

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1208 of 2009
and M.P.No.1 of 2009

1.Ponnusamy (Died)
2.Chinnasami
3.Valliyathal

.... Appellants/ Defendants
.... Appellant

(3rd appellant brought on record as legal representative
of the deceased first appellant viz., Ponnusamy, Vide Order
of Court dated 07.06.2019 made in CMP.No.5051/2019
in S.A.No.1208/2009)

Vs

Lakshmi

.... Respondent /Plaintiff

Prayer :- Second Appeal filed under Section 100 of the Civil
Procedure Code, preferred against the judgment and decree of the
learned Subordinate Judge, Dharapuram dated 28.4.2009 in
A.S.No.36/2008 confirming the judgment and decree of the learned
District Munsif, Kangeyam dated 16.11.2007 in O.S.No.400/2004.

For Appellants : Mr.T.M.Hariharan

For Respondent : Mr.S.Saravanan

JUDGMENT

The present appeal is preferred by the defendants in a dispute
that falls within a very narrow campus. Parties would be
referred to by their rank before the trial Court.

2.1 The plaintiff has laid a suit for declaration of her title
over a property measuring 6.43 acres out of a larger extent of
7.71 acres in Survey No.290 of Keeranoor Village, Kangekayam
Taluk, Erode District. According to the plaintiff, the remaining
1.28 acres belongs to the defendants who own and enjoy this plot
to the east of the plaintiff's property. According to the
plaintiff, the suit property originally belonged to a certain
Palanisamy Gounder, that on 03-06-1964 Vide Ext. A-2 settlement
deed, he settled the property in favour of his two daughters
namely Valliathal and Palaniathal, that on 09-06-2004, they sold
the property with specific and specified boundaries to the
plaintiff under Ext.A-1 sale deed.

2.2 In the written statement, the defendants contended that contrary to plaintiff's allegation that they are entitled to 1.28 acres, in fact they are entitled to 2.15 acres. They would further allege that on 24-08-1959, under Ext.B-1 Partition deed, Palanisamy and his two sons had partitioned their properties including the suit property. It is the property which Palanisamy obtained in that partition, he had settled in favour of his daughters. Ext.A-2 settlement does not provide the boundaries of the property settled thereunder.

3.1 Before the trial Court, both sides adduced evidences and the trial Court relied heavily on the testimony of the second defendant as D.W.1, wherein he appeared to have stated that the plaintiff's property lies in two blocks, that a lane separates his 1.28 acres and the plaintiff's property on the west, and there is a bund that separates the plaintiff property and their property to the north of the latter's property. In other words, according to the defendants, their 1.28 acres falls to the south of the bund and to the east of the aforesaid lane.

3.2 On appreciating the evidence before it, the trial Court decreed the suit, which later came to be confirmed by the first appellate court.

4.1 The appeal is not yet admitted. But, respondent has entered appeared pursuant to the notice ordered to be served on her.

4.2 The learned counsel for the appellants made a valiant attempt to persuade this Court to believe that in the additional pleadings (reply statement) of the plaintiff filed in answer to the written statement of the defendants, it is alleged that out of the entire extent of suit property is 7.71 acres in Survey No.290, the predecessors-in-title of the plaintiff were entitled to 5/6 share, and that the defendants were entitled to 1/6 share in the property. This 1/6 share equals to 1.28 acres. In the reply statement, it is further alleged that prior to 1959, there was an oral partition between the predecessors in title of the plaintiff and the defendants' ancestors.

5.1 The argument now advanced by the learned counsel for the appellants is that the plaintiff, inasmuch as he has introduced a case of partition prior to 1959, has to prove that partition, and in the absence of the same, it has to be held that the parties are enjoying their respective extent only for the sake of convenience.

5.2 This precisely is not the case pleaded by the defendants, but now attempted to be built on the basis of certain facts that are available on record. It is not the case of the defendants that they are enjoying the property anything more than 1.28 acres, which the second defendant has admitted in his testimony. It is also not their case that whatever extent that they enjoy

falls less than 1.28 acres either. Now what is sought to be agitated that inasmuch as the plaintiff had pleaded an oral partition in 1959, he ought to prove the exact terms thereof of. In other words, the defendants/appellants now would require the plaintiff to prove the terms of an oral partition more than 60 years from now.

5.3 This proposition now advanced, is too difficult to appreciate. After all, when the defendants are in enjoyment of a specific plot of 1.28 acres, bounded on the west by a lane, and by a bund on the north, it necessarily has to be understood that such enjoyment has been in relation to their share in the suit property. After all, when a certain term of an oral partition could not be established by passage of time, how facts appear today may provide a clue to understand how things would have happened on the day which has now vanished in antiquity.

6. In substance, this Court does not find any merit in this appeal and accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Subordinate Judge
Dharapuram.

2.The District Munsif
Kangayam.

3.The Section Officer
VR Section, High Court, Madras.

+lcc to Mr.S.Saravanan, Advocate SR.68304

+lcc to Mr.T.M.Hariharan, Advocate SR.68435

KK(CO)
CB(06/03/2020)

S.A.No.1208 of 2009

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