

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.Nos.686 and 687 of 2006
and M.P.No.1 of 2006

Selvaraju ..Appellant/Appellant/2nd Plaintiff
in SA.No.686 of 2006
and Appellant/1st Appellant/8th Defendant
in SA.No.687 of 2006

Vs.

1. Shanmugam
2. Pichamuthu ... Respondents/Respondents/Defendants 1 & 2
in SA.No.686 of 2006
and Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs 1 & 2
in SA.No.687 of 2006
3. Krishnamurthy ...3rd respondent/2nd Appellant/10th Defendant
S.A.No.687 of 2006

Common Prayer: Second Appeals are filed under Section 100 of code of Civil Procedure against the judgment and decree dated 21.09.2005 in A.S.No.96 of 2004 and 76 of 2004 respectively on the file of the Principal Sub-Court, Vridhachalam in confirming the judgment and decree dated 28.11.2003 in O.S.Nos.635 of 1985 and 263 of 2000 respectively on the file of the II Additional District Munsif, Vridhachalam.

For Appellants : Mrs.V.Srimathi
in both the Appeals

For Respondents 1 & 2 : M/s.Hema Sampath, Senior Counsel
in both the Appeals Assisted by Mrs.R.Meenal [R1 & R2]

For 3rd Respondent
in SA.No.687 of 2006 : No Appearance

COMMON JUDGMENT

Both these appeals arise out of a common judgment passed in two separate first appeals which have been filed against the decrees passed in two separate suits. They have not been admitted yet.

2. The short facts necessary for the litigation are :

- The present appellant had laid the suit in O.S.No.635/1985 before the District Munsif Court, Vridhachalam, claiming partition over nine items of suit properties against the defendants, who are 15 in number. The defendants 1 and 2 in O.S.No.635/1985 have laid the suit in O.S.No.263 of 2000 for declaration of title over substantially the same items of properties in the partition suit and also for other ancillary reliefs, and in the said suit, the appellant herein (plaintiff in O.S.No.635/1985) is one of the defendants.
- The plaintiff/appellant was partially successful before the trial Court in O.S.No.635/1985, when he was granted a decree pertaining to the properties in Item Nos.3, 4 and 9, and as to the rest the suit was dismissed. So far as O.S.No.263/2000 is concerned, the suit was decreed.
- The plaintiff preferred A.S.No.96 of 2004 against the decree in his partition suit in O.S.No.635/1985 and A.S.No.76/2004 against the decree passed in O.S.No.263/2000. The contention before the first appellate Court was limited to plaintiff's claim to Item Nos.7 and 8 in the suit properties. These properties are scheduled as Item No.1 and 2 in O.S.No.263/2000.
- Item No.7 was purchased by a certain Annammai under Ext.B1, sale deed, dated 30.06.1961. Annammal was married to Narayani. Item No.8 was purchased by Narayani under Ext.B4 sale deed dated 19.06.1918. Annammai and Narayani had three sons namely, Thavasus, Sanniyasi and Muthusamy. It appears Muthusamy died in 1951, but his branch is not in the party array.
- The first plaintiff in O.S.No.635/1985 is Sanniyasi and his son Selvaraj is the second plaintiff. The contesting defendants 1 and 2 are the sons of Thavasus. Defendants 3 to 8 are the other children of Sanniyasi and the 9th defendant is his wife. Pending suit, his daughter, the seventh defendant died and her legal representatives are brought on record as defendants 10 to 15. Except the contesting defendants 1 and 2, who are the sons of Thavasus, others chose to remain exparte before the Courts below.
- The contention of the second plaintiff/appellant is that on the demise of his grand parents Annammai and Narayani, the property devolved on Thavasus and Sanniyasi, but no partition had ever taken place between them and claims partition of 1/3 share in both these items.

3. The plea of the contesting defendants 1 and 2 is that in 1934, an oral partition had taken place between Narayani and his three sons, Sanniyasi, Thavasu and Muthu Kumar, in which all have been provided with necessary properties and that the allottees of shares in the oral partition including Sanniyasi have been dealt with properties allotted to them. It is on the strength of this allegation of oral partition and the transactions that had taken place, pursuant to that dealing with the properties, the brothers either among themselves or with the third parties, the defendants 1 and 2 have laid the suit in O.S.No.263/2000 for declaration of title and injunction.

