

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1348 of 2002

1.Kalyani

2.Ramasamy Appellants/LRs of Plaintiff

Vs.

1.Ravi

2.Kannan

3.Vairam Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree made in A.S.No.44 of 1998 on the file of the court of Additional Subordinate Judge, Mayiladuthurai dated 14.12.2001 in confirming the judgment and decree made in O.S.No.870 of 1995 on the file of the court of Principal District Munsif, Mayiladuthurai dated 22.01.1998.

For Appellants : Mr.A.Muthu Kumar

J U D G M E N T

The appellants are the legal heirs of one Vaidyanathan who filed a suit for permanent injunction with regard to three items of the suit property. The lower court granted decree with regard to Item no.2, however, rejected the claim with regard to Item nos.1 and 3, against which, the appellants who are the legal representatives of the said Vaidyanathan/ plaintiff filed appeal before the lower Appellate Court. The lower Appellate Court confirmed the order of the lower Court, against which, the second appeal is filed.

2.During the pendency of the second appeal, the first appellant died on 26.03.2005 and the second appellant, her legal heir, has already appeared in the cause title and the same is recorded. The third respondent in the second appeal died on 03.10.2004. Her legal heirs/ respondents 1 and 2 are already on record. Subsequently, the legal heir/ second respondent also

died on 20.02.2017. However, steps were not taken to bring on record the legal heirs of the deceased second respondent.

3.The plaintiff filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

4.According to the plaintiff, initially, the suit schedule property was purchased in the name of the plaintiff and his brother Mahalingam. Thereafter, on 04.04.1992 there was an oral partition between the plaintiff and his brother Mahalingam by which, 'A' schedule property was allotted to Mahalingam and 'B' schedule property was allotted to the plaintiff. On the strength of the oral partition, the plaintiff filed the suit for permanent injunction.

5.The allegations made in the plaint were totally denied by the defendants in the written statement. According to the defendants, the suit schedule property was purchased by the brother of the plaintiff Mahalingam through his earnings and the same is self-acquired property. The defendants also denied the oral partition between the plaintiff and his brother Mahalingam. According to the defendants, the plaintiff has filed the suit taking advantage of the relationship between them. It is further stated that considering the plight of the plaintiff, the said Mahalingam allowed the plaintiff to run a shop in Item No.2 of the suit schedule property and after the death of the said Mahalingam, the plaintiff has filed the suit seeking permanent injunction. Since the plaintiff is disturbing the peaceful possession and enjoyment of the defendants, the third defendant has filed a suit in O.S.No.852 of 1995 against the plaintiff and has also obtained permanent injunction and there is no appeal as against it and it became final.

6.After trial, the lower Court decreed the suit with regard to Item no.2, however, rejected the claim with regard to Item nos.1 and 3 and the lower Appellate Court also confirmed the order of the court below.

7.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

“(1) When the Courts below have accepted the case of the plaintiffs with regard to second item of the suit property, whether the lower appellate Court not erred in law in holding there was no partition between the

original plaintiff Vaidyanathan and his brother Mahalingam contrary to the evidence of P.Ws.1, 2 and 4?

(2) Whether the lower Appellate Court not erred in law in holding that there are no properties for the defendants and consequently the partition pleaded by the plaintiffs is not true when overwhelming evidence suggest the partition between plaintiffs and defendants predecessor in interest?"

8.The admitted facts of the plaintiff as well as the defendants are that the property is situated in Palaiyur village and the suit schedule property is divided into three Items: Item No.1 is the house property, Item No.2 is the tea stall and Item No.3 is the Punjai Thidal. The relationship between the plaintiff and the defendants is also not disputed. However, the un-registered partition is not acceptable. In order to prove the un-registered partition, the plaintiff examined P.W.4. However, P.W.4 did not speak about the un-registered partition.

