

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :23.10.2018

PRONOUNCED ON: 01.11.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.387 of 2015

and

M.P.No.1 of 2015

A.Easwaran

... Appellant/Respondent

Vs.

A.Venkidusamy

... Respondent/Appellant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.29 of 2014 dated 07.03.2015 on the file of the IV Additional Sub Court, Coimbatore and Appellate Authority of Coimbatore reversing the well considered Decree and Judgement in O.S.No.2123 of 2010 dated 04.03.2014 on the file of the Principal District ***Munsif** Coimbatore.

For Appellant : Mr.M.Velmurugan

For Respondent: Mr.P.Valliappan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 07.03.2015 passed in in A.S.No.29 of 2014 on the file of the IV Additional Subordinate Court, Coimbatore reversing the judgment and decree dated 04.03.2014 passed in O.S.No.2123 of 2010 on the file of the Principal District Munsif Court, Coimbatore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that the plaintiff and the defendant are brothers and the suit properties and the other properties originally belonged to father of the plaintiff and the defendant namely Anganna Gounder and during his life time, the suit properties and other properties were partitioned amongst Anganna Gounder and his four sons including the

plaintiff and the defendant by way of a registered partition deed dated 10.12.1982 and in the said partition, the first schedule was allotted to the plaintiff's share and he is in possession and enjoyment of the same as the absolute owner of the properties comprised in the said schedule and the patta had also been issued in favour of the plaintiff in respect of the suit property and furthermore, the plaintiff had alienated a portion of his properties acquired by way of the abovesaid partition deed situated in S.F.No.24 to an extent of 88 cents out of 1.97 acres on 24.11.2006 to one Mrs.Mohanadevi by way of a sale deed and the remaining land of an extent of 1.09 acres is now in the possession and enjoyment of the plaintiff and under his cultivation. The defendant has no right or title or interest over the suit property and on the other hand, he had started giving troubles to the plaintiff and thereby schemed to grab the suit property belonging to the plaintiff and also proclaiming that he would not permit the plaintiff to measure the suit properties and would dispossess him and accordingly the plaintiff had been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the suit properties and other properties were partitioned by Anganna Gounder and his four sons including the plaintiff and the defendant by way of a registered partition deed dated 10.12.1982 and the suit property and other properties which are the subject matter of the abovesaid partition are settled at various locations and have different values and therefore, the father and the four sons had mutually agreed that the properties situated in prime areas should be sold first and the sale proceeds should be shared equally among the four sons and in the abovesaid partition, the lands in S.F.No.202 at Thirumalampalayam village were allotted to the defendant and the other two brothers Krishnasamy and Kumarasamy and the said lands were sold in the year 1992 and the sale proceeds were divided equally amongst the plaintiff, the defendant and the other two brothers, even though, the plaintiff was not entitled to a share in those lands. The receipt in connection with the same was signed on 07.11.1992 by the deceased Anganna Gounder and his four sons and in the abovesaid partition, 1.97 acres in S.F.No.24 at Pichannoor village, which included the suit property was allotted to the plaintiff and accordingly, the plaintiff had duly agreed that he would divide the 1.97 acres in S.F.No.24 equally amongst himself and the three brothers including the defendant as he had been given a share in the sale proceeds of the lands in S.F.No.202 at Thirumalampalayam village and accordingly on 07.11.1992, the deceased Anganna Gounder had divided the 1.97 acres in S.F.No.24 at Pichannoor village equally amongst the four sons and the four sons are in

possession and enjoyment of the suit property and accordingly, the defendant is in possession and enjoyment of his $\frac{1}{4}$ share i.e., 50 cents in the 1.97 acres which is situated adjacent to the lands belonging to the defendant and accordingly, the plaintiff is not entitled to lay the suit for permanent injunction by claiming absolute ownership, possession and enjoyment of the entire suit property and the plaintiff has no cause of action to lay the suit and the allegation that the defendant had interfered with his possession and enjoyment is false and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A5 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B6 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present Second Appeal has been laid.

8. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

"Whether the judgment and decree of the first appellate court in granting the relief in favour of the plaintiff is based upon proper appreciation of the evidence, oral and documentary, adduced by the respective parties in the matter and also on the basis of the principles of law governing the same?"

