

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

C O R A M

THE HON'BLE MS.JUSTICE P.T. ASHA

Second Appeal No.440 of 2018

Rajendhran

.. Appellant/Plaintiff

Vs

1.Ravichandran

2.Sivarajani

3.Ramani

.. Respondents/Defendant

Prayer:Second Appeal filed under Section 100 of C.P.C., praying to set aside the Judgment and Decree dated 06.09.2017 passed in A.S.No.21 of 2017 on the file of the Sub Court, Ulundurpet confirming the Judgment and Decree dated 17.02.2016 passed in O.S.No.159 of 2012 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellant : Mr.A.Thiyagarajan
Senior Counsel
for M/s.M.Nallathambi

ORDER

The plaintiff is the appellant before this Court. The appeal arises against the suit for declaration and injunction filed by the appellant/plaintiff in respect of the "E" Schedule property. The suit in O.S.No.159 of 2012 on the file of the Principal District Munsif Court, Ulundurpet was dismissed. Challenging the same, the appellant/plaintiff had filed A.S.No.21 of 2017 on the file of the Sub-Court, Ulundurpet. The Appellate Court also confirmed the judgment and decree of the Trial Court and therefore, the present second appeal has been filed.

2. The brief facts of the case is that the appellant has filed the suit on the basis that "E" Schedule properties, which forms part of other properties belonged to his father one Rajanga Konar and there was a suit in O.S.No.349 of 1999 which was filed by the children of the plaintiff's brother one Ravichandran, who is the first respondent herein represented by their mother against the appellant, his father and the first

defendant. An ex parte decree was passed wherein the respondent Nos.2 and 3 were allotted 1/12th share each, and the first respondent 1/12th share and the appellant and his father Rajanga Konar and sister Usha were each allotted 3/12th share. It is his further case that subsequently, there was an oral partition in and by which, the properties which were allotted to the father Rajanga Konar as ''A'' schedule in the original suit was partitioned amongst Rajanga Konar, the plaintiff and his sister. The father later sold his 1/12th share under the sale deed dated 24.02.2002 to the appellant's wife and his sister had sold her share to her sons. It was the plaintiff's case that what remains is the suit "E" schedule property in which he has been in possession and enjoyment. It was his further case that the respondents were attempting to trespass into the property and stake their claim. Therefore, the appellant had come forward with the suit for declaration and injunction.

3.The defence to the said suit was that the "E" Schedule property was never allotted to the appellant exclusively and that he has not been in possession and enjoyment of the same. The oral partition which is put forward was also denied.

4.On these pleadings, parties had gone to trial. The Trial Court had formulated three issues and the plaintiff had examined himself as P.W.1 besides examining three other witnesses and marking the documents as Exs.A1 to A14. On the side of the respondents, the first respondent had adduced evidence as DW1 and the second respondent as DW2. Exs.B1 to B5 were marked on their side. The Trial Court dismissed the suit holding that the appellant had not come forward to produce any of the revenue records to show his possession of the suit property and that apart, even in Ex.B2 settlement deed, which is executed in favour of the appellant's wife, there is no reference to the oral partition. The learned Trial Judge had also opined that the remedy that is available to the appellant was only to file for final decree proceedings. Finally, the suit was dismissed. The appellate Court by its judgment and decree dated 06.09.2017 was pleased to confirm the judgment and decree of the Trial Court. Challenging this concurrent judgment and decree, the appellant is before this court.

5. Today, the matter came up for admission, heard Mr.A.Thiyagarajan, learned Senior Counsel for the appellant. From the records, it is seen that there is already a preliminary decree for partition in O.S.No.349 of 1999. It is not known as to why the appellant has filed another suit for a declaration and injunction without filing an application for passing a final decree and having the properties allotted to each of the sharers. The appellant who has come forward with the specific case of an oral partition between himself, his sister and father

has not pleaded the date on which such a partition had taken place and has also not substantiated with proof of the fact that he is in possession of the said property by producing the revenue records. In the absence of such proof, the Courts below have rightly dismissed the suit. I do not find any question of law much less substantial question of law. No substantial question of law arises for consideration in this appeal.

6. In view of the above said discussion, the judgment and decree of the First Appellate Court passed in A.S.No.21 of 2017 do not warrant any interference and the same is confirmed.

7. In the result, the second appeal fails and accordingly, the same is dismissed at the stage of admission itself. The judgment and the decree passed in A.S.No.21 of 2017 by the Subordinate Judge, Ulundurpet, is confirmed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gv/gsi

To

1. The Subordinate Judge, Ulundurpet.
2. The Principal District Munsif Court, Ulundurpet

S.A.No.440 of 2018

GJ II (CO)
GMY (24/01/2019)

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