9.With regard to Item No.1 of the suit schedule property, on perusal of the Commissioner Report marked as Ex.C1, it is known that the one Kannan as stated by the plaintiff is not residing as tenant instead one Sambandham is residing as tenant. With regard to Item No.2 of the suit schedule property, the plaintiff is running the tea stall as Mahalingam allowed the plaintiff to run a shop and with regard to Item No.3 of the suit schedule property, the plaintiff has not produced any evidence or documents to show that he is in possession of the property. Accordingly, since the plaintiff was running the tea stall in Item No.2 of the suit schedule property with the permission of Mahalingam and since the defendants also did not oppose the same, the lower Court granted injunction with regard to Item no.2. Since the plaintiff did not produce any evidence or documents to show that he is in possession of Item Nos.1 and 3 of the suit schedule property, the lower Court rejected the claim with regard to Item nos.1 and 3

10.On perusal of entire documents, it is seen that the suit schedule properties stand in the name of Mahalingam and there is no partition inbetween them. In the absence of any registered partition, the plaintiff claiming the relief with regard to Mahalingam's property is not sustainable. The suit schedule properties are in exclusive possession of the defendants.

11.In view of the above, I do not find any error in the concurrent findings of the Courts below. Accordingly, the substantial questions of law are answered against the appellants

and the second appeal is dismissed. The judgment and decree made in A.S.No.44 of 1998 on the file of the Court of Additional Subordinate Judge, Mayiladuthurai dated 14.12.2001 confirming the judgment and decree made in O.S.No.870 of 1995 on the file of the Court of Principal District Munsif, Mayiladuthurai, dated 22.01.1998 is confirmed. No costs.

s/d-
Assistant Registrar(CS VII)

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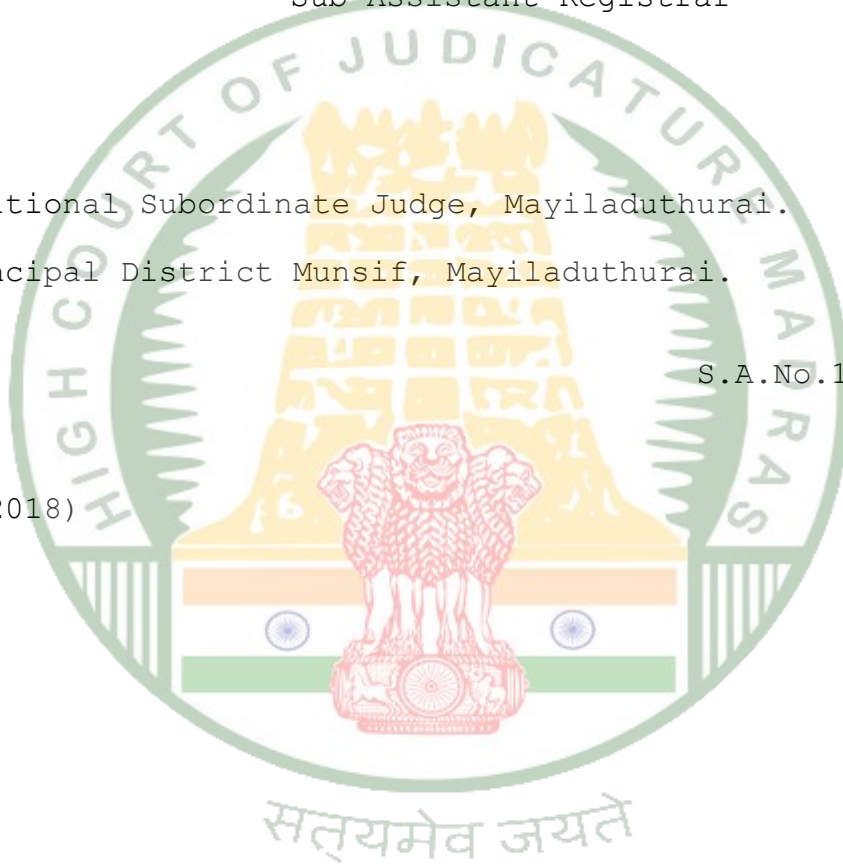
Sub-Assistant Registrar

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To

- 1.The Additional Subordinate Judge, Mayiladuthurai.
- 2.The Principal District Munsif, Mayiladuthurai.

S.A.No.1348 of 2002

NMI (CO)
SP(20/02/2018)



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