

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.336 of 2015

and

M.P.No.1 of 2015

S.Jothi

... Appellant/Plaintiff

vs.

P.Velu

...Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C. against the decree and judgment dated 27.11.2014 passed in A.S.No.1 of 2014 on the file of the Sub-Judge, Arni, Tiruvannamalai District, reversing the decree and Judgment dated 23.09.2013 passed in O.S.No.95 of 2007 on the file of the District Munsif, Arni.

For Appellant : Mr.A.Paneerchelvam
For Respondent : Mr.V.Ramana Reddy

J U D G M E N T

The plaintiff is the appellant before this Court, being aggrieved over the Judgment and decree dated 27.11.2014 passed in A.S.No.1 of 2014 on the file of the Sub-Judge, Arni, Tiruvannamalai District, in and by which, the lower Appellate authority, had reversed the Judgment and decree dated 23.09.2013 granted in favour of the plaintiff by the trial Court viz., the District Munsif Court, Arni in O.S.No.95 of 2007.

2. On 30.04.2015, this Court, while admitting the Second Appeal, has framed the following substantial questions of law:-

"a) Whether different purchasers of the property from the L.R.'s of the owner of the said property can claim right and title over their respective share by virtue of the Sale Deed registered in their favour?

b) Whether one party claims right over in respect of entire property by virtue of a Will executed in her favour which was rejected by the Courts below and held that she is entitled to only half share, can interfere with the right of party who acquired the other half?".

3.1 The admitted facts are as follows:- The suit property with an extent of 731.50 sq.ft. originally belonged to one Somasundhara Mudaliar as per Ex.A1 dated 27.03.1964. Somasundhara Mudaliar died intestate, leaving behind his wife Boologammal and three daughters by name Pachaiyammal, Saroja ammal and Raja ammal. Thus, each of them are entitled for 1/4th share in the suit property. However, Boologammal executed a Will in favour of Raja ammal under Ex.B.2 dated 14.02.2002. Based upon the said document, the defendant purchased the entire extent of 731.5 sq.ft. under Ex.A2/B3. The plaintiff/appellant purchased half of the extent covered under Ex.A1 and B2, being the intended half share of an extent of 365.75 sq.ft.

3.2 With the above said facts, the plaintiff filed a suit in O.S.No.95 of 2007 before the District Munsif Court, Arni, for declaration and permanent injunction for the suit property, which is mentioned under Ex.A5 dated 22.02.2007. The trial Court, after considering the materials available on record, which are mostly admitted, by Judgment and decree dated 23.09.2013, was pleased to hold that each one of the legal heirs of the deceased Somasundhara Mudaliar is entitled for 1/4th share and therefore, the plaintiff is entitled to succeed.

3.3 Aggrieved over the same Judgment and decree of the trial Court, the defendant preferred an appeal in A.S.No.1 of 2014 before the Sub Judge, Arni. The lower Appellate Court, by Judgment dated 27.11.2014, while confirming the findings of the trial Court, was pleased to dismiss the suit on the sole premise that in the absence of any evidence to show that the entire extent as mentioned in Ex.A1 has been divided by way of partition, no relief can be granted.

Challenging the said Judgment and decree of the lower Appellate Court, the present Second Appeal has been filed by the plaintiff.

4. Heard the learned counsel on either side and perused the materials available on record.

5. As submitted by the learned counsel for the appellant, there is no dispute on basic facts. Both the Courts below have found that the legal heirs of the deceased Somasundhara Mudaliar are entitled to 1/4th share out of an extent of 731.5 sq.ft. Both the Courts have also found that the Will executed by Boologammal in favour of her daughter Raja ammal, as the absolute owner, is not correct. Therefore, Ex.B2 was not accepted by both the Courts. In the said factual context, the only issue to be considered at this juncture, is as to whether in a case where the suit is filed for declaration and injunction, a decree for partition can be granted or not, especially in the absence of any evidence in favour of such a partition.

6. Except Ex.A.5, there is no other material to hold that there was a partition. Now, by virtue of the admitted facts and the findings rendered by the Courts below, which are not challenged by the respondent, there is no difficulty in holding that both the appellant and the respondent are entitled for half of the share out of the property covered under Ex.A.1 To this extent, there is no controversy.

7. It is settled position of law that when a party has sought for a larger relief, the Civil Court, while exercising its power, which is inclusive of plenary, can mould the relief and grant a lesser one. As far as the case in hand is concerned, when once the shares of the parties are determined, this Court is of the view that there is no necessity to drive them for one more round of litigation further to seek a decree for partition. Therefore, when once the title and the shares are determined, the Civil Court can mould the relief accordingly, by granting a lesser relief of partition. Both the counsels appearing for the parties do not have objection for granting a decree for partition.

8. Accordingly, the Second Appeal is allowed and the Judgment and decree of the lower Appellate Court dated 27.11.2014 passed in A.S.No.1 of 2014 stands set aside. There shall be a preliminary decree for partition, granting half share to the plaintiff and the defendant of the property mentioned under Ex.A.1. The parties are at liberty to file an application for final decree before the trial Court. The trial Court can also consider equities as the defendant is said to have put up some construction.

No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

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To

1. The Sub-Judge, Arni, Tiruvannamalai District,
2. The District Munsif, Arni.

+1 CC to Mr. V. Ramana Reddy, Advocate sr 1906

+1cc to Mr.A.Panneerchelvam, Advocate sr.1851 (15/3/2017)

Copy to

The Section Officer,
V.R. Section
High Court, Madras

Judgment made in
Second Appeal No.336 of 2015

SV (CO)
sp/21/2



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