

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on 26.07.2017**

**Pronounced on 01.08.2017**

**Coram**

**The Honourable Dr.Justice G.JAYACHANDRAN**

**Second Appeal No.40 of 2001**

V.Arumugha Gounder

Appellant

/versus/

1.K.Mani

2.K.Rajamanickam Gounder

3.K.Renu

Respondents

**Prayer:** Second Appeal is filed under section 100 of CPC, against the Judgment and Decree made in A.S.No.25/2000 dated 19-06-2000 on the file of the Additional District Judge, Tiruvannamalai confirming the Judgment and Decree made in O.S.No.861/92 dated 30-06-97 on the file of the Principal District Munsif, Arani.

For Appellant :Mr.R.Bharanidharan

For Respondents :No appearance

### **JUDGMENT**

This appeal is against the concurrent finding of the Courts below dismissing the suit filed for declaration and recovery of possession and mense profits.

2. The case of the plaintiff, who is the appellant herein is that, the suit property measuring 2.30 acres was purchased from one Raju Naicker on 2.01.1964. Out of the sale consideration of Rs.1000/-, the appellant paid Rs.500/- and the remaining Rs.500/- was contributed by three other sons of Veera Gounder (Kuppusamy Gounder, Kannaiah Gounder and Shanmugam) The property was purchased in the joint name of Kuppusamy Gounder and Arumuga Gounder, the appellant herein. Some 20 years prior to the suit, the sons of Veera Gounder divided the property wherein 1.15 acres of land in the southern side was allotted to the appellant and the remaining 1.15 acres of land were divided among the four brothers. Thus the appellant is entitled for 5/8 share in total extend of 2.30 acres. Whiles, in the year 1980, he orally mortgaged his 5/8 share in the property to one of his brother Kuppusamy Gounder. After 5 years, he redeemed the property from the respondents herein who are the sons of Kuppusamy Gounder. After one year from redemption, the respondents forcibly occupied half of the land in the Northern 1.15 acres land. Hence, suit for partition claiming 5/8 shares.

3. The rival contention of the respondents as found in their written statement is that, the factum of purchase of the suit property from Raju Naicker is admitted. The claim of the plaintiff that he contributed half of the Sale consideration and the remaining half was jointly contributed by other 3 brothers, are not admitted. According to the respondents, when Veera Gounder decided to leave India and go to Malasiya along with his sons, he left the possession of his share of property in S.No.529, (1.15 acres, out of 2.30 acres) to the co-sharer Raju Naicker. In the year 1961, Veera Gounder died in Malaysiya. Due to long possession with Raju Naicker, the patta for entire extent of 2.30 acres, which include the 1/2 share of Veera Gounder, stood in the name of Raja Gounder exclusively. On return to India, when sons of Veera Gounder approached Raju Naicker to get back the possession of their share in the suit property, he offered to sell his share of 1.15 acres in the suit property and execute a sale deed for entire 2.30 acres. Kannaiya Gounder and Shanmugam, who were other two sons of Veera Gounder, expressed their inability to contribute for the sale consideration and restricted their claim to 2/16 shares in the entire property.

4. Under these circumstances, paying Rs.500/- each, Kuppa Gounder and Arumuga Gounder jointly purchased the suit property on 02.01.64 from Raju Naicker.

5. According to the respondents, after purchase of the suit property, 28 3/4 cents of land to each of the four sons were allotted to each of the sons of Veera Gounder on the eastern portion of the suit property. The share of Raju Gounder on the northern side was equally divided among the Kuppusamy Gounder and Arumuga Gounder. Later the other two sons of Veera Gounder sold away their share of 28 3/4 cents each were sold to the first respondent, he refer the claim of the appellant as the plaintiff seeking 5/8 share in the suit property is denied.

6. The plea of oral usufructuary mortgage in favour of the 1st respondent in the year 1980 and the oral redemption, after 5 years are denied. Thus, according to the respondents, out of 2.30 acres of land, 1.15 acres owned by their grandfather Veera Gounder. 1.15 acres alone owned by Raju Gounder. Since the Patta for entire extent stood in the name of Raju Gounder, for sake of convenience sale deed was executed for entire extent. However, the half share of Veerasamy i.e. 1.15 acres was equally divided among their four sons, the remaining 1/2 share (1.15 acres) purchased jointly by the appellant Arumugam and the father of the respondents herein were equally divided among the appellant and the respondents' father.

7. The trial Court, as well as the first Appellate Court, held against the

appellant, since he failed to prove manner of payment of the sale consideration as pleaded, also held that he failed to prove the alleged oral mortgage in the year January 1980, and further redemption. Aggrieved by the dismissal of his suit and appeal, the present second appeal is preferred.

8. At the time of admission the following substantial question of law has been framed for consideration:

(i) Whether the Courts below are correct in dismissing the suit, in the light of the admission made by the first defendant that the plaintiff's father Veera Gounder and Raju Naicker divided 2.30 acres into two equal shares and were enjoying the same separately?

(ii) Whether the Courts below are correct in coming to the conclusion that the plaintiff has not paid any amount for the purchase of the suit property?

9. The admitted fact is that the suit property was purchased from Raju Naicker vide sale deed Ex.A1. The plea regarding payment of Rs.500/- towards the half share by the plaintiff and remaining Rs.500/- paid jointly by the other sons of Veera Gounder is not found in the recital of the sale deed. Any oral evidence in respect of a written document is subject to Sections 91

and 92 of the Indian Evidence Act. The payment and claim of exclusive 1/2 share of 1.15 acres, in total 2.30 acres, based on his contribution to the sale consideration and another 1/8 share as son of Veera Gounder not been substantiated through evidence. Both the Courts below have categorically held that none of the plea either the alleged partition allotting 1.15 acres on the northern side of the suit property or the oral mortgage in favour of the 1st defendant in the year 1980 or its redemption after 4 years, are proved. Contrarily, Ex.A1, Ex.B1 and Ex.B3 negatives the case of the appellant.

10. In his ocular evidence, PW1, who is the son of Arumuga Gounder admits that the legalheirs of his paternal uncles Shanmugam and Kannan have sold away 28 3/4 cents of land each and the same was purchased by the defendants. He, in his evidence, states that mortgage terms were reduced into writing but, it is not produced before the Court. He has admitted that he is in possession and enjoyment of 87 1/2 cents, which is 3/8 share, the remaining shares are with the respondents. The possession of 87 1/2cents through Ex.A1 and 57 1/2 cents through purchase under Exs.B1 to B3 is based on valid title and none else can claim right over it. If at all, the appellant can only claim 1.15 acres of land, as per Ex.A1 provided, he successfully challenge Exs.B1 to B3 the sale deeds executed by the legal representatives of Shanmugam and Kannan, which transaction presumably based on the partition effected among the sons of Veera Gounder wherein

each of his four sons were allotted 28 3/4 cents. Therefore, looked from any angle, there is no legal basis or evidence to substantiate the claim of the appellant that he is entitled for 5/8 share in the suit property. The finding of the Courts below is based on the evidence and pleadings. Hence, this Court finds no infirmity or perversity in the findings of the Courts below.

11. In the result, ***the Second Appeal is dismissed.*** No costs. Consequently, connected Miscellaneous Petition is closed.

01.08.2017

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Index:Yes/No

Internet:Yes/No

Speaking order/Non speaking order

To

The Principal District Munsif, Arani

The Additional District Judge, Tiruvannamalai.

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**G.JAYACHANDRAN, J**

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**Predelivery judgment made in  
Second Appeal No.40 of 2001**

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**01.08.2017**