

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.Nos.219 & 220/2017 & CMP.Nos.5161 & 5162/2017

Karunanithi

..Appellant / Defendant
in both the Second
Appeals

Versus

Neelamegam

... Respondent / Plaintiff in
both the Second Appeals

Prayer in SA.No.219/2017: Second Appeal filed under section 100 of the Code of Civil Procedure against the Decree and Judgment dated 20.01.2016 passed in AS.No.132/2008 on the file of the learned Sub Judge, Perambalur, in confirming the decree and judgment passed in OS.No.350/1998 on the file of the learned District Munsif, Perambalur, dated 14.06.2004.

Prayer in SA.No.220/2017: Second Appeal filed under section 100 of the Code of Civil Procedure against the Decree and Judgment dated 20.01.2016 passed in AS.No.133/2008 on the file of the learned Sub Judge, Perambalur, in confirming the decree and judgment passed in OS.No.251/1997 on the file of the learned District Munsif, Perambalur, dated 14.06.2004.

For Appellant in
both the Appeals : Mr.K.Suresh for
Mr.E.K.Kumaresan

For Respondent in
both the Appeals : Mr.P.Valliyappan

COMMON JUDGMENT

By consent, both the Second Appeals are taken up for final disposal as the impugned Judgments passed by the Lower Appellate Court, which are the subject matter of challenge, have been dealt with and disposed of by a common judgment.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

SA.No.219/2017:-

[a] The defendant-brother of the respondent / plaintiff, who lost before the Courts below, is the appellant herein.

[b] The respondent / plaintiff instituted a suit in OS.No.350/1998 on the file of the Court of the District Munsif, Perambalur, against the appellant / defendant for recovery of a sum of Rs.24,000/-, being the value of 50% of the yield of the Paddy cultivated during the year 1997-1998 in the suit property.

[c] It is the case of the respondent / plaintiff that the defendant is his brother and the suit properties were jointly purchased by them and though he demanded partition and separate possession of his share, it was refused to be acceded and therefore, filed OS.No.251/1997 on the file of the very same Court and it is pending. It is further contended by the respondent / plaintiff that during May 1997, the respondent / plaintiff has cultivated "Ponni Paddy" and harvested the same during January - February, 1998 and in respect of his share, i.e., 60 bags of Paddy, the defendant did not give it and he has also sold the plaintiff's share and earned a sum of Rs.24,000/- and as such, the respondent / plaintiff is entitled to the same and hence, came forward to file the suit.

[d] The defendant / appellant has filed a written statement, denying the averments and would contend that though the suit properties were jointly purchased and subsequently, an Agreement of Sale dated 27.12.1996 [Ex.B1] came into being, wherein, the respondent / plaintiff had agreed to convey half of his share for a consideration of Rs.1,00,000/- and on the date of agreement, received an advance amount of Rs.75,000/- and though the defendant/appellant was willing to pay the balance sale consideration of Rs.25,000/-, it was refused to be received by the respondent / plaintiff herein for the reasons best known to him and as such, the defendant is having right, title and possession in respect of the suit properties and therefore, the claim made by the plaintiff is wholly untenable and prays for dismissal of the suit.

SA.No.220/2017:-

[a] The defendant, the brother of the respondent / plaintiff, who lost before the Courts below, is the appellant herein.

[b] The respondent / plaintiff filed a suit for partition in OS.No.251/1997, contending among other things, that the suit properties were jointly purchased on 06.01.1992 and 05.10.1995 respectively and since both the plaintiff and the

defendant are employees of the Government, they engaged the services of the agricultural coolies to carry on the cultivation activities and necessary expenses have also been met out jointly. It is further averred by the respondent / plaintiff that during March 1997, "IR 20" Paddy was planted and though the respondent / plaintiff is entitled to 50% of the yield and the value, the appellant / defendant did not give the same and had taken the entire yield and value and on account of the said dispute, the respondent / plaintiff demanded partition and separate possession of his half share and it was refused to be acceded by the appellant / defendant and therefore, the respondent / plaintiff came forward to file the present suit in OS.No.251/1997, seeking one-half of his share by passing a preliminary decree and also for mesne profits and cost of the suit.