9. It is not in dispute that the suit property and the other properties originally belonged to the deceased Anganna Gounder, the father of the plaintiff, the defendant and Krishnasamy and Kumarasamy. It is also not in dispute that the deceased Anganna Gounder and his four sons had divided the suit property and the other properties amongst themselves by way of a partition deed dated 10.12.1982 and the certified copy of the abovesaid partition deed has been marked as Ex.A1. On a perusal of Ex.A1, it is seen that the extent of 1.97 acres in S.F.No.24 at Pichaanor village had been allotted to the plaintiff's share together with the other properties as set out in the partition deed. Even in the written statement, the defendant had admitted that the abovesaid property had been allotted to the plaintiff's share. Furthermore, the defendant during the course of his

evidence, has admitted that after Ex.A1 partition, no other property had been left to be divided amongst the sharers as abovestated and also admitted clearly that under Ex.A1 partition deed, the plaintiff had been allotted 1.97 acres and the brother of the parties namely Kumaramsamy who has been examined as D.W.3 has also during the course of his evidence, admitted that as per the shares allotted to the sharers under Ex.A1 partition deed, they had been cultivating their respective shares and also admitted that as per Ex.A1 partition deed, 1.97 acres had been allotted to the plaintiff. Therefore, from the abovesaid admission putforth by the defendant in the written statement as well as during the course of evidence, it is seen that, the extent of 1.97 acres in S.F.No.24 had been allotted only to the share of the plaintiff and accordingly, it is seen that the sharers had been thereafter enjoying their respective properties allotted to them under the partition deed and in such view of the matter, as rightly determined by the first appellate court, when the plaintiff's entitlement to the suit property comprised in the abovesaid 1.97 acres in S.F.No.24 has been clearly admitted, both in the written statement as well as during the course of evidence by the defendant, in such view of the matter, there is no need for the plaintiff to seek the declaration of title to the suit property, as such, as now sought to be projected by the defendant's counsel. In the light of the abovesaid position, the contention of the defendant's counsel that the suit laid by the plaintiff simplicitor for the relief of permanent injunction without seeking the relief of declaration of title to the suit property is not maintainable, as such, cannot be countenanced. In this connection, the principles of law outlined in the decisions relied upon by the defendant's counsel reported in 2008 (4) SCC 594 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and others], as well as reported in 2012 (6) CTC 892 [Syed Dhashakeer Vs. Navab John], 2015 (3) MWN (Civil) 36 [G.Balakrishnan and another Vs. K.Jayalakshmi] and 2017 (3) MWN (Civil) 68 [State of Tamil Nadu by the District Collector, Salem and others Vs. T.Krishnasamy Chettiar (deceased) and others] relied upon by the plaintiff's counsel are taken into consideration and followed as applicable to the case at hand.

10. Therefore the only point that remains for consideration is whether the plaintiff is entitled to obtain the relief of permanent injunction as prayed for. The plaintiff's case is being resisted by the defendant on the footing that under the partition made by way of Ex.A1, the parties had mutually agreed that the valuable lands allotted to the sharers should be sold and the sale proceeds should be shared equally amongst themselves and accordingly it is stated by the defendant that the lands in S.F.No.202 at Thirumalampalayam allotted to the defendant and his other two brothers namely Krishnasamy and

Kumarasamy had been alienated and the sale proceeds had been equally shared amongst the four sons of Anganna Gounder and accordingly, it is stated that in view of the same, the plaintiff had agreed to divide the 1.97 acres of land in S.F.No.24 at Pichanoor village equally amongst the four sons of the deceased Anganna Gounder and accordingly it is the case of the defendant that he has been in the possession and enjoyment of 50 cents in S.F.No.24 of Pichanoor village and therefore, it is his case that the plaintiff cannot claim any exclusive ownership of the abovesaid property as well as the exclusive possession and enjoyment of the said property and therefore, the suit laid by the plaintiff is liable to be dismissed. For the abovesaid defence version, it is seen that the defendant would rely upon the receipt dated 07.11.1992 marked as Ex.B1. When it has been admitted clearly that the deceased Anganna Gounder and his four sons had divided the suit property and the other properties in all amongst themselves by way of Ex.A1 partition deed and there is no other property left to be divided among the abovesaid sharers, it does not stand to reason as to how come thereafter the parties had agreed to further divide the properties allotted to their respective shares as such, has not been clearly made out by the defendant. In the written statement, the defendant has pleaded that the parties had mutually agreed that the properties situated in prime areas should be sold first and the sale proceeds should be equally shared among the four sons. However as to when such an agreement had been entered into, whether it is made orally or in writing etc., there are no proper pleas put forth in the written statement. Now, as per the written pleas, it is stated that the lands in S.F.No.202 of Thirumalampalayam village were sold and the sale proceeds were equally shared amongst the four sons and in this connection, Ex.B1 receipt was recorded. However, as rightly found by the first appellate court, on a perusal of Ex.B1 receipt, it only recites that the parties should divide the land in S.F.No.24 of Pichanoor village and there is no recital contained therein that by way of the abovesaid receipt, the parties had divided the abovesaid property into equal shares and that each had been allotted a particular share in the abovesaid property. Therefore, when Ex.B1 being a xerox copy and when there is no proper explanation on the part of the defendant as to the non-production of the original document and though the defendant would plea that the original is available with the plaintiff, however when no requisition has been made by the defendant calling upon the plaintiff to produce the original of the same in the manner known to law, as rightly determined by the first appellate court, by way of Ex.B1 receipt, it cannot be construed that the parties thereto had mutually agreed to divide the property situated in S.F.No.24 of Pichanoor village equally as sought to be projected by the defendant. When it is not pleaded by the defendant that by way of Ex.B1 receipt, the

