



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE OF RESERVATION : 01.03.2017

DATE OF ORDER : 16.03.2017

CORAM

The HONOURABLE MR.JUSTICE S.S.SUNDAR

A.S(MD)No.64 of 2011
and
M.P(MD)No.1, 2 of 2011
& 1 of 2012

1.S.Kathirvelsamy
2.K.Balasubramanian

.. Appellants/Defendants

Vs.

1.Chandra
2.B.Sooriyanarayan
3.B.Bala

.. Respondents/Plaintiffs 3 to 5

Prayer:- Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree, dated 21.04.2011 made in O.S.No.8 of 2004, on the file of the Additional District Court (Fast Track Court), Periyakulam.

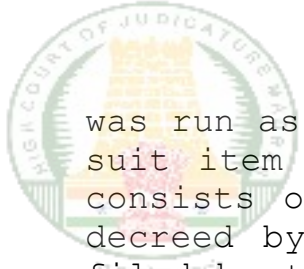
For Appellants : Mr.M.V.Venkateseshan

For Respondents : Mr.Veera Kathiravan
Senior Counsel
for Mr.R.Prabhu Ramachandran

JUDGMENT

This First Appeal has been preferred against the Judgment and Decree, dated 21.04.2011 made in O.S.No.8 of 2004, on the file of the Additional District Court (Fast Track Court), Periyakulam.

2.The defendants 1 and 2 are the appellants in this appeal. The husband of the first respondent and mother-in-law of the first respondent as plaintiffs filed a suit in O.S.No.226 of 1997 on the file of the Subordinate Court, Periyakulam and the said suit was transferred to the Additional District Court (Fast Track Court), Periyakulam and re-numbered as O.S.No.8 of 2004. The suit is for partition of plaintiffs two-third share in 'A' schedule properties and 7/12 share in 'B' schedule properties. 'A' schedule consists of 13 items. 'B' schedule property is only a Cinema Theatre which



was run as a partnership firm and the Cinema Theatre was put up in suit item No.9 of 'A' schedule properties. 'C' schedule property consists of the outstanding amount borrowed. The suit was partly decreed by the trial Court and the present appeal suit has been filed by the defendants 1 and 2 in respect of suit items 1 and 9 in the suit 'A' schedule properties.

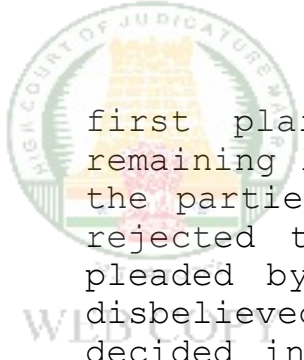
3.The plaintiffs died during the pendency of the suit and hence the legal heirs of the first plaintiff were impleaded as plaintiffs 3 to 5. The plaintiffs 3 to 5 are respondents 1 to 3 in this appeal suit.

4.The case of the plaintiffs in the plaint are as follows:-

The first plaintiff is the son of Suriyanarayana Thevar. The first defendant is also the son of Suriyanarayana Thevar. The second defendant is the son of the first defendant. The second plaintiff is the second wife of Suriyanarayana Thevar. Though Suriyanarayana Thevar had a first wife. by name Balammal, she died issueless. The second plaintiff, who is the second wife of Suriyanarayana Thevar, had two sons namely, the first plaintiff and first defendant. The suit 'A' schedule properties belonged to the Hindu Joint family consisting of late.Suriyanarayana Thevar, the first plaintiff and the first defendant. The members constituted a Hindu Joint family and Suriyanarayana Thevar was the kartha. The second plaintiff died after filing of the suit and executed a registered Will in favour of the first plaintiff with regard to her right in the suit properties. The suit was contested by the defendants.

5.Though the suit was partly decreed by granting half-share in respect of item Nos.1, 2, 3, 4, 5, 6, 8, 9 and 10, the suit was dismissed in respect of item Nos.7, 11 and 13 of 'A' schedule property. Since the debts payable by the family are stated to be barred by limitation, no relief was granted to anyone with regard to the items shown as debt in 'C' schedule. The suit was also dismissed in respect of 'B' schedule.

6.The present appeal suit has been filed by the defendants 1 and 2 only with regard to item Nos.1 and 9 of 'A' schedule properties. It is the case of the plaintiffs that these items are the family properties and the plaintiff is entitled to half-share. However, in the written statement, the plaintiffs claim was objected by the defendants on the ground that the suit first item in 'A' schedule was allotted to the first defendant exclusively in a prior partition. It is further stated by the defendant that in view of 'A' schedule that was allotted to the first defendant in a oral partition, the first plaintiff was also allotted a different house which belonged to the family in Sedapatty Village. With regard to item No.9 of the suit 'A' schedule, it is the case of the defendants that by an oral partition between the plaintiffs and first defendant, item No.9 of the suit 'A' schedule was divided between the brothers. It was the case of the defendants that the

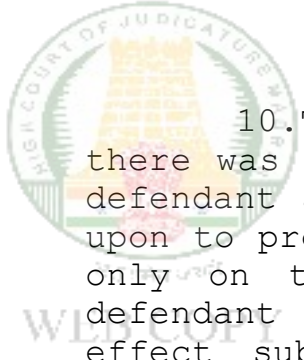


first plaintiff was allotted 630 square meter of land, the remaining lands leaving a portion which was kept as common between the parties, was allotted to the defendants. The trial Court has rejected the contentions of the defendants. The oral partition pleaded by the defendants with regard to item Nos.1 and 9 was disbelieved by the trial Court. The question that has to be decided in this appeal is, therefore, whether there was an oral partition between the first plaintiff and first defendant in the manner as stated by the defendants regarding item Nos.1 and 9 of the suit 'A' schedule property.

