnappan divided some of his properties among his four sons and in support of the partition, lists were executed by every one of them in favour of others on 26.07.1957 and 03.08.1976, in which the suit property has been allotted to the father of the plaintiffs 1 and 2 viz., Vedham @ Vedha Muthu and he is in possession and enjoyment and that property is named as Kamali Thottam and Therku Thottam. But the defendants have attempted to interfere their possession by stating that the Defendants 1 to 3 joined with Defendants 6 to 8 have executed a sale deed and thereby attempted to interfere with the possession and denying the title. Hence, they are constrained to file a suit for declaration of title and injunction.

4. The third defendant filed a written statement stating that there is no partition list dated 26.07.1957 and 03.08.1976 and the suit properties were not allotted to the father of the plaintiffs 1 and 2 viz., Vedham @ Vedha Muthu. In the year 1980, there was a oral partition between all four brothers and in pursuant of oral partition, there was a mutation on revenue records. In pursuance of that, Sandhiyaghu sold his share to Kuzhandhai on 15.03.1982 and they are enjoying the property independently and the plaintiffs are not having any relief. Hence, he prayed for dismissal of the suit.

5. In the reply statement, the plaintiffs stated that during the life time of Chinnaiah @ Chinnappan, the properties have been divided and handed over to his sons. So, the first item of the property is not a road and the sixth defendant has not purchased the property and enjoying the property and the documents are created for the purpose of case.

6. The trial Court, after considering the averments in the plaint and written statement, framed five issues and dismissed the suit stating that the plaintiffs have not proved that the suit properties were allotted to the share of the father of the plaintiffs 1 and 2 viz., Vedham @ Vedha Muthu under Exs.A.1 and A.2 and they are not in possession. Against which, the plaintiffs preferred an appeal in A.S.No.72 of 2010. The first appellate Court also held that item No.2 is a road and it was not in possession of the plaintiffs and further the documents Exs.A.1 and A.2 have not contained the signature of the father of the plaintiffs 1 and 2 viz., Vedham @ Vedha Muthu. Further it was stated that the property was not allotted to Vedham @ Vedha Muthu. So the first appellate Court has held that as per Exs.A.1 and A.2, there is no evidence to show that the properties viz., Kamalai Thottam and Therkku Thottam were allotted to the share of Vedham @ Vedha Muthu. It is further held by the first appellate Court that there was a partition in the



year 1982 and in pursuance of that, some properties have been allotted to the father of the plaintiffs and patta has been changed in his name in respect of other items of properties. Furthermore there is no co-relation between Kamalai Thottam and Therkku Thottam relating to suit properties..

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7. The first appellate Court has taken much pain in this matter and came to the conclusion that the plaintiffs have not proved that the properties were allotted to the father of the plaintiffs 1 and 2 viz., Vedham @ Vedha Muthu under Exs.A.1 and A.2 which are not related to the suit property. It was also held that item No.2 of the suit property is a road and the plaintiffs are not in possession. The first appellate Court has considered all these aspects in proper and perspective manner and came to the correct conclusion. Even though, the appellants have raised Questions of Law, they are not relevant to this case. Hence, I am of the view that there is no substantial question of law arisen for consideration in this second appeal and the second appeal is liable to be dismissed at the stage of admission.

8. Accordingly, this second appeal is dismissed in the admission stage itself. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

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

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.H.Thayumanaswamy, Advocate in SR.42710

S.A(MD) No.505 of 2016
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