

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.01.2019

Pronounced on :06.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.2293 of 2004

and

C.M.P.No.20508 of 2004

P.A.Perumal .. Appellant/Plaintiff
/versus/

1.P.A.Mani(deceased)

2.P.A.Balaraman

3.P.A.Vasudevan

4.P.A.Ganesan

Pulavar Govindan(died)

(Cause title amended vide order of
Court dated 29.01.2015)

5.M.S.Selvapandian

6.M.Jegadeeswari

7.Thilagavathi

8.M.Loganathan

9.Jayalakshmi

10.Vijayalakshmi

11.M.Venkatesan

(RR6 to 11 brought on record as LRS of the
deceased R1 vide order of Court dated
29.01.2015 made in C.M.P.Nos.457 to 459 of 2014
in S.A.No.229 of 2004) .. Respondents/Defendants

Second Appeal has been filed under Section 100 of the Civil
Procedure Code against the judgment and decree dated 27.02.2004
made in A.S.No.12 of 2003 on the file of Sub Court, Cheyyar,
confirming the judgment and decree dated 10.09.2001 made in
O.S.No.94 of 1989 on the file of the Additional District Munsif,
Cheyyar.

For Appellant :Mr.S.Sounthar for
Mr.A.Jenasenan

For Respondents :Mr.J.Arunprasad for R6 to R8
R10 and R11
No appearance for R2,3,4,5

J U D G M E N T

The plaintiff is the appellant herein. The suit filed for partition of "A" schedule property allotting 1/3rd share to the plaintiff and injunction restraining the defendants from putting up any construction in the "C" schedule property was dismissed by the trial Court and the same was confirmed by the lower appellate Court.

2. Aggrieved by the concurrent findings, the present appeal is preferred. At the time of admission, this Court has formulated the following Substantial Questions of Law:-

1. Whether the findings of the Courts below that the plaintiff is estopped from filing a suit since a clause was made in the partition that none of the parties to the partition should go to either civil or criminal court can be said to be right?

(ii) Whether the Courts below are right in holding that the C schedule property in the plaint is also a joint family property when a specific plea was made by the first defendant in his written statement that only the ancestral properties were included in the deed of partition. When the C schedule property was acquired by the plaintiff in his name such a finding of the Courts below can be said to be valid?

(iii) Whether the Courts below are right in holding that the self acquired property of the plaintiff can also be included in the partition, when the specific clause in the partition says that only the ancestral properties alone are to be partitioned among the members?

(iv) Whether the Courts below are right in deciding that the property is a joint family property in the absence of any documentary evidence adduced by the first defendant?

(v) Whether the Courts below are right in their finding that only the self acquired property of the plaintiff alone is liable to be partitioned among all the members and the other self acquired properties of the other remaining parties of the partition deed are not amenable for putting up in partition?

3. The case of the plaintiff is that he and defendants 1 to 4 are sons of one Annamalai Mudaliar. After the death of Annamalai Mudaliar on 01.01.1981, the family properties were divided under a registered partition deed 30.01.1986. Accordingly, the properties were separated and allotted to plaintiff and the defendants for their exclusive possession and enjoyment. The joint family properties are described in "A" schedule of the plaint contending that some of the properties purchased by defendants 1 and 2 in their names from out of the joint family properties were not included in the partition deed and few ancestral properties were excluded. Taking advantage of his absence, the first defendant has caused deliberate omission of some of the ancestral properties and the properties purchased in the name of defendants 1 and 2 from out of the joint family property. Whereas the C schedule property, which he purchased on 05.05.1975 from out of the financial assistance rendered by his father-in-law and from the savings of his wife were included in the partition. Having come to know about the commission and omission, he has sought for reopening the partition and to allot 1/5th share in the A schedule property and injunct the 5th defendant, who has purchased the 'C' schedule property from putting up construction.