[c] The appellant / defendant filed his written statement, denying the averments made in the plaint and would contend that though the suit properties were purchased jointly, in the light of the agreement dated 27.12.1996, the respondent / plaintiff has agreed to convey half of the share and also received a sum of Rs.75,000/- towards advance and also put him in possession of the properties and despite the fact that the appellant/defendant was willing to perform his part of obligation by paying the balance sale consideration of Rs.25,000/-, it was not received by the plaintiff. It is the further contention of the appellant / defendant that by virtue of the above said Agreement, he is having right, title and possession and as such, the claim for partition by the plaintiff, is wholly untenable and prays for dismissal of the suit.

[d] Since the issue to be adjudicated are in respect of the very same suit property, a joint trial of both suits was taken up and the evidence recorded in OS.No.358/1998 was taken as the respondent in OS.No.251/1997 also.

[e] The Trial Court, on a consideration of the pleadings, had framed the following issues in OS.No.251/1997 filed for partition:-

- Whether the plaintiff is entitled for half share of the suit property?
- Whether the Agreement of Sale dated 27.12.1996 pleaded by the defendant is true and valid?
- Whether the defendant is liable to pay a sum of Rs.9780/-, being the value of 30 bags of paddy to the plaintiff?
- Whether the plaintiff is entitled for mesne profits?; and
- To what other relief the plaintiff is entitled to?

[f] During the course of trial, the plaintiff examined himself as P.W.1 and examined one Gunasekaran as P.W.2 and no documents were marked and the defendant examined himself as DW1 and also examined one Rajendran and Thirunavukkarasu as Dws.2 and 3 respectively and marked Ex.B1-Agreement of Sale dated 27.12.1996 and Ex.B2-Monthly Passbook of Sri Surya Chit Funds maintained by DW1.

[g] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has decreed both the suits as prayed for, vide common Judgment and decree dated 14.06.2004 and the defendant in both the suits, aggrieved by the same, filed AS.Nos.132 and 133/2008 on the file of the Court of Sub Judge, Perambalur.

[h] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for determination:-

- Whether the Agreement of Sale dated 27.12.1996 is true and enforceable?
- Whether the respondent / plaintiff is entitled for mesne profits?
- Whether the common judgment and decree passed in OS.Nos.251/1997 and 350/1998 are liable to be set aside?

[i] The Lower Appellate Court found that the points urged on behalf of the appellant / defendant are untenable and therefore, dismissed both the appeals vide common judgment and decree dated 20.01.2016 and aggrieved by the same, the appellant / defendant before the Lower Appellate Court in both the Appeal suits, filed the present Second Appeals.

3 In the Memorandum of Grounds of Appeal in SA.No.219/2017, the following substantial questions of law are raised for consideration:-

- Whether the Courts below are right in granting a decree in favour of the plaintiff when especially no evidence with regard to the quantity of harvest, nature of crop and the charges of labour?
- It is enough to prove the execution of sale agreement when it has been denied or is it a responsibility upon the defendant to prove the signature found in such a sale agreement even after proving the execution?
- Whether the agreement holder is entitled to the benefits of Section 53[A] of the Transfer of Property Act even in the absence of filing of a suit for specific performance?

- Whether the agricultural harvest can be determined merely upon the pleadings or on assumption or it requires documentary evidence or not?
- Whether anti-dated stamp paper can be utilized in a future date?

4 In SA.No.220/2017, the following substantial questions of law are raised for consideration:-

- Whether the Courts below are right in granting a decree in favour of the plaintiff when especially no evidence with regard to the quantity of harvest, nature of crop and the charges of labour?
- It is enough to prove the execution of sale agreement when it has been denied or is it a responsibility upon the defendant to prove the signature found in such a sale agreement even after proving the execution?
- Whether the agreement holder is entitled to the benefits of Section 53[A] of the Transfer of Property Act even in the absence of filing of a suit for specific performance?
- Whether the agricultural harvest can be determined merely upon the pleadings or on assumption or it requires documentary evidence or not?
- Whether anti-dated stamp paper can be utilized in a future date?

