

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 25.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.240 of 2006

1.ParamasivamAppellant/Plaintiff
Vs.

1.Rangasamy (died)
2.Elayaperumal (deceased)
3.Tamilarasi
4.Chinnamani
5.Govindan
6.Thangadurai
7.Jayalakshmi
8.Saravana

..Respondents 3 to 8/LRs of the
deceased defendants

RR3 to 6 brought on record as Lrs of the deceased R1
vide order of court dated 30.01.2012 made in
CMP No.1518 of 2008

RR7 and 8 brought on record as Lrs of the deceased
R2 vide order of court dated 07.03.2019 made in
M.P.No.1 to 3 of 2014

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 1.07.2005 made in A.S.No.18 of 2004 on the of the Principal subordinate judge's court at Vridhachalam in reversing the judgment and decree dated 14.11.2003 made in O.S.No.155 of 1995 on the file of the District Munsif cum Judicial Magistrate court at Neyveli.

For Appellant : Mrs.Mythili Suresh
for M/s. Sarvabhauman Associates

For Respondents : Mr.R.Agilesh for R3 to R6
Mr.R.Krishna Prasad for R7 and R8

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 1.07.2005 passed in A.S.No.18 of 2004 on the of the Principal subordinate court, Vridhachalam reversing the judgment and decree dated 14.11.2003 passed in O.S.No.155 of 1995 on the file of the District Munsif cum Judicial Magistrate court, Neyveli.

2. The second appeal has been admitted on the following substantial questions of law.

"1. Having regard to the scope and ambit of order XXI Rule 95 of C.P.C., whether the sale under Ex.B2 is valid in law and binding on the appellant, when there is no iota of evidence to prove that possession was taken by Veerappa Chettiar pursuant to the said sale?

2. Whether the subsequent oral sale put forward by the first respondent is legally sustainable especially when the sale under Ex.B2 is not absolute and therefore not binding on the parties?

3. Whether in law the appellant is not entitled to the decree in respect of items 1 and 2 since the first respondent has miserably failed to prove the absolute sale under Ex.B2 and also the subsequent oral sale put forward by him and as such whether the judgment and decree of the appellate court is sustainable in law?

4. Whether in law the appellant is not entitled to the decree in respect of items 1 and 2 in view of the admitted case of the respondents that those properties are the ancestral property of grand father Thoppula Padayachi?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiff against the defendants for partition and mesne profits.

6. Briefly stated, claiming that the suit properties are the ancestral properties belonging to the plaintiff and the defendants and that the first defendant had suppressed the existence of the suit properties from the knowledge of the plaintiff at the time of the partition effected between the parties on 19.07.1976, accordingly the case has been projected by the plaintiff that he is entitled to his lawful share in the suit properties and accordingly come forward with the suit for appropriate reliefs.

7. The defence had been put forth by the defendants contending that the family properties belonging to the parties had already been divided by way of the partition deed dated 19.07.1976 and therefore, the plaintiff is not entitled to claim partition in respect of the suit properties and furthermore, according to the defendants, as regards the items 1 and 2 of the suit properties, the same had been already brought for sale in connection with the debts incurred by the parties' predecessors in interest, namely, Veerasamy and Rajamanickam and according to them, the said properties had been brought for sale by one Veerappa Chettiar in O.S.No.2982/57 and accordingly, in the court auction sale, Veerappa Chettiar had obtained the delivery of the Items 1 and 2 of the suit properties and enjoying the same and thereafter, had orally sold the same in favour of the first defendant and since then, it is only the defendants, who are enjoying the items 1 and 2 of the plaint schedule properties and the plaintiff is not entitled to seek partition in respect of the items 1 and 2 of the plaint schedule properties.

