

THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 05.01.2017  
PRONOUNCED ON : 09.01.2017  
CORAM  
THE HONOURABLE MR. JUSTICE T.RAVINDRAN  
S. A.No.534 of 2011  
and  
M.P.No.1 of 2011

1.Jayaraman  
2.Sethupathy

...Appellants/Plaintiffs

Vs.

1.Venkatakrishnan  
2.Saroja  
3.Raghupathy

... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the II Additional Sub Judge, Cuddalore dated 27.08.2010 made in A.S.No.46 of 2009 confirming that of the learned Additional District Munsif, Cuddalore dated 07.10.2009 made in O.S.No.330 of 2003.

For Appellants : M/s.G.Sumithra  
for Mr.W.M.Abdul Majeed

For Respondents : Mr.N.Suresh

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 27.08.2010 made in A.S.No.46 of 2009 on the file of the Second Additional Sub Judge, Cuddalore confirming the judgment and decree dated 17.10.2009 made in O.S.No.330 of 2003 on the file of the Additional District Munsif Court, Cuddalore.

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

3. It appears pending the suit, the second plaintiff has been transposed as the 3rd defendant. The plaintiffs, the defendants 1 & 3 are brothers and the sons of Manickasamy. The second defendant is the wife of the first defendant. As regards the above said relation ship, there is no dispute. Claiming that the land properties of the Joint Hindu Family consisting of the plaintiffs and the defendants 1 and 3 have been already divided and that only the suit property remains to be divided, according to the plaintiffs, claiming 1/4 share each in the suit property, they have laid the suit.

4. The defence has been taken that the properties belonging to the Joint Family have already been divided and hence, there is no need for going in for another division of the properties and the suit is liable to be dismissed.

5. The suit property is stated to be originally situated in Survey No.294 /2 0.37 cents out of the total extent of 0.51 cents. Therefore, as per the plaintiffs' case, the suit property is only 0.37 cents in Survey No.294/2. Further, according to the plaintiffs, the suit property has been subsequently subdivided and it is now lying in survey No.294/2A 0.30 cents and survey No.294/2C 0.11 cents. Therefore, it could be seen that adding the extent now given in the above said two new survey numbers, it comes to 0.41 cents. On the other hand, according to the plaintiffs' case, the suit property is only 0.37 cents. It is therefore evident as rightly put forth by the defendants counsel, that the plaintiffs are not sure about actual extent of the suit property.

6. As seen from the judgments of the Courts below, it could be seen that Manickasamy had acquired 0.17 cents totally under the registered settlement deeds executed by Ponnukannu marked as Exs.A1 to 3. It is admitted that Ponnukannu is the maternal grandfather of Manickasamy. Further, it could also be seen that an extent of 20 cents had also been acquired by Manickasamy by cumulatively perusing Exs.A4 to 7. Therefore, it could be seen that as rightly found by the Courts below Manickasamy is found to be the owner of 0.37 cents in survey No.294/2. It is also found that the remaining extent of 0.14 cents had been settled by Ponnukannu in favour of Kathayee ammal and others under Ex.A10. The same is also not disputed. Therefore, the only issue that has to be resolved in this matter is whether the suit property to which the joint family is entitled to has already been divided as contended by the defendants or required to be divided as claimed by the plaintiffs.

7. It could be seen that as per the settlement deed marked as Ex.B2, the second plaintiff had settled an extent of 0.12 cents in favour of his wife in survey No.294/2A. A perusal of Ex.B2 would go to show that there is a clear recital that the property comprised therein is stated to have been acquired by the second plaintiff by way of partition. It is therefore clear that inasmuch as the suit property belonging to the Joint family had already been divided, accordingly it could be seen that the second plaintiff had settled the extent, to which, he had been allotted under Ex.B2 in favour of his wife. It is also further found that subsequent Ex.B2, the second plaintiff's wife viz., Usha had settled the same property in favour of the 2nd plaintiff under Ex.B3. As regards Exs.B2 & 3, no challenge has

been made by the plaintiffs. However, when Exs.B2 & 3 were confronted to the second plaintiff examined as PW2, he would only state that he is not aware of the same. However, he would proceed to depose as regards the other extent in the suit survey numbers remaining undivided. It is therefore clear that the plaintiffs, as rightly found by the Courts below, have suppressed the material facts particularly the division of the suit property amongst the brothers already and have come forward with the case projecting as if no division had been made in respect of the suit property falsely.

8. Further, it is also found that under Exs.B4 and 5, the entire extent of 0.11 cents in survey No.294/2C had been alienated by the first defendant and others in favour of the Vaithiyalingam and Kuppusamy respectively. Even the above said sale transactions have not been disputed by the plaintiffs. As adverted to earlier, claiming 294/2C measuring 0.11 cents to be the suit property also the plaintiffs have laid the suit. However, in specific, the plaintiffs have not thrown any challenge to the alienations made in respect of the above said suit property by the first defendant and others under Exs.B4 & 5. This would only go to show that inasmuch as the suit property as such had already been divided amongst the members of the joint family, it could be seen that the plaintiffs though fully aware of the transactions made under Exs.B4 & 5 and also the transactions made under Exs.B2 & 3 not throwing any challenge to the same and further, suppressing the same, have laid the suit by claiming that the suit property alone is yet to be divided and the land property had already been divided. On the other hand, as rightly found by the Courts below, inasmuch as the brothers viz., the plaintiffs and the defendants 1 & 3 have already been divided amongst themselves both in respect of the land properties as well as the suit property already, it could be seen that the plaintiffs have not made any challenge to the transactions made under Exs.B2 to 5. The Courts below have also found that inasmuch as the partition have already taken place, the plaintiffs are unable to give any particulars as to whether any further extent of the property is available with the joint family and in whose possession they still lie. Therefore, holding that the plaintiffs have suppressed the material facts and come forward with the false case seeking partition of the property which had been found to be already divided, the Courts below have negatived the relief sought for by the plaintiffs. No exception could be taken to the findings of the Courts below for disallowing the plaintiffs' case.

9. The counsel for the plaintiffs contended that the defendants have set up a plea of ouster in respect of 0.17 cents in the said survey number and the Courts below having held the above plea projected by the defendants to be a false one should have allowed the plaintiffs' case. However, the above

contention does not merit acceptance. No doubt, the Courts below have not accepted the plea of ouster set up by the defendants. However, the Courts below having found that the suit property along with the other properties had been already divided amongst the brothers and accordingly, further transactions have also been effected by the brothers as found under Exs.B2 to 5 and the plaintiffs having not thrown any challenge to the above said transactions and further the plaintiffs also unable to substantiate any case whether at all any property still is available with the joint family, it could be seen that the Courts below have rightly rejected the plaintiffs' case. The judgment and decree of the courts below are found to be based upon the proper appreciation of the evidence on record and not to be interfered with.

In conclusion, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The II Additional Sub Judge,  
Cuddalore.

2. The Additional District Munsif,  
Cuddalore.

+1 cc to M/s.G.Sumithra Advocate sr 1712  
+1 cc to M/s.N.Suresh Advocate sr 1875

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