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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.03.2019

PRONOUNCED ON:26.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1590 of 2005

- 1.Ramaswamy Naicker (Deceased)
- 2.Lakshmi
- 3.Krishnaveni

[First Appellant Died.
Second and Third appellants
are recorded as LR's of the
deceased First appellant vide
order of court dated 06.03.2019
in S.A.No.1590 of 2005 as per

memo dated 05.03.2019
is recorded]

... Appellants/Appellant/Defendant

Vs.

Balaraman

...Respondent/Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 14.03.2005 in A.S.No.11 of 2003 on the file of the Court of the Subordinate Judge, Kallakurichi, confirming the judgment and decree passed by the Principal District Munsif, Kallakurichi dated 27.01.2003 and made in O.S.No.314 of 1995.

For Appellants : Mr.S.Kondhandaraman

For Respondent : Mr.P.Valliappan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 14.03.2005 passed in A.S.No.11 of 2003 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 27.01.2003 passed in O.S.No.314 of 1995 on the file of the Principal District Munsif Court, Kallakurichi.

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



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(i) Whether the Courts below are right in granting the Decree on the basis of oral partition in the absence of any evidence for the same?

(ii) Whether the Courts below are right in believing the evidence of P.W.1 who was not even born on the date of the Exhibit-B1? And

(iii) Whether the Courts below are right in granting the relief's for possession when no reasons or findings have been given for title or possession?

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 the rankings in the trial court.

5. Suffice to state that the plaintiff has laid the suit against the defendants for declaration and permanent injunction.

6. The plaintiff claims title to the suit property on the footing that the same belonged to his father Narayanasamy Naikar and that Narayanasamy Naicker had settled the suit property in his favour on 13.04.1966 by way of a settlement deed and further it has also been put forth by the plaintiff that Narayanasamy Naicker, his father and the first defendant Ramasamy Naicker are brothers and the total extent of 44 cents in the suit R.S.No.81/16 was acquired by the first defendant as the family manager on 06.06.1945 and in the oral partition which took place between his father and the first defendant, each were allotted 22 cents in the same and accordingly the plaintiff's father had settled the suit property in his favour by way of the settlement deed dated 13.04.1966, however in the abovesaid settlement deed, the property has been wrongly mentioned as 0.15 ½ cents in 0.31 cents, however the plaintiff has been enjoying the northern half share in 0.44 cents, by paying Kists etc., from the days of his father and the defendants without any right or title to the suit property, out of enmity, attempted to interfere with the plaintiff's possession and enjoyment of the suit property by endeavoring to cut the trees thereon and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

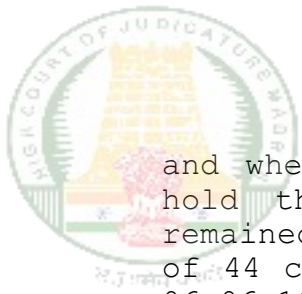


7. The defendants resisted the plaintiff's case contending that the plaintiff's father is not entitled to the suit property and not entitled to settle the same in favour of the plaintiff by way of the settlement deed dated 13.04.1966 as put forth in the plaint and according to them, the extent of 44 cents in the suit survey number is the self acquired property of the first defendant and the partition took place between the first defendant and his father Narayanasamy Naicker during 1940 and thereafter the extent of 44 cents in the suit survey number had been acquired by the first defendant and enjoyed by him as his separate property and therefore the case projected by the plaintiff that the first defendant had acquired the extent of 44 cents in the suit survey number as the family manager is false and also disputed the oral partition said to have taken place between Narayanasamy Naicker and the first defendant in respect of the same and the allotment of northern 22 cents to the plaintiff's father in the said partition and put forth the case that the claim of the plaintiff that the suit property has been wrongly described in the settlement deed dated 13.04.1966 and also disputed the claim of the plaintiff that he has been in the possession and enjoyment of the suit property by paying Kists from the days of his father and challenged the cause of action projected by the plaintiff for instituting the suit as false and prayed for the dismissal of the plaintiff's suit.