parties had chosen to divide the abovesaid property in equal shares and if that be so, Ex.B1 being a xerox copy and considering the nature of the said document, when by way of the same, the parties cannot be allowed to divide the properties described therein as per law, in such view of the matter, it is seen that the case of the defendant that on the basis of the mutual arrangement entered into between the parties subsequent to Ex.A1 partition deed, the property in S.F.No.24 had come to be divided amongst the four brothers later, as such cannot be countenanced. Furthermore, when Ex.B1 is not shown to be a legally and validly enforceable document evidencing the claim of partition of the property lying in S.F.No.24 as put forth by the defendant, as rightly determined by the first appellate court, based on Ex.B1 receipt, the case of the defendant that the four brothers had mutually agreed to divide the property in S.F.No.24 on an arrangement/understanding, as pleaded, cannot be accepted in any manner.

11. In this connection, the defendant during the course of his evidence has admitted that there is no recital in Ex.A1 partition deed that the parties had agreed to sell the valuable lands and divide the sale proceeds equally. In such view of the matter, when the four sons of Anganna Gounder had chosen to divide the properties belonging to them by metes and bounds by way of Ex.A1 partition deed and when thereafter no other property is available for partition to be divided amongst them, as admitted by the defendant himself and when Ex.B1 does not recite that thereby the parties had divided the property in S.F.No.24 amongst themselves and even assuming for the sake of arguments that such a recital is available, the abovesaid document being the xerox copy and not a registered document as per law, the case of the defendant that pursuant to the same, the parties had divided the property lying in S.F.No.24 in equal shares, as such, cannot be legally countenanced.

12. Furthermore, the plaintiff has pleaded in the plaint that out of 1.97 acres in S.F.No.24 allotted to him under Ex.A1, he had sold the extent of 88 cents to one Mohana Devi by way of a sale deed dated 24.11.2006. The said fact has not been controverted by the defendant. Even during the course of evidence, the defendant has admitted that the plaintiff has alienated 88 cents in the year 2006 and that he is aware of the same. Similarly, the brother examined as D.W.3 has also, during the course of evidence, admitted that the plaintiff had alienated 88 cents of land to one Mohana Devi during 2006 and that he is aware of the same and no one had objected to the abovesaid sale effected by the plaintiff. In the light of the above position, when the sharers of Ex.A1 partition deed, had, pursuant to the partition, been enjoying their respective shares absolutely as admitted by the defendant and his witnesses and

