

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.132 of 2016
and C.M.P.Nos.2765 & 2766 of 2016

Poomalai Konar

.. Appellant

Vs.

1.Periyasamy
2.Aavichukudi Ramadas

3. The District Collector,
Cuddalore District.

4. The Tahsildar,
Virudhachalam Taluk,
Virudhachalam.

.. Respondent

Second Appeal is filed under Section 100 C.P.C., against the judgment and decree of the Principal Subordinate Court, Virudhachalam dated 11.11.2011 in A.S.No.39 of 2011 confirming the judgment and decree of the learned Principal District Munsif Court, Virudhachalam dated 30.07.2010 in O.S.No.560 of 2006.

For Appellant : Mr.D.Shivakumaran
For respondents : Mrs.R.Meenal (R1 & R2)
R3 & R4 - given up

J U D G M E N T

The plaintiff, who lost before the Courts below in a suit for declaration and injunction, is the appellant herein. The appellant has filed the above Second Appeal by raising the following substantial questions of law:

1.When the plaintiff has specifically pleaded that he has been in exclusive possession and he had no knowledge about the grant of patta in the name of the 1st defendant, are the Courts below correct in law in holding that the kist receipts Ex.A4 to A7 showing the payments by the plaintiff in respect of Patta No.288, which stands in the name of the 1st defendant could not

lead to an inference about the exclusive possession of the plaintiff?

2. When the plaintiff has established that the suit property was originally purchased by Sadaya Konar, grand father of the plaintiff and when the defendants did not file any supportive documents viz., death certificate and legal heirship certificate of Poomalai Konar, particularly when the onus to prove the alleged title has shifted on the defendants, are the Courts below correct in law holding that Ex.B2 a registered Will executed by Poomalai Konar on 25.07.1938 is 70 years old document and that the same has to be relied as per Section 90 of Evidence Act?

3. When the defendants failed to prove their proposition of division, by documentary evidence, are the Courts below correct in law in holding that Poomalai Konar was allotted 15 cents in S.No.53/2A and Sadaya Konar was allotted only one cent, house portion, on the Northern side in S.No.53/2A merely on the basis of surmises and assumptions?

4. In the absence of oral or documentary evidence that the individual properties of Sadaya Konar were being treated as joint family property are the Courts below correct in law in holding that the suit properties were allotted to the share of the Poomalai Konar?

5. Are not the judgments and decrees of the Courts below vitiated for non appreciation of the material evidence produced by the plaintiff in their correct perspective and as such are not the judgment and decree of Courts below liable to be set aside?

2. The suit property belonged to one Poomalai Konar and Sadaya Konar, who are brothers. Pursuant to a oral partition, Poomalai Konar has executed a Will under Ex.B2 25.07.1938 in favour of his two daughters, one of his daughter is Pachiammal. From Pachiammal, 11 cents was purchased by the 1st defendant and the remaining extent of 5 cents was purchased by the 2nd defendant. Now, the plaintiff has filed the suit on the ground that the suit property is an ancestral property and he is claiming right through Sadaya Konar. The defendants place reliance upon Ex.B2 Will dated 25.07.1938 executed by Poomalai Konar in favour of Pachiammal. Thereafter, she has executed a Sale Deed in favour of the defendants 1 & 2 under Exs.B4 & B3 dated 27.11.1997 and 27.07.1978 respectively. Much reliance is placed by the Courts below on Ex.A8 Partition Deed dated 01.02.1962, involving the plaintiff, in which there is specific reference to the property owned by Pachiammal in the Southern

part.

3.The learned counsel appearing for the appellant submits that the Courts below have wrongly relied upon Section 90 of the Indian Evidence Act. 30 years have to be reckoned with respect to the execution, but that will not cover the mandate of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, therefore, the judgment and decree will have to be reversed.

4.The learned counsel appearing for the respondents submits that it is not as if the suit has been dismissed based upon Ex.B2 Will alone, but the relevant materials have been taken into consideration, including Ex.A8 and hence, no interference is required.

5.Though the submission of the learned counsel for the appellant is correct with respect to Section 90 of the Indian Evidence Act, the issue has to be seen in the context of the documents filed. Ex.A8 has been marked by the plaintiff himself. This document makes a specific reference to the property owned by Pachiammal. Thus, along with Ex.A8, the Court has to take note of Exs.B1 & B2 as done by the Lower Courts. In such view of the matter, this Court finds no perversity in the judgments and decrees rendered by the Courts below. The substantial questions of law are answered in favour of the defendants.

6.Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CCC)

True Copy//

Sub-Assistant Registrar

To

1. The Principal Subordinate Court,
Virudhachalam.
2. The Principal District Munsif Court,
Virudhachalam.
- +1 CC to Mrs. R. Meenal, Advocate sr 6051

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