4. Both the suits were tried together and evidences were recorded in O.S.No.635/1985. In this suit, to prove the oral partition had taken place in 1934, the defendants have produced Ext.B93, Exts.B95 to B98. Ext.B2, Ext.A9 and Ext.A12 to create a probability that oral partition had indeed taken place.

5. To counter it, the plaintiff relied on Ext.A13, a service register of Sanniyasi, wherein his birth was recorded as 12.4.1930. The arguments founded on Ext.A13 is that going by the said document, Sanniyasi would have been only four years when the oral partition had taken place in 1934, and as alleged by the defendants, there could not have been a partition involving a minor boy.

6. The point is whether the contents of Ext.A13, which is the service record maintained by the employer of Sanniyasi, is conclusive enough to negate the effect of Exts.B95 to B98, all of which are the documents executed either by Sanniyasi or executed in favour of Sanniyasi. These set of documents, according to the learned counsel for the defendants/respondents is that they create a strong probability that a partition indeed had taken place even well before 1945. The impact that Exts.B95 to 98 creates against Sanniyasi is further corroborated by Ext.B93 dated 17.09.1937, a sale deed by Muthusamy (whose branch, as already indicated is not a party to the present litigation), wherein he has indicated the southern boundary of the property sold under Ext.B93 is Sanniyasi's. This puts the time of partition to well before 1937. Turning to Ext.A-13, this is a self serving document, and not an extract from the Birth Register and do not carry any evidentiary value to negate the preponderating effect of Exts.B-95 to 98. The learned counsel also read extensively from the testimony of cross-examination of oral evidence of PW1.

7. Given the fact that civil disputes are decided by the rule of probability, what is the extent to which Ext.A13,

Service Register can affect the conclusion of the first appellate court?

8. As rightly argued by the counsel for the respondents, Ext.A13, the copy of the Service Register of Sanniyasi is a self-serving document, and therefore, it may not aid him much. If Ext.B96 followed by Exts.B95, B97 and Ext.B98 are taken into account, they would show that even in 1943, properties were purchased in the name of Sanniyasi and the sale deed does not show Sanniyasi as a minor. Exts.B95 and B97 are the documents executed either by Sanniyasi or in favour of Sanniyasi in or about 1945. These documents apart, Ext.A9, a chitta produced by the plaintiff shows Sanniyasi to be a pattadar of the property in S.No.71/3B. In the UDR patta issued (Ext.B100), he is shown to be the pattadar of the property in S.Nos.71/3A, 3C and 3D. Turning to item No.8, Ext.B100 shows that Sanniyasi had been granted patta for the properties in S.No.74/15B. Where is the need for the division of the survey fields within which items 7 and 8 properties fall, if the these properties had not been partitioned earlier?

9.1 This Court finds merit in the submission of the learned counsel for the respondents. There is no dispute over the survey number of items Nos.7 and 8, and so was Exts.A9 and B100 too are not in dispute. In his evidence, the plaintiff has deposed that his father had died only in 1988. And, in the absence of any proof to the contra, it has to be held that plaintiff's father had admitted these documents.

9.2 Turning to the point, if there these properties had been already partitioned in 1930s, it is ultimately a question of fact. Both the Courts below have held on the basis of preponderance of probability generated by the evidence on record that items 7 and 8 indeed had been partitioned between the plaintiff's father and the latter's brothers. Since it is chiefly a question of fact, and since this Court does not find any perversity in the appreciation of evidence by the first appellate Court, it does not find any material to warrant any interference.

10. In the result, both the Second Appeals are dismissed and the judgment and decree of the Courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Vridhachalam.

2. The II Additional District Munsif,
Vridhachalam.

+1cc to Mr.V.Raghavachari, Advocate Sr.No.57250

+2cc to M/s.R.Meenal, Advocate Sr.No.57284 and 57285

AKM/04.03.2020/5P-6C/

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