furthermore in exercise of his right to the properties allotted to him under the partition deed, when it is noted that the plaintiff had alienated a portion of the properties allotted to him to one Mohana Devi and the said fact is also admitted and effected to the knowledge of the defendant and the other brothers and admittedly no one had objected to the same, in such view of the matter, the case of the defendant that the parties had mutually agreed to effect the division of 1.97 acres in S.F.No.24 equally amongst themselves, subsequent to Ex.A1 partition deed, cannot at all be accepted in any manner and in such view of the matter, the mere reliance placed by the defendant upon Ex.B1, as above discussed, would not in any manner be useful to sustain his case. As rightly determined by the first appellate court, when the father and the four sons had chosen to divide the properties belonging to them by metes and bounds in all aspects by way of Ex.A1 partition deed and thereafter the parties had been enjoying their respective shares independently, thereafter, the father Anganna Gounder also would not be entitled or competent to divide the property further which had been allotted to the plaintiff's share, as sought to be made out by the defendant. In such view of the matter, the first appellate court is found to have correctly analysed the validity of Ex.B1 receipt and finding that the same cannot be given any legal sanctity for accepting the case of the defendant that the property in S.F.No.24 had been divided amongst the four brothers and on the other hand, when to the knowledge of the defendant and the other brothers, the plaintiff had been exercising absolute ownership over the said property and also had alienated the portion of the same to the third party to the knowledge of one and all and when no objection has been raised with reference to the same by any one, in such view of the matter, the claim of the defendant that he owns a share in S.F.No.24 of an extent of 50 cents by way of the mutual arrangement entered into between the parties sans any acceptable and reliable material pointed to the same cannot be countenanced. It is thus found that the first appellate court had rightly analyzed the materials placed on record by the respective parties and found that the defendant had miserably failed to establish that he is entitled to a share in the property lying in S.F.No.24 of Pichanoor village.

13. Admittedly, the suit property had been allotted to the share of the plaintiff under Ex.A1 partition deed. It has also been admitted that the sharers of Ex.A1 partition deed had been thereafter enjoying their respective shares independently. Furthermore, the plaintiff had also alienated a portion of the property allotted to his share as above discussed. No one had objected to the same. In such view of

the matter, it is evident that, it is only the plaintiff, who has been in the possession and enjoyment of the suit property as well as the other properties allotted to his share by way of Ex.A1 partition deed and enjoying the same as his own, in all aspects. Accordingly, it is seen that the patta had also come to be issued in favour of the plaintiff, which has been marked as Ex.A3. As rightly determined by the first appellate court, Ex.A3 being a patta, evidencing the claim of possession and enjoyment of the suit property by the plaintiff and contra to the same, when there is no material worth acceptance placed by the defendant to establish his claim of possession and enjoyment of the suit property or any extent in S.F.No.24 of Pichanoor village and when the alleged documents of possession projected by the defendant are found to have emanated after the institution of the suit, it is seen that the first appellate court had correctly not placed reliance upon those documents for recognizing the alleged claim of possession and enjoyment of the portion of the suit property by the defendant. On the other hand, it is seen that Ex.A3 patta had come to be issued in favour of the plaintiff prior to the institution of the suit and as abovenoted, when the plaintiff is admittedly allotted the suit property under Ex.A1 partition deed and the same is in his possession and enjoyment, as also admitted by the defendant as above discussed and accordingly, it is seen that the defendant would not be entitled to disturb the plaintiff's possession and enjoyment of the suit property and on the other hand as averred and put forth by the plaintiff, inasmuch as the defendant had resisted the attempts of the plaintiff in measuring the suit property and thereby interfered with his possession and enjoyment of the same, it is seen that the plaintiff has been necessitated to lay the suit for permanent injunction against the defendant. It is thus found that the first appellate court had rightly determined that the plaintiff has a valid cause of action to institute the suit against the defendant and no interference is called for with reference to the abovesaid finding of the first appellate court.

14. For the reasons aforesated, it is found that the first appellate court on the basis of the proper appreciation of the evidence, both oral and documentary, adduced by the respective parties in the matter and also on the basis of the proper understanding of the principles of law governing the same, had rightly granted the relief in favour of the plaintiff as prayed for. The judgment and decree of the first appellate court in granting the relief in favour of the plaintiff do no warrant any interference. Accordingly, the substantial question of law formulated in the second appeal is answered in favour of the plaintiff and against the defendant.

15.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar
Dated:27/12/2018

*Amended as per letter
dated 06.03.2019

Sd/-
Assistant Registrar (CS-IV)
Dated:09/04/2019
Address to JR(J)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The IV Additional Sub Judge, To be substituted for the
Coimbatore and Appellate Authority, order already despatched
Coimbatore. On 27.02.2019
- 2.The Principal District *Munsif
Coimbatore.

Copy to
The Section Officer,
VR Section,
High Court,
Chennai.(2 copies)

+1cc to Mr.M.Velmurugan, Advocate sr.no.75366
+1cc to Mr.P.Valliappan, Advocate sr.no.75093

S.A.No.387 of 2015
and
M.P.No.1 of 2015

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