

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.796 of 2001

1.Lalitha(deceased)
2.Sasikala
3.Muruganantham (deceased)
4.M.Devi
5.Minor. Thirunavukkarasu ... Appellants
(Rep. By his mother & natural guardian)

Appellants 4 & 5 brought on record as LR'S
of the deceased 1st Appellant & 3rd Appellant
order dated 25.01.2018 made in
CMP.18732 to 18737 in SA.796 of 2001.

Vs.

1.Kamalam
2.Visalakshmi
3.Saraswathi
4.Arumugham(a lunatic)
Rep.By court-guardian R.Ramalingam,Advocate
5.Santha
6.Janakiammal
7.Patti Chettiar
8.Khaja Hussain
9.Thayammal
10.Nagalakshmi
11.Sivarama Krishnan
12. Raghupathi
13. Rajendran ... Respondents

PRAYER:

The Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 31.10.2000 in A.S.No.199/1998 on the file of the II Additional District Judge, Coimbatore, confirming the Judgment and Decree dated 17.07.1998 in O.S.No.1685/1984 on the file of the Principal District Munsif Court, Coimbatore.

For Appellants : Mr. K. Selvaraj
For Respondents : No appearance (for R1 to R3)

Dismissed (for R4)
vide court order dt 11.09.2014

Given up (for R5 to R8)

M/s.Mythili Suresh for
M/s.Sarvabhauman Associates
(for R9-R13)

J U D G M E N T

The unsuccessful plaintiffs, who lost the case before the lower courts have filed this second appeal.

2. The appellants/plaintiffs had filed the suit seeking partition. The first defendant is the mother and others are brothers, sisters and tenants. After elaborate discussion and on perusal of the available materials on record, the courts below dismissed the suit, against which, the present Second Appeal is filed.

3. The averments contained in the plaint, in brief, are as follows:

a) The first defendant is the wife of late Thellapindi Nagi Chettiar and the plaintiffs and the other defendants are the sons and daughters of the said Thellapindi Nagi Chettiar. The suit schedule properties were the self acquisition of him by virtue of sale deeds dated 05.03.1941 and 04.07.1941. The said Thellapindi Nagi Chettiar had two wives, through first wife, he had two children viz., N.Masiappa Chettiar and N.Rangasamy Chettiar. There was a partition effected between first wife son and Thellapindi Nagi Chettiar in the year 1948. A portion of the property purchased by him was allotted in favour of his two sons and Thellapindi Nagi Chettiar retained the suit schedule property as his share through partition deed with registration No.3015/48 dated 20.08.1948.

b)After the partition, the Thellapindi Nagi Chettiar was in absolute possession and enjoyment of the property till his death on 02.10.1957. The suit property, after the death of Thellapindi Nagi Chettiar have been in the joint possession and enjoyment of the legal heirs Nagi Chettiar by leasing out portions and by personally occupying the remaining property. The plaintiff's brother one Jayaraman had executed release deed in favour of the plaintiffs and the defendants 1 to 7 by means

of a registered document. The defendants 8 to 10 have advanced loans and they are continuing occupation of portion of the property in lieu of the interest. The defendants 3,4,5,7 are sisters and they have been provided adequate sreeethana at the time of their marriage and they are well settled in their life. The said defendants expressed their willingness not to claim any share in the property and they would execute necessary documents in the appropriate time. Conforming to the promise made by the female members, the property was agreed to be partitioned among the plaintiff, defendants 1, 2 & 6 and they are residing in specific portions.

c) As per the original partition, the plaintiff and defendants 1,2 & 6 are in possession and enjoyment of the same. They have been assessed for the property tax by the Coimbatore Municipal Corporation and the plaintiff is also paying the property tax. Thereafter, the parties agreed to execute a pakka partition deed and register the same. But the second defendant is postponing the execution and registration of a regular partition under some pretext or other. Thereafter, the second defendant evaded the earlier promise and obtained patta in his favour. Admittedly, the suit properties are poramboke lands and the second defendant has been causing disturbance of the peaceful possession and enjoyment of the property and issued a legal notice dated 19.02.1984 to the plaintiff and requested him to vacate the premises on the ground that the plaintiff occupy the portion as a tenant. Consequent to the legal notice, the second defendant had initiated rent control proceedings against the plaintiff, against which, the present partition suit is filed claiming one-fourth share in the suit property.

4. The averments contained in the written statement, in brief, are as follows:

a) The defendants denied the allegation made in the plaint. The suit property is the Government poramboke land and by the sale deed referred to in para 2 of the plaint Nagi Chettiar acquired no title. In fact, Nagi Chettiar realised this fact after the partition in 1948 and filed a suit for reopening of partition and allot him, share in the property situated north of the suit property in O.S.No.187/1950 on the file of District Munsif Court, Coimbatore.

b) The suit was decreed and he got a share in the northern side of the property. The suit schedule property is excluded from the partition since the suit property is a poramboke land. Nagi Chettiar was not in possession of the suit property even at that point of time. Till his death, there was no superstructure over the poramboke land. The second defendant

alone has put up the superstructure at his cost on the poramboke land. Thereafter, he has been paying penalty to the Government for several years.

c)The plaintiff seems to have concocted document gradually in order to claim right over the suit property which belongs to the second defendant alone. There has been no partition of the suit property at any time and there is no necessity to do so since neither the plaintiff nor the other brothers have any right over the suit property. Any document purport to create in right over the Government land will have no effect.

d)The partition suit is a counter blast to the Rent Contral proceedings initiated by the defendants in RCOP.No.127/1984. Already the second defendant has initiated rent control proceedings against the plaintiff on the ground of default of payment of rent. Accordingly the second defendant issued the legal notice to the plaintiff to vacate the portion in his possession. Aggrieved by the same, the present partition suit is filed.

