



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.527 of 2016

Japamony

.. Appellant/6th Appellant/7th Plaintiff

vs.

- 1.Benjamin
- 2.Sarojini
- 3.Muthurahai
- 4.Anpumony
- 5.Maria Pushpam
- 6.Kamaraj
- 7.Devaraj
- 8.Mary Stella
- 9.Mary Kamalabai
- 10.Mary Stephen
- 11.Mary Alphonsal
- 12.Mary John
- 13.Mary Devaraj
- 14.Mary Kanakaraj
- 15.Mary Ranibai
- 16.Mary Pushpa Raj
- 17.Mary David Raj
- 18.Mary Albert Raj
- 19.Mary Merlin Delma
- 20.Parakunnu Pankoor Co-operative Society Ltd.,
represented by its Secretary Parakkunnu,
Palukal Village, Vanniyoor desom,
Vanniyoor Post, Villavancode Taluk,
Kanyakumari District.

- 21.Pathrose
- 22.Dharmaraj
- 23.Esantha
- 24.Thankayyan Nadar
- 25.Chellan
- 26.Yesudhas
- 27.Kunji
- 28.Arujunan
- 29.Lakshmanan



31.Mariathai

32.Sivadas

33.Sivaraj

34.Mary Nirmala

35.Mary Amala

36.Manonmony

37.Thankapushpam ... Respondents 31 to 36/ Appellants 1 to 5 & 7/
Plaintiffs 2 to 7 & 90

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Decree and Judgment dated 20.10.2009, rendered in A.S.No.147 of 2007, on the file of the Subordinate Judge, Kuzhithurai, confirming the decree and the judgment dated 22.06.2007, rendered in O.S.No.309 of 2004, on the file of the Principal District Munsif of Kuzhithurai

For Appellant : Mr.S.Subbiah

JUDGMENT

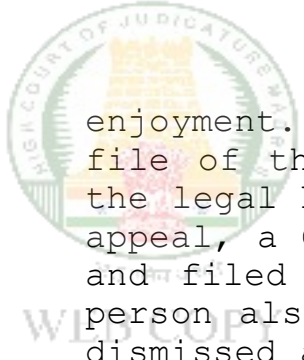
One of the appellants, who is the legal heir of the deceased plaintiff has come forward with this Second Appeal challenging the concurrent finding of both the Courts below.

2. Heard the learned Counsel appearing for the appellant.

3. The learned Counsel appearing for the appellant would submit that one Nallathampi Nadar filed a suit in O.S.No.309 of 2004, on the file of the Principal District Munsif Court, Kuzhithurai, for partition and separate possession of 65 cents in the suit property as per the partition deed dated 25.01.1949, which was mentioned as A schedule property which included in schedule 2, 3, 4, 5, 6 and 8. He further stated that even though there was a partition deed, the property was not demarcated. Hence, he is constrained to file the suit for partition and separate possession of 65 cents in the suit property.

4. Resisting the same, the respondents filed a written statement stating that already the property was partitioned and in pursuance of the partition, all the sharers have taken possession. Even though, the plaintiff was allotted 1 Acre 4 cents out, out of which he sold 51 ¼ cents. He is now in possession of only 65 cents. So already the property has been divided and all the sharers are in possession and hence there is no necessity for partition.

5. The trial Court, after considering the averments in plaint and written statement, framed necessary issues and also considering the oral and the documentary evidences dismissed the service outsourcing services at already partition has been taken place and in pursuance of the partition, all the sharers had dealt with the property and the subsequent purchasers were in possession and



enjoyment. Against which, an appeal in A.S.No.147 of 2007, on the file of the Subordinate Court, Kuzhithurai has been preferred by the legal heirs of the first plaintiff. During the pendency of the appeal, a Commissioner was appointed and he inspected the property and filed a report and also documents were also filed. Another person also filed a suit in O.S.No.134 of 1993 and that has been dismissed and against which, A.S.No.103 of 2002 has been preferred and that appeal was also partly allowed and the copies of the decree and judgment in A.S.NO.103 of 2002 were also marked as Exs.A.14 and A.15. The first appellate Court also dismissed the appeal stating that already partition has been taken place and the parties are also enjoying the property and it is also seen from the sale deed executed by the deceased plaintiff and hence, no demarcation is necessary and confirmed the finding of the trial Court. Against which, the Second Appeal has been filed.

6. Considering the arguments advanced by the learned Counsel appearing for the appellant and also on the basis of the materials available on record, it shows that there was a partition as per Exs.A.1 and A.2 dated 25.01.1949. In pursuance of the partition, all the sharers have taken possession and enjoying the same and dealt with the property. The first plaintiff has also dealt with his property and the subsequent purchasers have also taken possession and enjoying the same.

7. In such circumstances, both the Courts below held that there is no necessity for partition. Considering the same, I am of the view that there is no substantial question of law arises 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(AE)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Court, Kuzhithurai.

2. The Principal District Munsif Court, Kuzhithurai.

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