

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.10.2018

DELIVERED ON: 10.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1577 of 2001

Kothandapani Appellant/Defendant

Vs.

Chellammal Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 18.10.2000 passed by the Additional Subordinate Judge, Tindivanam in A.S.No.86 of 1992 reversing the decree and judgment dated 30.04.1992 passed by the Additional District Munsif, Tindivanam in O.S.No.151 of 1987.

For Appellant : Mrs.V.Srimathi
for Mr.Raghavachari

Respondents : Mr.P.Sunilkumar

JUDGMENT

The appellant is the defendant in O.S.No.151 of 1987 on the file of the Additional District Munsif, Tindivanam and respondent in A.S.No.86 of 1992 on the file of the Additional Subordinate Judge, Tindivanam,

2. The respondent/plaintiff (Chellammal) filed a suit in O.S.No.151 of 1987 before the Additional District Munsif, Tindivanam for declaration of her title to the suit property situate in Survey number 289/10 of Bommaya Palayam Village, Vannur Taluk measuring 35 cents and also for a permanent injunction restraining the defendant Kothandapani (Dw1) from interfering with her peaceful possession and enjoyment over the suit property.

3. The case of the respondent/plaintiff in nutshell is as follows. The suit property is the ancestral property of the plaintiff's husband Ranganathan Gounder (PW2) and the suit

property and other properties were allotted to her husband's share in a family arrangement that took place during the year 1962. The husband of the plaintiff was in enjoyment of the suit property by mutating the revenue records and also he executed a settlement deed dated 04.03.1974 (Ex.A4) in favour of his wife, the respondent/plaintiff. According to the plaintiff, she has been in possession and enjoyment of the suit property by cultivating cashew nut crops and that the defendant without any iota of right over the suit property, is attempting to interfere with her peaceful possession, since February 1987.

4. The suit was resisted by the appellant/defendant on the ground that the suit property was originally owned by one Sadayandi Gounder and his three brothers, from whom he (defendant) purchased the same through a registered sale deed dated 23.12.1986(Ex.B1). According to him, he is in possession and enjoyment of the suit property.

5. The trial court framed necessary issues and after full contest, dismissed the suit on the following grounds.

[i] The alleged family arrangement that took place during 1962 has not been proved by the plaintiff.

[ii] The settlement deed (Ex.A4) is not a valid document.

[iii] The defendant has not also proved his title to the suit property.

6. Aggrieved over the decree and judgment passed in O.S.No.151 of 1987 on the file of the Additional District Munsif, Tindivanam, the plaintiff Chellammal filed an appeal before the Additional Subordinate Judge, Tindivanam. The appeal was allowed and the decree and judgment dated 30.04.1992 passed by the learned Additional District Munsif, Tindivanam was set aside.

7. Now the present second appeal has been filed by the appellant/defendant.

8. Mrs.Srimathi, learned counsel appearing for the appellant would contend that, when the plaintiff has not proved the alleged partition that took place during the year 1962, the PW2, husband of the plaintiff had no right to execute the settlement deed dated 04.03.1974 (Ex.A4) in favour of the plaintiff. She also drew the attention of this court to the deposition of PW1, wherein, the PW1 had categorically admitted that the suit property is the ancestral property of her husband Ranganatha Gounder (PW2). The PW1 had also deposed that she was not aware as to whether there was partition between her father-in-law and his brothers. She had further deposed that neither a partition deed was executed nor a memorandum in evidence of partition was prepared and that her father-in-law Sadayandi Gounder had four

brothers and that one Balu and Damodaran are the sons of her father-in-law's brothers.

9. Ranganatha Gounder (PW2) in his deposition admitted that his father's name is Sadayandi Gounder and that he does not know as to whether any partition took place between his father and his brothers. In fact, the PW2 had married the plaintiff as his third wife, even during the life time of his second wife Kannayi.

10. The learned counsel for the appellant would contend that when the alleged oral partition of the year 1962 has not been proved, the PW2 does not have any right to execute a settlement deed (Ex.A4) in favour of his third wife Chellammal. It is further contended by the learned counsel for the appellant that the first appellate court had cast the entire burden on the appellant/defendant and had further observed that since the brother of PW2 did not file a suit seeking partition of the suit property, it has to be construed that there was a partition in the family during the year 1962. According to her, this observation is based on surmises and conjectures and hence, liable to be set aside.

11. Though PW2 has stated that he executed a settlement deed Ex.A4 in favour of his third wife Chellammal, the plaintiff (PW1) who claimed title to the suit property should prove her case. No doubt, it is true that the defendant though had contended that the suit property is an undivided property, he has not adduced any evidence to show that his vendors alone were entitled to the suit property. In any event, the plaintiff has not proved the oral partition that allegedly took place in the year 1962. Further more, the suit property is an agricultural land. The plaintiff has not filed extract of adangal, Chitta showing exclusive possession of the suit property by her husband (PW2). The kist receipts Ex.A1 and Ex.A2 are of the years 1985 and 1987 and they are not sufficient to prove exclusive possession of the suit property by the PW2, since 1962.

12. Mr.P.Sunilkumar, counsel for the respondent/plaintiff relied on the patta (Ex.A3) and contended that this piece of evidence is sufficient to show the possession of the suit property by the plaintiff's husband. A perusal of Ex.A3 shows that some person has signed on behalf of Tahsildar. It does not contain the date, designation seal of the signatory to Ex.A3, The name of the person, who verified the records and written the patta does not find place in Ex.A3. No revenue officials have been examined to prove Ex.A3. Therefore, Ex.A3 alone is not sufficient to prove the alleged partition and subsequent exclusive possession of the suit property by the PW2. Therefore, I hold that the decree and judgment dated 18.10.2000

passed by the Additional Subordinate Judge, Tindivanam in A.S.No.86 of 1992 is liable to be set aside.

13. In the result,

(i) The second appeal is allowed. No costs.

(ii) The decree and judgment dated 18.10.2000 passed by the Additional Subordinate Judge, Tindivanam in A.S.No.86 of 1992 is set aside.

(iii) The suit in O.S.No.151 of 1987 on the file of the Additional District Munsif, Tindivanam is dismissed with costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional Subordinate Judge, Tindivanam.
2. The Additional District Munsif, Tindivanam.

Copy To:

The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.V.Raghavachari, Advocate Sr.No.69963

+1 cc to Mr.R.Sunil Kumar, Advocate Sr.No.70519

S.A.No.1577 of 2001

MG(CO)

GN/14.11.2018

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