

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.586 and 1636 of 2008

Selvarayar ..Appellant in both the Appeals
Plaintiff/Appellant in both the appeal
Vs.

1.Periyanayagam
2.Anthonisamy
3.Saminathan

..Respondents in S.A.No.586 of 2008/
Defendants/Respondents in S.A.No.586/2018

1.Periyanayagam
2.Anthonisamy

..Respondents in S.A.No.1636 of 2008/
Defendants/Respondents in S.A.No.1636/2018

COMMON PRAYER: Second Appeal filed under Section 100 of C.P.C., against the common judgment and decree of the learned Additional Subordinate Judge of Vriddhachalam in A.S.Nos.54 of 1999 and 55 of 1999 dated 22.08.2003, preferred against the common judgment and decree of the learned Principal District Munisf of Vriddhachalam in O.S.No.22 and 1481 of 1988 dated 13.10.1999.

For Appellant : Mr.V.Anand
in both Appeals
For Respondents : Mr.R.Suryakumaran
in both Appeals
for M/s.D.Shivakumaran

C O M M O N J U D G M E N T

These two appeals arise out of the common judgment of the appellate Court viz., Sub-Court, Vriddhachalam made in A.S.Nos.54 and 55 of 1999.

2. The said appeals were filed by the plaintiff/ appellant challenging the dismissal of the suits in O.S.Nos.22 of 1988 and 1481 of 1988. In both the suits the plaintiff had sought for declaration of his title and consequential injunction restraining the defendants from interfering with his possession, in the alternative, for recovery of possession of the suit properties.

3. In O.S.No.22 of 1988, the plaintiff sought for a declaration of title to three items of the properties. Insofar as the suit 1st item is concerned he had claimed title on the basis of his long possession, so far as the items 2 and 3 are concerned he claimed title on the basis of a oral partition said to have been entered into between the parties. As regards the sole item in O.S.No.1481 of 1988, the plaintiff claims title by virtue of the purchase under the sale deed dated 19.12.1974.

4. The defendant resisted the suit contending that none of the properties belong to the plaintiff absolutely. According to the defendants 1 and 2, who are brothers of the plaintiff, all the properties were subject matter of partition and at the partition specific extents of properties were allotted to various parties and they have been in enjoyment of the properties on the basis of such partition, the Revenue records have also been mutated based on their enjoyment. The 3rd defendant in O.S.No.22 of 1988 filed a separate written statement substantially supporting the case of defendants 1 and 2.

5. The trial Court framed the relevant issues and accepted the case of partition pleaded by the defendants. Though, the extent claimed by the plaintiff was larger, the trial Court found that as per the partition his entitlement is of a lesser extent. Upon the said finding, the learned trial Judge dismissed both the suits.

6. Aggrieved, the plaintiff preferred appeals in A.S.No.54 and 55 of 1999. The lower appellate Court allowed the appeals in part granting declaration of title in respect of 4 cents only in 1st item in O.S.No.22 of 1988, 64 cents and 27 cents in item Nos.2 and 3 in O.S.No.22 of 1988. Insofar as the sole item of property in O.S.No.1418 of 1988, the lower appellate Court found that the plaintiff is entitled to 96 cents as per the partition and granted a decree for declaration and injunction in respect of the said extents only. Aggrieved, the plaintiff has come forward with the above appeals.

7. I have heard Mr.V.Anand, learned counsel appearing for the appellant and Mr.R.Suryakumaran, learned counsel appearing for the respondents.

8. Notice of admission was ordered by this Court on 25.04.2008. The findings regarding partition that is said to have taken place in the family is that the properties were divided equally among the brothers. The Revenue Records filed in the form of Exs. A2 to A31 also evidence such partition having taken place amongst the family members. Though, the plaintiff

would claim that larger extent has been allotted to him in the said partition in O.S.No.22 of 2008, the Courts below had, on appreciation of the evidence in the form of Revenue Records, as well as oral evidence of the witnesses, come to the conclusion that the partition was equal and the plaintiff was entitled to only a lesser extent of property than what he has claimed. Though, the trial Court dismissed the entire suit after accepting the evidence relating to partition, the lower appellate Court had granted a decree for actual area which is found to be allotted to the plaintiff and in his enjoyment.

9. Despite best efforts Mr.V.Anand, learned counsel for the appellant is unable to project any question of law much less than a substantial question of law arising for consideration in these appeals.

10. I have considered the entire evidence on record, the Courts below particularly the lower appellate court after considering the entire evidence has come to a factual conclusion that the partition was equal and even though Ex.A1 sale deed with reference to the property which is the subject matter of the suit in O.S.No.1418 of 1988 stood in the name of the plaintiff the same was also subject matter of partition and the plaintiff was allotted only 96 cents in the said property. I do not see any illegality or perversity in the findings of the lower Appellate Court in order to enable this Court to interfere with the factual findings under Section 100 of CPC.

11. In fine, the appeals are dismissed, at the admission stage without being admitted, confirming the judgment of the Lower Appellate Court. However, in the circumstances there will be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

dsa

To

1.The Additional Subordinate Judge, Vriddhachalam.

2.The Principal District Munisf, Vriddhachalam.

3.The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+1cc to Mr.V.Anand, Advocate SR.No.51665

+2cc to Mr.D.Shivakumaran*, Advocate SR.No.51042 & 51043

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GMV (11/10/2018)



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