5 The learned counsel for the appellant / defendant in both the appeals, would vehemently contend that the joint ownership in respect of the suit properties is not in dispute and however, the respondent / plaintiff had agreed to convey his half share in the suit properties through an Agreement of Sale dated 27.12.1996 [Ex.B1] and also put the appellant / defendant in possession of the same and ever since the date of agreement, the appellant / defendant has become the owner of the properties and as such, he is having right, title and possession and in the absence of any tenable evidence as to the claim of the respondent / plaintiff regarding half share in the suit properties and also the value of the yield purported to have been sold by the appellant / defendant, the concurrent findings arrived by the Courts below are wholly untenable. It is the further submission of the learned counsel for the appellant / defendant that in the suit in OS.No.350/1998 filed for recovery of value and yield of paddy said to have been sold, no documentary evidence has been marked and except the self-serving

statement of the plaintiff who was examined as P.W.1, no other worthwhile evidence is available and therefore, the findings rendered by the Courts below, granting the relief to the respondent / plaintiff is wholly unsustainable.

6 Insofar as SA.No.220/2017, which arises out of the suit for partition in OS.No.251/1997, it is the submission of the learned counsel for the appellant / defendant that by virtue of the Agreement of Sale dated 27.12.1996 marked as Ex.B1, the plaintiff is no longer entitled to half of his share and as such, the suit for partition and other consequential reliefs, is not maintainable and therefore, prays for interference.

7 Per contra, Mr.P.Valliyappan, learned counsel for the respondent / plaintiff / decree holder would submit that the Courts below had recorded the findings that the Agreement of Sale dated 27.12.1996 is an unregistered document and during pendency of the suits, steps were taken by the appellant / defendant to send the document for Expert Opinion to ascertain the genuineness of the signature put by the respondent / plaintiff and it was rejected and the revision filed before this Court, was also dismissed and admittedly, the respondent / plaintiff / decree holder did not file any suit for specific performance of Ex.B1-Agreement of Sale dated 27.12.1996 and taking into consideration of the said fact, the Courts below had rightly sustained the case of the respondent / plaintiff for partition and for separate possession and for other consequential reliefs. Insofar as the recovery of the value of the yield of paddy sold by the appellant / defendant, which is the subject matter in OS.No.350/1998, it is the submission of the learned counsel for the respondent / plaintiff / decree holder that admittedly, both the appellant as well as the respondent are Government servants and they engaged the services of the agricultural workers to cultivate the paddy and being the undivided owner of the suit properties, the respondent / plaintiff is also entitled to his share and taking into consideration of the said fact only, the said suits were decreed and the appeals, challenging the same, have also ended in dismissal. In sum and substance, it is the submission of the learned counsel appearing for the respondent / plaintiff that since the findings rendered/recorded by the Courts below are concurrent in nature, there are no substantial questions of law, arise for consideration in these Second Appeals and prays for dismissal of both the appeals.

8 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

9 SA.No.219/2017:-

[a] The appellant / defendant claimed his right in respect of his half share of his brother / respondent / decree holder by virtue of Ex.B1-Agreement of Sale dated 27.12.1996. The respondent / plaintiff / decree holder, in the written statement, denied the very existence of the agreement and therefore, the appellant / defendant took steps to verify the genuineness of the signature of the respondent / plaintiff in Ex.B1 by filing necessary application and it has ended in dismissal and a challenge was made in the form of Revision before this Court which was also ended in dismissal. The appellant / defendant despite the fact that the respondent / plaintiff had disputed the very existence of the said