8. Insofar as this matter is concerned, based on the materials placed on record by the respective parties, it is found that, at the first instance, the trial court was pleased to dismiss the plaintiff's suit. Impugning the same, the plaintiff has preferred the first appeal in A.S.No.43 of 1999. In the abovesaid first appeal, the first appellate court had confirmed the dismissal of the plaintiff's suit as regards the items 3 to 5 of the plaint schedule properties. However, remitted the matter back to the trial court for a fresh consideration of the issues involved between the parties as regards the items 1 and 2 of the plaint schedule properties and accordingly, it is found that only in respect of the items 1 and 2 of the plaint schedule properties, the matter had been remitted back to the trial court for fresh disposal. As regards the dismissal of the plaintiff's suit in respect of the items 3 to 5 of the plaint schedule properties, the plaintiff has not preferred any further appeal and hence the dismissal of the plaintiff's suit as regards the items 3 to 5 of the plaint schedule properties has become final and therefore, there is no need for considering the rival

contentions put forth by the respective parties in respect of the items 3 to 5 of the plaint schedule properties.

9. As regards the items 1 and 2 of the plaint schedule properties, as could be seen from the materials available on record, it is found that the parties had been already divided by way of the partition deed dated 19.07.1976, the copy of which deed has been marked as Ex.A8. According to the plaintiff, at the time of Ex.A8 partition, he was not aware of the existence of the items 1 and 2 of the plaint schedule properties and the same had been suppressed by the first defendant, who was managing the family at that point of time and only subsequent thereto, he had come to know that the items 1 and 2 of the plaint schedule properties are available for partition.

10. Per contra, according to the defendants, the items 1 and 2 of the plaint schedule properties had been brought for sale by Veerappa Chettiar in connection with the discharge of the debts even during the time of Veerasamy and Rajamanickam, the predecessors in interest of the plaintiff and the defendants and according to them, the abovesaid two items had been brought for court auction sale in O.S.No.2982/57 and in execution of the decree passed in the abovesaid suit, the abovesaid two items had been purchased in the court auction sale by Veerappa Chettiar and he had obtained the delivery of the said properties through the court process after the sale had been confirmed in his favour and in this connection, the sale certificate had been marked as Ex.B2. On a perusal of Ex.B2 sale certificate, it is found that, as determined by the first appellate court, the items 1 and 2 of the plaint schedule properties had been brought for auction pursuant to the decree passed in O.S.No.2982/57 and in the court process, the said properties had been purchased by Veerappa Chettiar and the sale had been confirmed in his favour and pursuant to the same, it is seen that the sale certificate had been issued in favour of Veerappa Chettiar.

11. According to the plaintiff, merely on the production of Ex.B2 sale certificate, it cannot be presumed that Veerappa Chettiar had taken the delivery of the items 1 and 2 of the plaint schedule properties. Countering the same, it is put forth by the defendants' counsel that the official acts or the judicial acts shall be presumed to have been done properly as per the Indian Evidence Act and accordingly, it is contended that when Ex.B2 sale certificate clearly recites that the items 1 and 2 of the plaint schedule properties had been brought for sale and the same had been purchased by Veerappa Chettiar and the same had been taken delivery of by Veerappa Chettiar through Court process, the court should presume that the possession had been

