

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2018
PRONOUNCED ON : 05.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2313 of 2004

Sambandam Pillai ... Appellant/Defendant/Appellant

Vs.

Chinnamani Pillai ... Respondent/Plaintiff/Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.07.2004 made in A.S.No.31 of 2004 on the file of the court of District Judge, Nagapattinam in confirming the judgment and decree in O.S.No.48 of 2002 dated 08.01.2004 on the file of the court of Additional Subordinate Judge, Mayiladuthurai.

For Appellant : Mr. A.Muthukumar
For Respondent : Mr. R. Shivakumar
for M/s. K.M.Vijayan Associates

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 22.07.2004, passed in A.S.No.31 of 2004, on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 08.01.2004, passed in O.S.No.48 of 2002, on the file of the Additional Subordinate Court, Mayiladuthurai.

2. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the lower appellate Court erred in law in holding that the plaintiff is entitled for partition of the suit property when he was admittedly 18 years old at the time of purchase and had no sufficient income?

2. Whether the suit is bad for partial partition?

3. When the plaintiff had in his evidence admitted that he was allotted to a tea stall business, viz., "Saraswathy Tea Stall" by the defendant in the year 1978-79 and acquired properties out of the said business whether the lower appellate Court not erred in law in holding that there was no prior partition?"

3. Claiming that the suit property is the joint property belonging to the plaintiff and his brother, the defendant, by way of a sale deed dated 21.03.1966, according to the plaintiff, he is entitled to half share in the suit property and inasmuch as the defendant had failed to effect partition and allot his due share in the property despite several requests and also the issuance of notice, it is stated that he has been necessitated to lay the suit for partition.

4. Per contra, the defendant has taken a plea that though the suit property had been acquired jointly in the name of the plaintiff and the defendant, the plaintiff being only 14 years at the time of the abovesaid sale deed, there is no question of the plaintiff contributing any amount for the acquisition of the said property and the suit property had been acquired only by the defendant out of his own earnings from the tea shop and further, it is contended by the defendant that during 1978-79, an oral partition had been effected between the plaintiff and the defendant, whereunder, the defendant had been allowed to take the suit property in entirety and in lieu thereof the defendant had purchased the other properties at Moovalur village in the name of the plaintiff and also, it is the case of the defendant that it was he, who met the educational expenses of the plaintiff's eldest son and the plaintiff, suppressing the abovesaid facts, had come forward with the suit and therefore, it is contended that in case the plaintiff demands partition, all the properties should be included and hence, the suit is bad for partial partition and therefore, it is stated that the suit is liable to be dismissed.

5. The plaintiff and the defendant are brothers. Admittedly, the suit property has been acquired jointly in the name of the plaintiff and the defendant by way of a sale deed dated 21.03.1966. Thus, it is found that the plaintiff and the defendant would be entitled to equal share in the suit property. However, it is the case of the defendant that the suit property had been acquired only by him and the plaintiff, at that point of time, was only aged about 14 years and therefore, he would not have contributed any sum for the acquisition of the suit property and hence, it is urged by the defendant that the suit property belongs exclusively to him. However, when there is no

material placed on record as such to hold that the defendant had independently acquired the suit property, merely because the plaintiff at that point of time was a minor, that by itself would not lead to the conclusion that the suit property exclusively belongs to the defendant. As rightly determined by the first appellate Court, when the sale deed in respect of the suit property is found jointly in the name of the plaintiff and the defendant, it has to be presumed that the same had been acquired only for the benefit of the plaintiff and the defendant, unless materials contra to the same are projected. However, there is no such material placed by the defendant to take a different view.

6. Now, according to the defendant, in the oral partition effected during 1978-79, he had been allowed to take the suit property in entirety and instead the plaintiff had been given the other properties purchased in his name at Moovalur village and therefore, it is contended that the plaintiff is not entitled to seek partition and if at all the plaintiff demands partition, all the properties should be included in the suit and hence, the suit laid by the plaintiff is bad for partial partition. However, as rightly determined by the Courts below, there is no material placed to evidence the factum of oral partition between the plaintiff and the defendant as alleged and further, there is no material to show that the defendant had purchased the other properties in the name of the plaintiff and the same had been allowed to be enjoyed by the plaintiff in lieu of the suit property given to the defendant. When the abovesaid case of the defendant is not buttressed by any acceptable and reliable material, it is found that the Courts below had rightly negatived his said case and granted the relief of partition as prayed for by the plaintiff.

7. That apart, there is no material placed on the part of the defendant to show that he had been in the absolute possession and enjoyment of the suit property to the exclusion of the plaintiff. When it is found that the parties are brothers and also noted that both had been engaged in the tea business and accordingly, as rightly put forth by the plaintiff's counsel, the plaintiff also having been engaged in the tea business, accordingly it is noted that the parties had decided to acquire the suit property jointly in their name and such being the position, it is found that as rightly put forth by the plaintiff, he would be entitled to claim half share in the suit property.

8. As above noted, the defendant has not taken any specific plea to show that he had been enjoying the suit property to the exclusion of the plaintiff by ousting him and prescribed title to the suit property by way of adverse possession and that apart, with reference to the same, there is no material forthcoming on the part of the defendant. In addition to that,

the claim of the defendant that it was he, who had provided the assistance for meeting the educational expenses of the plaintiff's eldest son and it is he, who had acquired the other properties in the plaintiff's name etc., not being borne out by any material and accordingly, it is found that the defence version projected by the defendant has no legs to stand and rightly disbelieved by the Courts below.

9. In the light of the above discussions, it is found that the Courts below are justified in upholding the claim of partition prayed for by the plaintiff and it is further noted that the suit is not bad for partial partition, as there is no material to hold that the parties own joint properties in common other than the suit property. Accordingly, the substantial questions of law formulated in the second appeal are answered against the defendant and in favour of the plaintiff.

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

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

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To

1. The District Judge,
Nagapattinam.
2. The Additional Subordinate Judge,
Mayiladuthurai.
3. The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+1cc to Mr.A.Muthukumar, Advocate SR.No.43495
+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.43413

S. A.No.2313 of 2004

EV (CO)
GN (06/08/2018)