

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 352 of 2011

Suriya Moorthy
Anandan
Manjula

.... Appellants/Petitioner

Vs.

1.Masilamani
2.Anbuselvi
3.Dakshina Ammal
4.Velayudham
5.M.Velu Gounder

.... Respondents/Respondent

Prayer: Appeal filed under Order 41 Rule 1 and Section 96 of CPC against the judgment and decree dated 26.11.2010 made in O.S.No.21 of 2005 on the file of Additional District Judge, Fast Track Court, Tirupattur, Vellore District.

For Appellants : Mr.V.Jeevagiridharan

For Respondents : No appearance

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The unsuccessful plaintiffs 2 to 4, who are the appellants herein, filed the suit for partition and separate possession.

2. Heard the learned counsel appearing on behalf of the appellants. Though the judgment and decree was rendered on 26.11.2010, the appellants are unable to serve the respondents till date and, therefore, we are inclined to proceed to dispose of the appeal on merit.

3. The suit has been laid based upon Ex.A1 dated 07.08.1951. The suit property mentioned with specific reference to 'pymash' properties. According to the appellants, the suit property originally belonged to their father by name T.M. Kandasamy Gounder under Ex.A1 and, therefore, they are entitled to partition along with respondents/defendants. Before the trial Court, the appellants examined two witnesses. PW1 is the first appellant and PW2 has also spoken in tune with the case of the appellants. The appellants marked Exs.A1 to A11 in support of their contentions. The respondents have marked Exs.D1-D11 apart from examining four witnesses. The trial Court framed eight issues. After framing the issues, they have been answered against the appellants, inter alia, holding that the appellants have not proved that the suit properties are relatable to the property mentioned under Ex.A1. Accordingly, the suit was dismissed and hence the present appeal.

4. Learned counsel appearing for the appellants would submit that it is not in dispute that the appellants are the legal heirs of the deceased T.M.Kandasamy Gounder. The execution of Ex.A1 which is a partition deed is also not in dispute. Under Ex.A6, the first plaintiff issued notices to T.M.Kandasamy Gounder. Therefore, in tune with the evidence of PW1 and PW2, the suit ought to have decreed.

5. We do not find any merit in this appeal. The primary question for consideration is as to whether the suit properties are one and the same as mentioned in the partition deed under Ex.A1 under which certain properties were given in favour of the father of the appellants. The Court below has given a specific finding that the appellants have failed to do so. This has been done coupled with the evidence of the defendants to show that T.M.Kandasamy Gounder has alienated certain properties under Ex.D2 and D3. Accordingly, reliance has been made on the evidence of the 6th defendant and DW1. We do not find any contra material to come to a different conclusion. As rightly held by the trial Court, there is absolutely no piece of evidence to connect the suit properties with Ex.A1. After all, it is for the plaintiffs to substantiate their case. Thus, we find no error in the reasoning adopted by the trial Court.

In view of the above, the appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssm

To:-

The Additional District Judge,
Fast Track Court,
Tirupattur,
Vellore District

+1cc to Mr.V.Jeevagiridharan, Advocate sr.23247

A.S.No.352 of 2011

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