5. After framing issues, elaborate trial and on perusal of the documents, the lower court dismissed the suit. On appeal, the lower appellate court has also confirmed the dismissal order as against the concurrent findings, the present second appeal has been filed.

6. At the time of admission, this court has framed the following substantial question of law:

"Whether the courts below are right in dismissing the suit for partition on the ground that the suit should have been filed for specific performance where there was no partition even according to the defendants?"

7. Learned counsel for the appellant would submit that admittedly the plaintiff is in occupation of the suit premises and he is paying the house tax to the local bodies. In order to prove his possession, the plaintiff has filed the property tax assessment issued by the Corporation in the name of the plaintiff and the defendants. Accordingly, the suit properties are common properties of plaintiff and defendants. Originally, the property stands in the name of Nagi Chettiar and thereafter, the plaintiff and the defendants have been enjoying the property. Since the second defendant has issued a legal notice claiming the property and thereby the appellants/plaintiffs have filed a suit for partition claiming one-fourth share in the suit property. However, the lower court

and the lower appellate court have erroneously arrived at a conclusion that the suit properties are the poramboke lands and hence, the appellants/plaintiffs have no right to seek for partition.

8. Per contra, the learned counsel for the respondents/defendants would submit that admittedly, there was a partition between the first defendant husband Nagi Chettiar and his first wife sons and other properties including the suit properties were divided between Nagi Chettiar and two sons. After realising the suit property as a Government poramboke land, the property was excluded from partition. Accordingly, Nagi Chettiar filed a suit for re-opening of partition. The District Munsif Court, Coimbatore, in the year 1950 has reopened the partition suit and suit property was excluded. Thereafter, the suit property was in occupation of the second defendant and he is enjoying the property. Thereafter he put up construction and a portion of the property was leased out in favour of the plaintiffs. Due to non-payment of rent on the part of the plaintiffs, the second defendant has filed RCOP.No.127/1984, against which, the partition suit is filed.

9. After elaborate trial and after framing issues, the lower court has arrived at a conclusion that the suit properties are the Government properties and they does not belongs to Nagi Chettiar or joint family. Therefore, the suit was dismissed and the same was confirmed by the lower appellate court. The well considered concurrent findings need not be interfered with the second appeal. Accordingly, he prayed for dismissal of the second appeal.

10. On perusal of material records, it is seen that Nagi Chettiar had two sons. The first wife sons are N.Masiappa Chettiar and N.Rangasamy Chettiar and second wife's son is plaintiff and one Duraisamy Chettiar. During pendency of the suit, Rangasamy Chettiar died and his legalheirs are impleaded as plaintiffs 2 to 4 as per order in I.A.No.1741/1991 and defendants 1 and 2 also died and their legal heirs are impleaded as defendants 11 to 15 as per order in I.A.No.853/1990. Infact, there was a partition in between Nagi Chettiar and first wife sons and N.Masiappa Chettiar and N.Rangasamy Chettiar and some of the properties were divided between them including the suit schedule property. Thereafter, the said Nagi Chettiar and his sons realised that the suit schedule property is a poramboke land and thereby the Nagi Chettiar has filed a suit in O.S.No.187/1950 on the file of

the District Munsif court, Coimbatore.

11. On perusal of Ex.B2, the suit schedule property was shown as 'A' schedule property and the said property was allotted in favour of Nagi Chettiar. However, the suit property is found to be a government poramboke land and there was a readjustment of shares in between the Nagi Chettiar and his sons and thereby, the present suit schedule property was excluded from the partition. Accordingly, the Judgment was delivered in favour of the Nagi Chettiar and his two sons. Thereafter, final decree was passed confirming the exclusion of suit property from the partition. Therefore, the present suit properties are not the ancestral properties, but it is a Government poramboke land. Though the plaintiffs filed some documents to show that the Municipality has issued a demand notice against the plaintiffs and other defendants. However, on perusal of the abovesaid documents, no property details were disclosed in the demand notice. The name of the plaintiffs and defendants alone appeared in the said notice. However, on perusal of Ex.B19, it is seen that the Revenue Inspector issued a encroachment notice against the second defendant and on perusal of Ex.B20/Town Survey Register, it is seen that the second defendant has put up a tiled house in the suit property. Apart from the above, other documents shows that the defendants are in possession of the suit property. In the earlier partition, the suit property was excluded from the partition on the ground that the suit schedule property is a government poramboke land. Admittedly, in the government poramboke land, no one has title over the property including the second defendant unless the government decided the issue for granting patta.

12. In view of the above, claiming partition in the government poramboke land is not sustainable. On perusal of entire records, it is seen that the appellants/plaintiffs did not establish that the suit schedule properties are common ancestral properties of the joint family and on further perusal, it is clearly seen that the suit schedule properties are poramboke properties and hence, no one has title over the property including the second defendant and plaintiffs. When there is no title over the property, claiming property through a partition suit is not a sustainable one. Hence, I do not find any error in the order passed by the courts below. Accordingly, the substantial question of law is answered against the appellants.

In the result, the second appeal is dismissed and the Judgment and Decree dated 31.10.2000 in A.S.No.199/1998 on the

file of the II Additional District Judge, Coimbatore, confirming the Judgment and Decree dated 17.07.1998 in O.S.No.1685/1984 on the file of the Principal District Munsif Court, Coimbatore, is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gv

To

1. The II Additional District Judge,
Coimbatore.
2. The Principal District Munsif Court,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.17709
+1cc to Mr.K.Selvaraj, Advocate, S.R.No.17623

S.A.No.796 of 2001

GMR(CO)
CS/19/04/18

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