

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.795 of 2016

and

C.M.P.Nos.15070 and 15071 of 2016

1. Chinnusamy @ Chinna Gounder
2. Chandrasekaran
3. Subramaniyan .. Appellants/Defendants 1 to 3/Appellant

Vs

1. Palanisamy ..Respondent / plaintiff
2. Nachammal
3. Thangammal
4. Jayaraman
5. Periyasamy
6. Jayachitra
7. Roja .. Respondents/ Defendants 4 to 9/
Respondents 2 to 7

PRAYER : This Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 17.03.2015 made in A.S.No.35 of 2014 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 17.04.2014 made in O.S.No.280 of 2010 on the file of the Subordinate Court, Namakkal.

For appellant : Mr.T.Dhanyakumar

For Respondent: Mr.P.Valliappan

J U D G M E N T

The defendants 1 to 3, aggrieved by the concurrent findings of the Courts below, have preferred the above Second Appeal.

2. The plaintiff is the first respondent herein. The suit is filed by the plaintiff for partition and for separate possession. Admittedly, the suit properties are ancestral in nature. One Muthusamy is the father of the first defendant and the plaintiff. The fourth defendant and one Papayee, who are the sisters of the plaintiff predeceased their father. The defendants 2 and 3 are the sons of the first defendant. The defendants 5 to 9 are the children of the said Papayee.

3. The plaintiff and defendants 1 to 3 are jointly paying the land revenue, house tax etc. in respect of the suit properties. According to the plaintiff, after the death of the Muthusamy, in a notional partition, the properties being ancestral, would devolve upon the first defendant and the plaintiff along with the father, each getting 1/3 share. The share of the father, namely, 1/3 share will once again be divided between his heirs, namely, the first defendant, plaintiff, the fourth defendant and defendants 5 to 9 together ($\frac{1}{4}$ of $\frac{1}{3} = \frac{1}{12}$). The plaintiff and the first defendant get each $\frac{5}{12}$ share. The fourth defendant gets $\frac{1}{12}$ share and the defendants 5 to 9 together get $\frac{1}{12}$ share.

4. The appellants / defendants had admitted the nature of the property as ancestral and also the division of shares of the properties as correct. However, the first defendant has pleaded that there was a oral partition between the plaintiff and the defendants on 20.04.1996 and claimed that certain properties were divided in the partition between them. Pursuant to which, he made improvements in the properties by expending huge money. The Courts below have concurrently held that there is no oral partition on 20.04.1996 as alleged by the first defendant. The further case of the first defendant is that though he paid a sum of Rs.5,50,000/- to get stream water connection to the first item of the suit property, the same was not proved. The Courts below have also relied upon the evidence of P.W-3, who is the sister of the plaintiff and the first defendant, and held that there was no partition on 20.04.1996 as alleged by the first defendant. P.W-3, being the Sister of the plaintiff and the first defendant, her evidence was believed by the Courts below and the plea of oral partition by the first defendant was dismissed.

5. In the absence of any prior partition and in the light of the admission made by the appellant / first defendant that the suit properties are ancestral in nature, the division made by the trial Court and the preliminary decree passed based on the same is correct and the same need not be interfered with. In such circumstances, this Court finds no question of law, much less, substantial question of law for consideration in this Second appeal.

6. Accordingly, the Second appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

srn
To

- 1.The Principal District Judge, Namakkal,
- 2.The Subordinate Judge, Namakkal.

Copy to

The Section Officer,
V.R.Section, High Court, Madras

+1cc to Mr.T.DHANYAKUMAR, Advocate, S.R.No. 9563
+1cc to Mr.P.VALLIAPPAN, Advocate, S.R.No. 9650

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SSI (CO)
TR(09/03/2018)

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