4. The suit was defended by the first defendant saying that the plaintiff and the defendants have entered into an oral partition long before they reduced the partition into writing in the year 1986. Long before the partition deed, the brothers were carrying out independent profession, avocation to buy properties from their own income, independent of the joint family income. Admitting some of the ancestral properties were not included in the partition deed, the defendants have justified the non inclusion citing high registration costs. However, it is contended by the defendants that those properties which were not included in the partition deed were already divided among the brothers orally and there was no necessity for them to include those properties in the deed of partition. Those properties were ancestral house, cattle shed and vacant land at Perumpalai village, which is the ancestral village of the parties.

5. Regarding Item 31 in the 'A' schedule property, which was not included in the partition, the defendants have contended that the said property was allotted to the 3rd defendant during the oral partition. It was sold to one Dhandapani by the third defendant on 14.07.1987 with the knowledge of the plaintiff. That is the reason why though the plaintiff has included the property for subjecting it to partition, he has not impleaded the said Dhandapani the purchaser of the property. The rest of the properties, which were self-acquired properties of the brothers were rightly excluded from the partition.

6. As far as the "C" schedule property is concerned, those properties were allotted to the first defendant under the partition deed. The possession and title are vested with the first defendant. He sold the property for adequate consideration to the 5th defendant and others. The plaintiff has no right to object the same on the ground that "C" schedule property is his personal property wrongly included and subjected to partition by direct. It was the joint family property and not the exclusive property of the plaintiff. The plaintiff, who is educated and employed cannot be cheated and was not cheated. With full consent and knowledge, the partition deed was reduced into writing and got registered. All the parties to the documents including the plaintiff have acted upon it. With an ulterior motive the plaintiff has filed the present suit with suppression of facts.

7. It is also contended in the written statement that earlier the plaintiff attempted to grab the property by filing a suit in the name of his wife. In the said suit in O.S.No.76 of 1988, the first defendant filed his written statement. After filing the written statement, the plaintiff allowed the suit to be dismissed.

8. The 6th defendant in his written statement has adopted the written statement of the first defendant and has contended that even if the plaintiff succeeds in the suit for partition, the 6th defendant has purchased 'C' schedule property for a valuable consideration bona fide based on the documents. The 'C' schedule property has to be excluded from the partition. The 5th defendant, while denying the allegations made in the plaint has contended that the plaintiff cannot seek the relief of partition for reopening the earlier partition entered between the brothers. Having executed the deed of partition along with the other brothers, the plaintiff is estopped from challenging the same. The 5th defendant has purchased the property in the name of the trust and not in an individual name. Therefore, the suit against him in the individual name is not maintainable.

9. The trial Court, on considering the rival submissions, has framed necessary issues and on examination of witnesses, in the light of the documents produced by the parties, has held that pursuant to the registered partition, the parties have acted upon it individually in respect of the properties allotted to them. The contention of the plaintiff that reposing faith and respect on the first defendant he signed the partition deed unaware of omission and commission was negatived. Being an educated and employed person his contention that some of the ancestral properties were omitted to be included and his self-acquired property was included wrongly, is found to be baseless.

10. Relying upon Ex.B16 which is the consent letter given by

the plaintiff to transfer the electricity service connection to the defendants in respect of the C schedule property, the Court has held that the plaintiff has not only accepted the partition deed, also acted upon it and allowed the buyers to enjoy the amenities. In the suit for partition contending that many of the ancestral properties are not included in the deed of partition, but aware of the fact that after partition, the properties were sold by the respective sharers and the third party interest have come into play, the plaintiff ought to have impleaded all the subsequent purchasers who are necessary parties to the suit. Therefore, the Courts below have rejected the plea of the plaintiff.

11. The learned counsel appearing for the appellant would submit that when the defendants have admitted that the alleged partition took place in the year 1986 under Ex.A7 and inclusive partition deed does not include certain joint ancestral properties and certain properties were included purchased in the name of the family members, the Courts below ought not to have dismissed the suit. The Courts below have laid undue significance to the clause in the partition deed that the parties will not resort to civil or criminal action. This clause was against the public policy and cannot be placed against the appellant. Further, when the defendants plead only ancestral properties were included in the partition deed then, the inclusion of C schedule property which was purchased by the plaintiff in the year 1975 is per se invalid.