handed over to Veerappa Chettiar unless materials are projected to rebut the same. Insofar as the abovesaid position, it is found that absolutely there is no material on the part of the plaintiff to hold that even pursuant to the court auction sale, the items 1 and 2 of the plaint schedule properties had remained in the family of the plaintiff and the defendants and enjoyed by them as their own properties. With reference to the same, absolutely there is no material on the part of the plaintiff. On the other hand, according to the plaintiff, the first defendant, at the time of Ex.A8 partition, suppressed the existence of the items 1 and 2 of the plaint schedule properties. Per contra, according to the defendants, Veerappa Chettiar had, after enjoying the items 1 and 2 of the plaint schedule properties, alienated the said items in favour of the first defendant orally during the year 1962 and since then, it is only the defendants who had been enjoying the said properties by effecting division amongst themselves. The plaintiff examined as P.W.1, during the course of cross examination has clearly admitted that he is fully aware that it is only the defendants who had been enjoying the items 1 and 2 of the plaint schedule properties separately from the year 1971 and accordingly, when to the knowledge of the plaintiff, it is seen that the defendants 1 and 2 had been enjoying the items 1 and 2 of the plaint schedule properties separately following the division effected amongst themselves with reference to the same, the contention of the plaintiff that the first defendant had suppressed the existence of the suit properties at the time of Ex.A8 partition deed, cannot, at all, be countenanced in any manner. In addition to that, the evidence had been let in by the defendants through D.W.2 that it is only Veerappa Chettiar, who had taken the possession of the items 1 and 2 of the plaint schedule properties, enjoying the same and D.W.2 had also tendered evidence that he had enjoyed the said items under Veerappa Chettiar on waram basis and thereafter, Veerappa Chettiar had alienated the same in favour of the first defendant orally. Despite the cross examination, nothing has been culled out from D.W.2 to dis-credit his evidence in any manner. D.W.2 has also tendered evidence that he had knowledge about the taking of the delivery of the items 1 and 2 of the plaint schedule properties by Veerappa Chettiar in the court process as he had also attested the receipt executed in connection with the same. As abovenoted, when to the knowledge of the plaintiff, it is only the defendants, who had been enjoying the items 1 and 2 of the plaint schedule properties in distinct mode, to say that the said items continue to remain as the joint family properties and that the same had been suppressed by the defendants at the time of Ex.A8 partition deed, cannot, at all, be accepted in any manner.

12. Even assuming for the sake of arguments, the oral sale effected by Veerappa Chettiar in favour of the first defendant may not be legally valid, that alone, would not lead to the conclusion that the items 1 and 2 of the plaint schedule properties continue to be the joint family properties of the plaintiff and the defendants as such. If the oral sale put forth by the defendants is ruled out, the only conclusion that could be arrived is that the said items of the properties are the separate properties of Veerappa Chettiar and the plaintiff cannot be allowed to claim share in the suit properties on the footing that they are the joint family properties belonging to the plaintiff and the defendants. As regards the claim of possession and enjoyment of the said items by the defendants, if the plea of oral sale is not accepted, the possession and enjoyment of the said items by the defendants 1 and 2 could only be challenged by the true owner, namely, Veerappa Chettiar and not by the plaintiff.

13. In the light of the abovesaid factual position, when the plaintiff has miserably failed to establish that the items 1 and 2 of the plaint schedule properties are the joint family properties belonging to the parties and available for partition and on the other hand, when the said properties are found to have been alienated in favour of Veerappa Chettiar through court process and when evidence had been let in to show that Veerappa Chettiar had taken the delivery of the said items of the suit properties through court auction and when no contra material has been placed by the plaintiff to hold that thereafter the said properties continue to remain as the joint family properties and when the plea of delivery of possession to Veerappa Chettiar had been established by way of Ex.B2 sale certificate, the truth and validity of which had not been challenged by the plaintiff by placing any contra material and furthermore, when the same had been established and corroborated by the evidence of D.W.2, in such view of the matter, the plaintiff having failed to establish that the items 1 and 2 of the plaint schedule properties are the joint family properties / ancestral properties of Thoppula Padayachi and available for partition on the date of lis or prior to the same and on the other hand, when it is found that the said properties had been alienated in favour of Veerappa Chettiar through court process, the first appellate court is fully justified in declining the relief of partition prayed for by the plaintiff in respect of the said items and rightly reversed the judgment and decree of the trial court with reference to the same.

14. The counsel for the defendants placed reliance upon the decision reported in 2018 4 L.W. 594 (T.Sampath Kumar and others

vs. K.Pushpalath and another). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

15. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Vridhachalam
2. The District Munsif cum Judicial Magistrate, Neyveli.

Copy to : The Section Officer, V.R.Section,
High Court, Madras

+1 cc to M/s.Sarvabhauman Associates Sr.No.40117

+1 cc to M/s.T.Dhanasekaran, Advocate Sr.No.40938

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