

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2017

PRONOUNCED ON : 17.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.377 of 2011

and

M.P.No.1 of 2011

Vijaya ... Appellant/Plaintiff

Vs.

Pichandi ... Respondent/1st Defendant

Govinda Gounder (died)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 07.02.2011 made in A.S.No.14 of 2010 on the file of the Sub Court, Vellore, Vellore District, confirming the judgment and decree dated 08.02.2010 made in O.S.No.53 of 2009 on the file of the District Munsif Court, Katpadi.

For Appellant : Mr.T.Dhanyakumar
For Respondent : No appearance

JUDGMENT

In this second appeal, the plaintiff has impugned the judgment and decree dated 07.02.2011 made in A.S.No.14 of 2010 on the file of the Sub Court, Vellore, Vellore District, confirming the judgment and decree dated 08.02.2010 made in O.S.No.53 of 2009 on the file of the District Munsif Court, Katpadi.

2. The suit has been laid by the plaintiff for partition.

3. Claiming that the suit properties are the ancestral joint family properties of the plaintiff and her father i.e. the second defendant and also alleging that the plaintiff and the defendants have entered into an arrangement in the presence of the village elders on 20.03.2000 regarding the division of the suit properties and the other properties and in such view of the matter, it is contended on behalf of the plaintiff that she is entitled to seek and obtain half share in the suit properties.

4. The claim of the plaintiff that the suit properties are the ancestral joint family properties of the plaintiff and the second defendant is stoutly disputed. Per contra, according to the first defendant, in particular, the suit properties are the separate and self acquired properties of the second defendant, he having purchased the same under the document dated 20.08.1974 and enjoying the same as such and under the sale deed dated 14.09.2000, the second defendant had alienated the suit properties in favour of the first defendant and pursuant to the same, it is only the first defendant, who is enjoying the suit properties absolutely by paying kist etc., and further, the first defendant has also disputed the arrangement letter pleaded by the plaintiff dated 20.03.2000 and according to the first defendant, the same has been created by the plaintiff for the purpose of this case and hence, the plaintiff is not entitled to seek and obtain partition in the suit properties as claimed.

5. As rightly found by the Courts below, no material has been placed by the plaintiff to hold that the suit properties are the ancestral joint family properties of the second defendant and the plaintiff. That apart, it has not been pleaded by the plaintiff in the plaint, as to how the suit properties constitute ancestral properties of the second defendant. Further, no material, as such, has been placed to show that at any point of time, the suit properties had been enjoyed by the second defendant and the plaintiff as ancestral joint family properties. If really, as put forth by the plaintiff, the suit properties are the ancestral joint family properties of the second defendant and the plaintiff, it does not stand to reason as to why there is a need for entering into an arrangement with the first defendant as regards the partition of the suit properties. Further, it has not been established by the plaintiff that the arrangement dated 20.03.2000 has been made in respect of the suit properties. A perusal of the said arrangement marked as Ex.A1 would go to show that there is no reference whatsoever about the suit properties. Further, it is found that under the said document, the parties, thereto, had

proceeded to divide the properties. Therefore, even assuming that the said document is a genuine document, inasmuch as the partition seems to have been entered under the said document, it could be seen that if it is to attain validity, it should be registered as per the law. But the same is an unregistered document. That apart, it is also found that the plaintiff has not examined reliable witness in support of the said arrangement marked as Ex.A1. Still the plaintiff has also not placed any material to hold that Ex.A1 as such had been acted upon and pursuant to the same, the parties have taken possession and been enjoying the properties as mentioned therein. In any event, as adverted to earlier, there is no reference about the suit properties or the character of the suit properties in Ex.A1 and when the validity of the same has also not been substantiated by the plaintiff, it is found that no reliance could be attached to the same for upholding the plaintiff's claim.

6. It is the specific case of the first defendant that the suit properties are the self acquired properties of the second defendant and the same can be seen from the sale deed dated 20.08.1974 marked as Ex.B1. Even Ex.B1 does not make any reference that the same are the ancestral properties of the second defendant and the plaintiff. Therefore, it is evident that the suit properties had been acquired by the second defendant under Ex.B1 and they being the self acquired properties of the second defendant, it is found that he is entitled to deal with the same as he desires. Accordingly, it is found that under the sale deed dated 14.09.2000 marked as Ex.B2, he had alienated the suit properties in favour of the first defendants. Accordingly, it is also found that pursuant to the same, it is only the first defendant, who is enjoying the suit properties by paying kist etc. and the same could be evidenced from the kist receipt, Chitta, Adangal etc. marked as Exs.B3 to 5.

7. In the light of the above position, there is no doubt that the suit properties are presently owned by the first defendant and the plaintiff, as such, is not entitled to make any claim whatsoever in respect of the suit properties.

8. The Courts below have rightly on the correct appreciation of the evidence on record and also giving proper reasonings and conclusions, rejected the case of the plaintiff. No infirmity is found in the judgment and decree of the Courts below both factually as well as legally.

At the end, no substantial question of law is involved in this second appeal. Accordingly, this second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

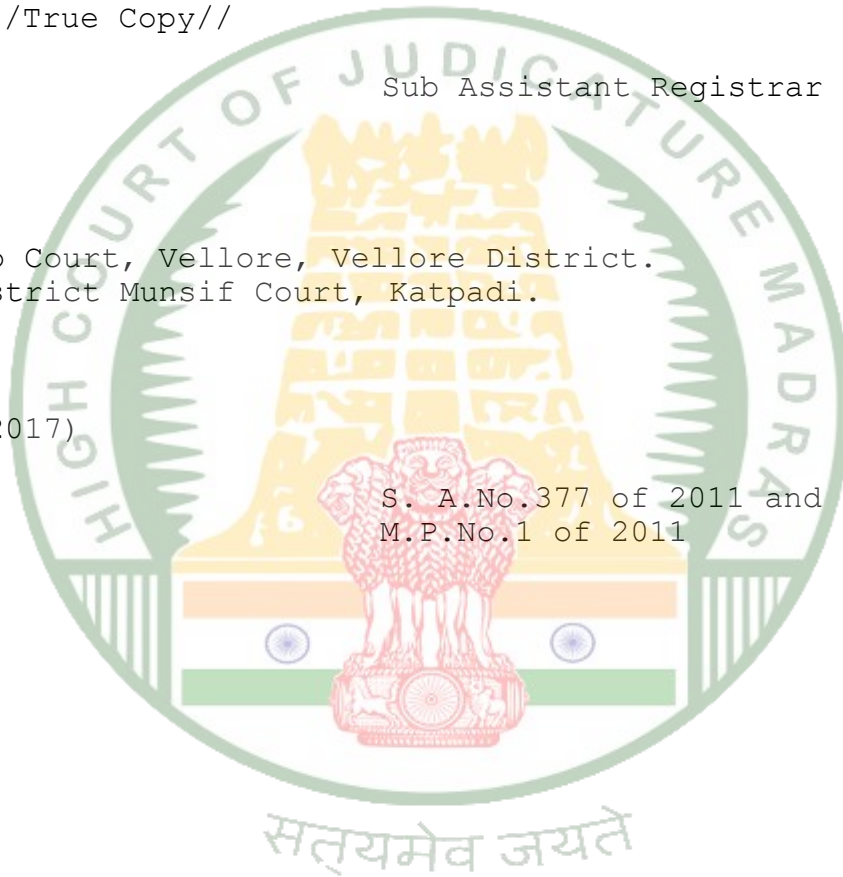
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To

1. The Sub Court, Vellore, Vellore District.
2. The District Munsif Court, Katpadi.

nm(CO)
md(06/03/2017)

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