7. Heard Mr.M.V.Venkataseshan, learned counsel appearing for the appellants and Mr.Veera Kathiravan learned senior counsel appearing for the respondents.

8.The learned counsel appearing for the appellants relied upon the documents Ex.B.4 and Ex.B.5. Ex.B.5 is the proceedings of the Assistant Director of Survey, dated 19.06.1997. This indicates that the Assistant Director of Survey and Settlement has passed the order on the basis of a petition filed by the first appellant on 21.04.1997. The proceedings refers to the statement of the first defendant, dated 19.06.1997. The Assistant Director of Survey and Settlement has passed the above order on the basis of the statement of the first defendant before him and that of Village Administrative Officer. The proceedings, dated 19.06.1997 is after the suit. The Tahsildar is the competent authority to effect sub-division based on records. Surprisingly, the Assistant Director of Survey and Land records has passed this order on the representation of the first defendant dated 21.04.1997. None of the Revenue Standing Order or any statute confers the power to the Assistant Director of Survey and Land Reforms to act as original authority to effect sub-division based on the petition and the statement of individuals there was no enquiry. Hence, this document shows that the first defendant is capable of influencing revenue officials to pass any order to suit the convenience of the first defendant. This document can never be acted upon and this document was not marked.

9.The learned counsel appearing for the appellants thereafter relied upon the District Gazettee Notification indicating that the Survey and Settlement effected in the Village has published in the Gazettee. He has not argued anything about the legal implication of the publication which is shown as an annexure to Ex.B.5 in the typed set filed by the appellants. In the sub-division plan filed along with this document, there is an endorsement that this document is not admissible in Court as the survey is not completed. This document is signed by the Assistant Director, District Survey office. This is issued on 22.01.1998. If survey is not completed in 1998, how could then be publication of ~~completion of survey~~ in August, 1997. The documents filed by the appellants are therefore unreliable.



10. This document has no relevance to decide as to whether there was an oral partition between the first plaintiff and first defendant as it was pleaded. The document Ex.B.5 cannot be relied upon to prove that there was an oral partition. The proceedings is only on the basis of the self-serving evidence of the first defendant before the Revenue Authority, who is not competent to effect sub-division as original authority as per the Revenue Standing Orders.

11. As it was pointed out earlier, the proceedings under Ex.B.5 came after the suit, at the instance of the first defendant and that will not prove the case of the plaintiff regarding oral partition.

12. It is also relevant to point out that under Ex.B.5, an extent of 620 square meter equivalent to about 7,000/- square feet is shown as the properties that was allotted to the first plaintiff. However, nine times more than this extent, namely an extent of 4185 square meter, was sub-divided in the name of the first defendant. The further extent of above 725 square meter was shown as the property belongs to both the first plaintiff and first defendant. This also indicates that the partition suggested by the first defendant is unequal and unfair and hence unbelievable. Though an application was made at the instance of the first defendant after the suit for sub-division, there was no pleading with regard to the nature of allotment in the oral partition. This Court is not inclined to believe the case of the first defendant regarding the oral partition relying upon Ex.B.5.

13. Regarding item No.1 of the suit 'A' schedule, it is the case of the plaintiffs that the item No.1 of the suit 'A' schedule is the Joint Family Property. It is not in dispute that the property namely, item No.1 of the suit 'A' schedule belonged to the Joint Family. It is the case of the first defendant that this property was orally allotted to him in the oral partition pleaded by him.

14. According to the first defendant, some other property that belonged to the family in Sedapatti Village was allotted to the first plaintiff in lieu of exclusive allotment of item No.1 of the suit 'A' schedule to the first defendant. It is the case of the first plaintiff that the property in Sedapatti Village is not a Joint Family Property.

15. It is the submission of the learned counsel for the respondents that the property in Sedapatti Village belonged to the mother of the first defendant and first defendant. It was never treated as a Joint family property. No record is produced before the Court to show that the family was enjoying the property namely a house in Sedapatti Village and the family members enjoyed the said property as a Joint Family Property.



16. Though no issue is specifically framed by the trial Court, this Court finds that there is no evidence available in this case to accept the case of the first defendant. The first defendant has not raised a plea with reference to the property available in Sedapatti Village no specific plea regarding partial partition. The first defendant never made an attempt to include the property in Sedapatti Village as a property belonged to Joint Family. It is the case of the defendants that the item No.1 of the suit 'A' schedule was exclusively allotted to the first defendant and that the plaintiffs were allotted another house in Sedapatti Village in a oral partition the burden lies on them to prove their case by raising specific pleading. The burden lies on the defendants to prove that the house in Sedapatti Village belonged to the family. Since the oral partition pleaded by the first defendant was not proved by any other evidence, this Court is not inclined to accept the case of the first defendant and hold that there was no oral partition as alleged by the first defendant in respect of either suit item No.1 or item No.9 of suit 'A' schedule property.

17. In view of my conclusion above, this Court find no merits in the Appeal suit and this Appeal Suit is dismissed.

18. In the result, the Judgment and Decree passed in O.S.No.8 of 2004 by the Additional District and Sessions Court, Fast Track Court, Periyakulam is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

ps

To

The Additional District Judge (Fast Track Court),
Periyakulam.

+1 cc TO Mr.M.V.VENKATASHAN, ADVOCATE SR.No.15349

+1 CC TO Mr.R.PRABHU RAMACHANDRAN, ADVOCATE, SR.No.15426

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