

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.750 of 2017

Mohammed Basha

...Appellant/Defendant

versus

Syed Musthafa,
Son of Basha Sahib,
Rep.by his son and Power agent
Mr.Rahamatulla
Vada Chettianthal Village,
Sankarapuram Taluk,
Villupuram District.

...Respondent/Plaintiff

Prayer: This second appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 29.02.2012 passed in A.S.No.67 of 2011 on the file of the Sub-Ordinate Judge at Kallakurichi confirming the judgment and Decree dated 09.07.2010 passed in O.S.No.671 of 2009 on the file of the District Munsif at Sankarapuram.

For Appellant :Mr.N.Ramesh

For Respondent :Mr.S.Ramajayam

J U D G M E N T

The defendant in the suit for declaration and permanent injunction has filed the above second appeal aggrieved by the concurrent findings of the Courts below.

2. The case of the plaintiff is that the properties originally belong to one Vedi. From the said Vedi and his sons it was purchased by the plaintiff on 24.05.1950 and he has been in enjoyment of the same. Since the defendant attempted to trespass into the suit property, O.S.No.671 of 2009 was filed by the plaintiff through his power agent one Rahamatulla before the District Munsif, Sankarapuram.

3. Though the defendant/appellant had admitted that the property was purchased in the name of the plaintiff/respondent on 24.05.1950, it is his specific case that it was purchased in

the name of the plaintiff, as he was the elder brother and Kartha of the family. It is also stated that there are other properties which were purchased in the name of the plaintiff, but were enjoyed jointly by the plaintiff and the defendant. While so, the defendant alleged that there was a partition in the year 1968 in which the suit Survey Number was allotted to his share and he has been in enjoyment of the property and also obtained patta in his name.

4. Before the Trial Court the plaintiff got himself examined as P.W.1 and marked Exs.A1 to A11. On the side of the defendant D.Ws.1 to 3 were examined and Exs.D1 to D22 were marked.

5. The Courts below on the available documents and evidence decreed the suit and dismissed the contentions of the defendant. Aggrieved by the same the above appeal has been preferred.

6. It is admitted that as per Ex.A2 dated 24.05.1950, the suit property was purchased by the plaintiff out of his own income. Admittedly, the parties belong to Muslim Community, to which, the concept of joint family is not known. However, the defendant claimed that the properties were purchased in the name of the plaintiff because he was the eldest male member and also claimed that thereafter in the year 1968 there was a partition between them. As per the Ex.A2, the plaintiff had purchased property from Vedi and others, which has been admitted by the defendant in the written statement itself.

7. It is the case of the plaintiff that the purchase was made independently out of his own income, whereas, the defendant/appellant claimed that it was purchased on behalf of the family and they have been enjoying the same jointly. As stated earlier, the concept of joint family is not known to the Muslim Community, hence the said contention of the defendant is dis-believed by the Courts below.

8. Admittedly, the plaintiff was serving in the Army at the relevant point and he had independent income and the properties were purchased out of his income in his name. By no stretch of imagination, in the absence of any evidence, the defendant can claim any right over the suit properties. It is admitted by the defendant that during the relevant point of purchase of the suit property, the plaintiff was serving in the Army and even after his retirement he has been receiving pension. In the absence of any evidence that the defendant also contributed to the purchase of the suit property, the Courts below have rightly held that the suit properties belonged to the plaintiff.

9. The partition alleged by the defendant in the year 1968 was also not proved. Ex.A3 is the patta for S.No.84/4 for the

extent of 0.89 cents in the name of the plaintiff. The patta has been issued even in the year 1962. In fact, during the year 1968, the defendant would have been only eight years old and the question of partition or management of the properties by the defendant is not believable.

10. In the absence of any evidence to show that the suit property is either jointly or independently owned by the defendant and the claim of partition in the year 1968 had not been proved by the defendant, the Courts below have rightly decreed the suit based on the evidence let in by the plaintiff. When the suit property belongs to the plaintiff exclusively, the defendant cannot have any right over the same.

11. Accordingly, the suit decreed by the Courts below does not warrant any interference in the absence of any infirmity in the same.

12. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 29.02.2012 passed by the learned Subordinate Judge, Kallakurichi in A.S.No.67 of 2011 and the Judgment and Decree dated 09.07.2010 passed by the learned District Munsif, Sankarapuram in O.S.No.671 of 2009. No Costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rsi

To

1. The Subordinate Judge,
Kallakurichi.
2. The District Munsif,
Sankarapuram.
3. The Section officer
VR Section , High Court, Madras.

+1 CC to Mr.N. Ramesh, Advocate sr 10544.

+1 CC to Mr.S. Ramajayam, Advocate sr 10517.

S.A.No.750 of 2017

KJI (CO)
SP(08/03/2018)