Agreement, did not file a suit for specific performance and it has become time barred. It is the specific case of the respondent / plaintiff that the appellant / defendant has grown paddy and appropriated the entire proceeds without giving half share of the yield, the respondent / plaintiff in order to sustain the said fact, did not mark any documents to show the value of the yield of paddy at the relevant point of time except the oral evidence let in on his behalf, no other piece of evidence is available to sustain his claim as to the value of the yield at the relevant point of time. It is also pertinent to point out at this juncture that the suit for partition in OS.No.251/1997 filed by the respondent / plaintiff which is the subject matter in SA.No.220/2017, he has also claimed mesne profits and in the considered opinion of this Court, the value of the yield could have been gone into at the time of passing of final decree proceedings by invoking Order 20 Rule 18 of the Code of Civil Procedure. Therefore, this Court is of the considered view that separate suit in OS.No.350/1998 ought not to have been instituted.

[b] Even otherwise, the Second Appeal is not maintainable for the reason that u/s.102 CPC, no Second Appeal shall lie from any decree when the subject matter of the original suit is for recovery of money, not exceeding Rs.25,000/-. Therefore, by virtue of the said provision, SA.No.220/2017 is not maintainable and even otherwise, the respondent / plaintiff has not sustained the value of the yield in respect of his share by letting in proper evidence. The suit for partition in OS.No.251/1997 filed, which is the subject matter of SA.No.220/2017, is a comprehensive one and while ascertaining the mesne profits, the evidence regarding the same may be let in also.

[c] Though the appellant / defendant had raised substantial questions of law, in the considered opinion of this Court, the substantial question of law No.4 alone is to be taken

up for consideration. It is answered accordingly, in favour of the appellant/defendant. Therefore, this Court is of the view that SA.No.219/2017 is to be allowed.

10 SA.No.220/2017:-

[a] The appellant / defendant had raised the very same substantial questions of law raised by him in SA.No.219/2017. This Court, while dealing with the said appeal, had recorded the findings that the appellant / defendant has failed to sustaine the Agreement marked as Ex.B1 dated 27.12.1996 and though the veracity of the same has been denied by the respondent / plaintiff, he did not filed a suit for specific performance and as on date, the said claim is also barred by limitation. This Court has also recorded the finding that in the light of the comprehensive prayer sought for by the respondent / plaintiff in OS.No.251/1997, which is the subject matter of this Second Appeal, by operation of law, in the form of Section 102 CPC, SA.No.220/2017. Though the respondent / plaintiff in the suit in OS.No.350/1998 which is the subject matter of SA.No.219/2017 did not adduce any tenable evidence as to the value of the paddy, it is always open to him to do so in the final decree proceedings and allowing of SA.No.219/2017 cannot operate as a bar or res judicata to sustain his claim.

[b] It is not in dispute that the suit properties were purchased jointly and since the appellant / defendant has failed to sustain his case, based upon Ex.B1-Agreement of Sale, this Court is of the view that the findings rendered by the Courts below may not be termed as perverse. The substantial questions of law raised in SA.No.220/2017 have been answered by the Courts below and there are no questions of law, much less the substantial questions of law raised for consideration in this Second Appeal. Therefore, the Second Appeal in SA.No.220/2017 deserves dismissal.

11 In the result, SA.No.219/2017 is allowed and the impugned judgment and decree dated 20.01.2016 made in AS.No.132/2008 on the file of the learned Sub Judge, Perambalur, is hereby set aside. SA.No.220/2017 is dismissed and the impugned judgment and decree dated 20.01.2016 made in

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AS.No.133/2008 on the file of the learned Sub Judge, Perambalur, is hereby confirmed. However, there shall be no order as to costs. Consequently, MP.No.5162/2017 in SA.No.220/2017 is also dismissed and MP.No.5161/2017 in SA.No.219/2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Munsif
Perambalur.

2.The Sub Judge,
Perambalur.

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

+2cc to Mr.P.Valliappan, Advocate, S.R.No.23330
+1cc to Mr.E.K.Kumaresan, Advocate, S.R.No.22892
+1cc to Mr.E.K.Kumaresan, Advocate, S.R.No.22893

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SA.Nos.219 & 220/2017

RSI (CO)
RS (12/06/2017)

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