

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.70 of 2018

Gnanaprakasam

... Appellant/Plaintiff

Vs

Lazar

.. Respondent/Defendant

PRAYER : This Second Appeal has been filed under Section 100 of Civil Procedure Code, praying to set aside the Judgment and Decree dated 11.04.2017, passed in A.S.No. 16 of 2015 on the file of the Subordinate Judge, Panruti, confirming the Judgment and Decree dated 31.07.2015 passed in O.S.No.333 of 2007 on the file of the District Munsif, Panruti.

For appellant : Mr.R.Venkatajalapathy

J U D G M E N T

The unsuccessful plaintiff is the appellant herein having lost before both the Courts below in a suit filed for declaration of title over the suit property and for consequent decree for permanent injunction.

2. It is stated that the suit property originally belonged to one Rajambal. The suit property was purchased by the plaintiff's father, jointly from the said Rajambal on 10.03.1947, which is marked as Ex-A1 (Sale deed). The plaintiff's father and defendant are the brothers. It is stated that though originally they have been enjoying it commonly, there was an oral partition between them dividing the property equally. It is stated that as per the oral partition, the Northern side of 0.87 Cents was allotted to the defendant and the Southern side of 0.87 cents was allotted to the plaintiff's father. Though it is stated that the said division was about 50 years back and from then they have been enjoying it independently, the plaintiff had not produced any document to substantiate his claim of possession. The plaintiff himself got the property transferred in his name by way of a registered sale deed dated 26.10.2006. As there was disturbance and denial by

the defendant, the suit was filed.

3. The joint purchase dated 10.03.1947 is admitted by the defendant. The defendant has specifically stated that the division of the property was not equal, as only 42.5 ares was divided and entire 0.87 cents was not divided into pieces and allotted. The remaining extent was given to the plaintiff's father at a different place, and the plaintiff's father had already sold the same to the third parties. Therefore, the claim of the plaintiff was stoutly denied by the defendant.

4. Before the Trial Court, the plaintiff examined himself as PW-1 and three more witnesses were examined as PW-2, P.W-3 and P.W-4 and Exs.A1 to A3 were marked. On the side of the defendant, the defendant examined himself as DW-1 and Exhibits B1 to B9 were marked.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

6. The Courts below have concurrently held that the plaintiff is not entitled to the decree as prayed for. The witnesses examined on the side of the plaintiff, have only spoken about the purchase in Sale Deed-Ex-A1. However, there is no evidence for the oral partition as alleged by the plaintiff. The witnesses have specifically pleaded ignorance about the alleged oral partition, whereas the defendant / respondent had stated that 1.74 acres purchased under Ex-A1, was not divided equally between the parties and it is only 1.02 acres that was divided into two portions. The balance of the said 0.36 cents to be allotted to the plaintiff's father, was given in a difference place and the same was sold by the plaintiff's father long ago. Thus, the plaintiff had not established his case for granting a decree in his favour for declaration of title of 0.87 cents in Survey No.190/10 with substantial evidence. It is contended by the learned counsel for the appellant that Ex.B-15 is the joint patta in the name of the plaintiff and defendant. However, the defendant had specifically established that Survey No.190/10 is in his possession. Considering Exs.B7 and B8, which are Adangal extracts and also Ex.B-13 and B-14, which are Kist receipts standing in the name of the defendant, the Courts below have found that the possession is only with the defendant and non-suited the plaintiff. As there is no infirmity in the findings of the lower appellate Court and in the absence of any substantial question of law, this Court finds no reason to interfere with the same.

7. Accordingly, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Panruti,
2. The District Munsif, Panruti.
3. The Section Officer,
VR Section, High Court, Madras

+lcc to Mr.R.Venkatajalapathy, Advocate, S.R.No.7703

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KJI(CO)
CS/26/02/18