

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.668 of 2017
and
C.M.P.No.17378 of 2017

Palanisamy

.. Appellant/Plaintiff

-Vs-

1. Subbayal
2. Subbulakshmi @ Chinna Ammini
3. Palaniammal
4. Papathi

.. Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 C.P.C against the Judgment and Decree dated 22.04.2013 made in A.S.No.23 of 2012 on the file of the Sub Court, Gobichettipalayam confirming the finding of the judgment and decree dated 14.12.2011 made in O.S.No.236 of 2008 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.M.Guruprasad

JUDGMENT

The unsuccessful plaintiff before the Courts below has preferred the above Second Appeal.

2. The suit is filed one for partition. The plaintiff and the defendants are the children of one Ponniammal. The property mentioned in the suit schedule was purchased by her on 26.05.1954. It is the case of the plaintiff that after the death of the said Ponniammal on 24.02.2004 intestate, the plaintiff is in possession and enjoyment of the suit property. While so, there was a suit filed by one Murugappa Gounder against the plaintiff and the defendants in O.S.No.378 of 2004 before the District Munsif Court, Gobichettipalayam based on a pro-note executed by the said Murugappa Gounder. The said suit was also decreed on 06.07.2006. As the property belonged to the mother-Ponniammal, who died intestate, the plaintiff claimed his 1/5th share by way of partition.

3. Except the first defendant, the other defendants remained ex-parte.

4. The suit was contested by the first defendant and he admitted the title of the mother-Ponniammal. According to the first defendant, out of the total extent of 2.18.0 hectares of the suit property in old Survey No.327 in New Survey No.11/2, the said Ponniammal had executed a settlement deed in favour of the first defendant and her son on 12.07.1999 conveying an extent of 1.14.0 hectares with specific boundaries. Therefore, the plaintiff cannot claim over the entire extent.

5. Before the trial Court, the plaintiff examined himself as PW-1 and Exhibits A1 and A6 were marked. On the side of the first defendant, the first defendant was examined as DW-1 and one more witness was examined as DW-2 and Exhibits B1 to B9 were marked.

6. On the basis of the pleadings and evidence, the trial Court decreed the suit excluding 1.14.0 hectares covered under Ex.B-3 and the same was confirmed by the lower Appellate Court in A.S.No.23 of 2012. Aggrieved by the same, the plaintiff has preferred the above Second Appeal.

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

8. It is admitted that the mother of the plaintiff had 2.18.0 hectares, out of which, she had settled 1.14.0 hectares in favour of the first defendant as per Ex.B-3. The validity of Ex.B-3 was already considered and the previous suit in O.S.No.378 of 2004 was decreed, in which, the plaintiff and the defendants were parties. The attester of Ex.B-3 was examined in the said suit and Ex.B-3 was held to be true and valid. Accordingly, even in the previous suit, attachment was raised to the extent which was covered under the said settlement deed. The appellant / plaintiff had produced Ex.A-7 purported to be the document cancelling the settlement deed dated 12.07.1999. The said Ex.A-7 is dated 09.09.1999.

9. As stated earlier, the previous suit filed by the third party for recovery of money of the year 2004 and the settlement deed was upheld in the same, and if really there was a cancellation of the settlement deed of the mother of the plaintiff, the same could have been produced in the previous suit itself. Besides, there is no pleading with respect to the cancellation of the settlement deed excepting marking of the said document. Even otherwise, unilateral cancellation of settlement deed is not valid. Therefore, the appellate Court had

rightly confirmed the decree passed by the trial Court only with respect to suit property excluding the extent of 1.14.0 hectares. Hence, the plaintiff cannot have any grievance over the same.

10. In view of the above discussion, there is no infirmity in the findings of the Courts below warranting any interference by this Court. There is no question of law, much less substantial question of law arising for consideration in the Second Appeal.

11. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge, Gobichettipalayam
2. The District Munsif, Gobichettipalayam.
3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.78042

S.A.No.668 of 2017
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NKJ (CO)
CS/06/02/18

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