8. On the basis of the materials placed on record, both oral and documentary, both the Courts below had decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

9. The plaintiff claims title to the suit property based on the settlement deed dated 13.04.1966 said to have been executed in his favour by his father Narayanasamy Naicker. According to the defendants, Narayanasamy Naicker had no right or title to the suit property in any manner and not competent to settle the same in favour of the plaintiff as put forth in the plaint and accordingly challenged the truth and validity of the settlement deed dated 13.04.1966 marked as Ex.A2. According to the plaintiff, the suit property had been allotted to his father in the oral partition which took place between his father and the first defendant. The abovesaid plea of partition projected by the plaintiff has also been challenged in toto by the defendants.

10. No doubt, the plaintiff's father Narayanasamy Naicker and the first defendant are brothers. It is the specific case of the first defendant that the partition between him and Narayanasamy Naicker took place during 1940. The same has also been reiterated by him during the course of his evidence. Therefore when it is found that during 1940 itself, the plaintiff's father and the first defendant had become separated



and when there is no material on the part of the plaintiff to hold that Narayanasamy Naicker and the first defendant had remained joint even at the time of the acquisition of the extent of 44 cents in the suit survey number by the first defendant on 06.06.1945, the claim of the plaintiff that the extent of 44 cents in the suit survey number had been acquired by the first defendant in his capacity as the family manager, as such, cannot be accepted in any manner. There is no material placed on the part of the plaintiff worth acceptance that since the acquisition of 44 cents in the suit survey number under Ex.B1, the plaintiff's father and the first defendant had been enjoying the same as the joint family property and in such view of the matter, the claim of the plaintiff that the extent of 44 cents in the suit survey number is the joint family property of his father and the first defendant cannot at all be accepted in any manner.

11. When the extent of 44 cents in the suit survey number had been acquired by the first defendant after division with his brother Narayanasamy Naicker, it is evident that the said 44 cents is the separate property of the first defendant. In such view of the matter, the claim of the plaintiff that in the oral partition which took place between his father and the first defendant, the suit property had been allotted to his father cannot at all be countenanced in any manner. The plaintiff has not come forward with the clear case as to when the abovesaid oral partition took place between his father and the first defendant, what are the properties which were the subject matter of the partition and what are the properties allotted to his father and what are the properties allotted to the first defendant and who are the Panchayathars with reference to the said partition and when with reference to the abovesaid facts, nothing has been averred in the plaint and also established by the plaintiff by adducing acceptable and reliable evidence and when there is no material placed on record to evidence that the extent of 44 cents in the suit survey number had been jointly enjoyed by the plaintiff's father and the first defendant, in such view of the matter, the Courts below had totally erred in not taking into account the abovesaid factors and committed an error by accepting the plea of partition projected by the plaintiff as true sans any material pointing to the same. In this connection, the plaintiff examined as P.W.1, during the course of cross examination would state that no oral partition took place between his father and the first defendant and they had divided only by way of a registered partition deed and that he had filed the abovesaid partition deed in the Court. Therefore, it is found that the plaintiff has given a go by to the case projected by him in the plaint and when according to the plaintiff, his father and the first defendant had got divided under the registered instrument, the plaintiff should



have come forward with the said document for sustaining his case. Though he would claim that he had filed the said document of partition, no such document is placed for consideration on the part of the plaintiff. As abovenoted, he has also not come forward with the clear particulars as to when the alleged oral partition took place between his father and the first defendant. P.W.2 examined on behalf of the plaintiff has not stated anything about the partition between the plaintiff's father and the first defendant and on the other hand he would admit that the suit property had been acquired only by the first defendant. Therefore, P.W.2's evidence would not be useful to sustain the plea of oral partition projected by the plaintiff in the plaint.

