

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1431 of 2008

and

M.P.No.1 of 2008

K.C.Venkatachalam (Died)

2. Saraswathi
3. Rajeshkumar
4. Jeevitha

(Appellants 2 to 4 brought on record
as legal representatives of the
deceased viz., K.C.Venkatachalam,
vide Order of Court dated 06.06.2019
made in M.P.No.1 to 3 of 2015
in S.A.No.1431 of 2008 (NSSJ))

... Appellants

versus

C.Kumar

... Respondent

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 09.08.2007 in A.S.No.45 of 2005 on the file of Principal Subordinate Judge, Krishnagiri confirming the Judgment and Decree dated 03.10.2005 in O.S.No.146 of 2001 on the file of District Munsif, Krishnagiri.

For Appellants : Mr.V.Nicholas

For Respondent : Mr.V.Raghavachari

JUDGMENT

The plaintiff herein was unsuccessful before the courts below has preferred this appeal. He laid a suit for declaration of title and injunction. The suit property was described as western 5 ½ cents in S.No.455/2.

2. The case of the plaintiff is that the suit property and others originally were the family property, that about 15 years prior to the institution of the suit, the property came to be partitioned among the plaintiff and his brothers and sisters. In the said partition, the suit property came to be allotted to the plaintiff. It is his further case that the defendant had been allotted a share on the east in the same survey field. The suit property has been in possession and enjoyment of the plaintiff. And he had a partially constructed building in the suit property. He would further state that on 05.06.2001, the plaintiff visited his portion along with his mason to the building in his property, the same was resisted by the defendant.

3. The defendant in his written statement has admitted the oral partition between the plaintiff, himself and others but has pleaded that the entire property in S.No.455/2 was allotted to him. He would further pleaded that on 19.01.1997, the plaintiff and his other siblings executed a release deed and the same was marked as Ext.B5. He had further pleaded that he had put up a construction in the suit property included a toilet and a bath room in the north east portion, that he had obtained electricity service connection to this building, that in a fire accident, the building was damaged and this was duly intimated to the authorities concerned. In fine, the defense was that the plaintiff was not entitled to maintain a suit for a property not his own, and other ancillary reliefs.

4.1 Before the trial Court, the plaintiff had examined himself besides the Village Administrative Officer, and has produced the Patta pertaining to S.No.455/2 that stand jointly in the names of the plaintiff and the defendant. The defendant had examined himself as DW1 and besides him he examined four of his neighbours as DW2 to DW5 to prove the fire accident that he had alleged and also produced several documents.

4.2 The trial Court has chiefly relied on the cross-examination of PW1 to negate the claim of absolute title over the suit property. In particular, the trial Court has relied on a portion of the cross-examination where the plaintiff has admitted that in the oral partition held, the suit property was allotted to their father Chinnasamy Nainar, and it was agreed that after his demise, the property would go to the defendant. This portion of cross-examination exposed himself to a contradiction that he could not get over. He compound this contradiction which his further admission that it was the defendant who put up a cow shed, bath room and toilet in the suit property. The First Appellate Court found little material to reverse the finding of the trial Court.

5. This appeal is not yet admitted and notice was sent to the respondent and he has appeared.

6. The learned counsel for the appellants have made valiant efforts to persuade this Court to act on the joint patta issued in favour of the plaintiff and the defendant. The issue is all about oral partition alleged by the plaintiff, and the terms thereof. On the factum of oral partition there is little to be proved since the defendant too admits the said partition. However, turning to the terms of the partition, since the same is orally done, it has to be established (a) through oral evidence and (b) by such further acts as would be consistent with the terms of the partition.

7. Here, as reflected in the judgment of the Courts below to which a reference is made in the earlier paragraphs, the plaintiff has spoken against his own interest during cross-examination and has literally proved the case of the defendant. There is very little material for this Court to consider that there exist a substantial question of law for it to raise, investigate and to decide.

8. In the result, this Court does not find any merit in this second appeal and the same is dismissed and the judgment and decree of the courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

ssn

To

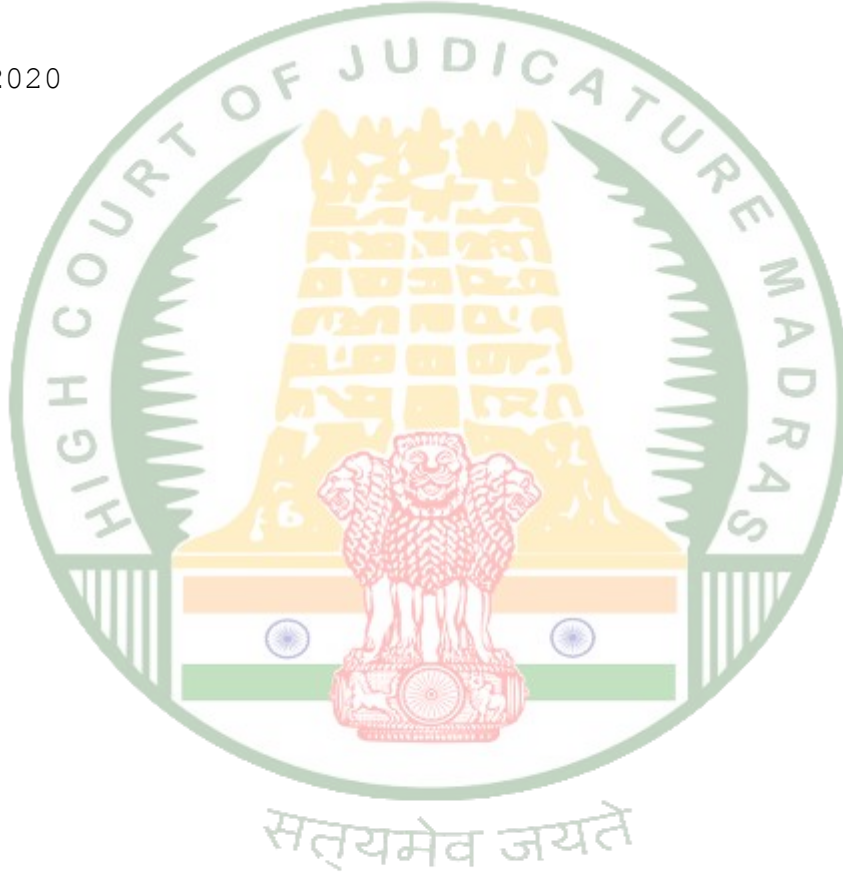
1. The Principal Subordinate Judge,
Krishnagiri.

2. The District Munsif,
Krishnagiri.

+1cc to Mr.V.Nicholas, Advocate sr.49009
+1cc to Mr.V.Raghavachari, Advocate sr.49220

S.A.No.1431 of 2008
and
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