12. As far as the contention of the learned counsel appearing for the appellant that he is not estopped from resorting to the legal course, in view of the clause in the partition deed is concerned, it has force. There cannot be an estoppel against the statutory right but, the plaint of the appellant has been rejected not on the said ground, but for other reasons. The claim of the plaintiff as found in the plaint is that the partition effected between the brothers in the year 1986 is a fraudulent deed and his signature was obtained by misrepresentation by including his self-acquired property and excluding some of the ancestral properties. If it is so, the plaintiff ought not to have given the consent letter Ex.B16 for name change. If really the plaintiff intended to reopen the partition, he should not have acted upon the partition deed and also allowed others to act upon it. The non-inclusion of all the parties who have interest in the property and purchased the property based on the partition deed is fatal to the case of the plaintiff. The Courts below have rightly pointed out all the infirmities in the case of the plaintiff and dismissed the suit.

13. This Court finds no error in the finding of the Courts

below. Therefore, this Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CCC)

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Sub-Assistant Registrar

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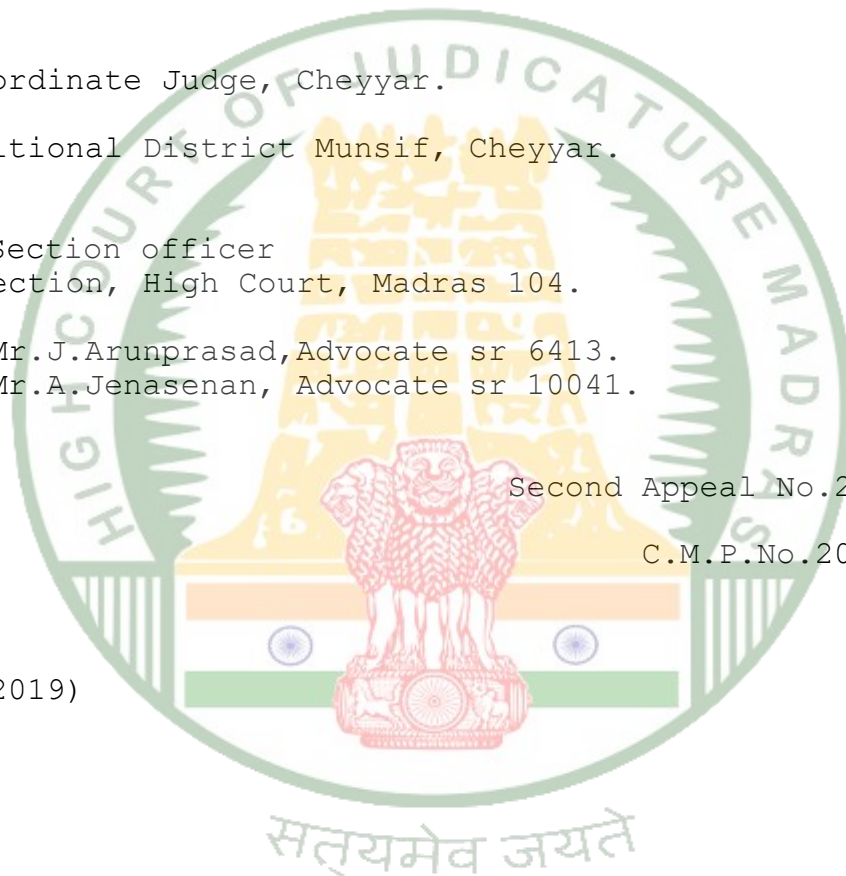
- 1.The Subordinate Judge, Cheyyar.
- 2.The Additional District Munsif, Cheyyar.

Copy to
The Section officer
VR Section, High Court, Madras 104.

- +1 CC to Mr.J.Arunprasad, Advocate sr 6413.
- +1 CC to Mr.A.Jenasenan, Advocate sr 10041.

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NMI (CO)
SP (07/03/2019)



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