12. In addition to that, the plaintiff has not placed acceptable material to hold that the suit property has been enjoyed by his father by paying Kists etc., Furthermore, the plaintiff claims title to the suit property based on the settlement deed dated 13.04.1966 said to have been executed in his favour of his father. Even in the said settlement deed, as per the case of the plaintiff, the suit property has not been correctly described. The property described in Ex.A1 settlement deed is stated to be consisting of an extent of 0.15 ½ cents out of 0.31 cents. Inasmuch as the plaintiff's father has no entitlement to the extent of 44 cents in the suit survey number in any manner and he had not been allotted the share in the abovesaid extent of 44 cents as put forth by the plaintiff and he has not enjoyed the allotted share i.e., the suit property following the alleged oral partition, it is found that the plaintiff's father without any right whatsoever had endeavored to execute the settlement deed in favour of the plaintiff and accordingly not correctly given the description of the property in the said settlement deed. If really the mistake had crept in Ex.A1 settlement deed by inadvertence, nothing would have prevented the plaintiff's father or the plaintiff from obtaining necessary rectification deed in connection with the same. However, the plaintiff would claim that he had become aware of the mistake in the settlement deed 35 years ago. Till date, he has not endeavored to rectify the document as per law. Though he would claim in his evidence that he had taken steps to rectify the document, no material is forthcoming on his part pointing to the same.

13. The Kists receipts projected by the plaintiff would not in any manner be useful to sustain his claim of title, possession and enjoyment of the suit property. When the Kists receipts projected by him are not shown to be relating to the suit property, as such, on the strength of the abovesaid documents alone, we cannot uphold the plaintiff's case.

14. The Courts below had accepted the plaintiff's case mainly on the settlement deed executed by the first defendant in



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favour of his wife on 22.09.1970 which document has come to be marked as Ex.A3. By way of Ex.A3, the first defendant had settled an extent of 11 cents out of 22 cents in the suit survey number and on that premise, the Courts below had proceeded to hold that inasmuch as the first defendant had been allotted only 22 cents out of 44 cents accordingly, he had only settled 11 cents out of 22 cents under Ex.A3 deed and on that reasonings, proceeded to accept the theory of oral partition projected by the plaintiff as well as his claim of title to the suit property based on Ex.A1 settlement. On a perusal of Ex.A3, settlement deed, nowhere in the said document, the first defendant has admitted that he had been allotted only 22 cents out of 44 cents in the oral partition between him and his brother. Merely on the footing that he had settled an extent of 11 cents out of 22 cents in favour of his wife under the said settlement deed, on that basis we cannot consider or hold that he had entitlement only to 22 cents and not the entire 44 cents in the suit survey number. The Courts below had also proceeded to hold that inasmuch as, the first defendant had failed to establish as to what had happened to the remaining extent not covered under Ex.A3 deed, on that reasonings also proceeded to accept the plaintiff's case. When the plaintiff has come forward with the suit for the reliefs of declaration and permanent injunction, it is for the plaintiff to establish his claim of title to the suit property based on acceptable and reliable materials. As above discussed, the plaintiff has miserably failed to establish his case in toto particularly his father's entitlement to the suit property as projected by him and when there is no material placed on the part of the plaintiff to establish his title, possession and enjoyment of the suit property in any manner, in all, it is found that the Courts below without property appreciating the materials placed on record in the right perspective and on the other hand, with the mindset of finding the defects in the defence version one way or the other, proceeded to uphold the plaintiff's case sans any material pointing to the same and as the abovesaid determination of the Courts below upholding the plaintiff's case is found to be based on perverse findings, illogical reasonings and irrational thinking, the same cannot be sustained in the eyes of law and liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiff.

15. For the reasons aforesaid, the judgment and decree dated 14.03.2005 passed in A.S.No.11 of 2003 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 27.01.2003 passed in O.S.No.314 of 1995 on the file of the Principal District Munsif Court, Kallakurichi are set aside and resultantly the suit laid by the plaintiff in O.S.No.314 of 1995 is dismissed with costs. Accordingly the



second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Kallakurichi.

2.The Principal District Munsif,
Principal District Munsif Court,
Kallakurichi.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1 cc to M/s.M.Balasubramanian Advocate sr 40446

+1 cc to M/s.P.Valliappan Advocate sr 40876

S.A.No.1590 of 2005

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