

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Second Appeal No.379 of 2012
and M.P.No.1 of 2012

1. C.Subramani Reddy
2. C.Ekanathan ... Appellants

Vs.

1. K.Jayaraman
2. Ravichander ... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 20.01.2012 passed in A.S.No.35 of 2011 by the Additional Subordinate Judge, Vellore reversing the decree and judgment dated 16.12.2010 passed in O.S.No.554 of 2009 by the District Munsif, Katpadi.

For Appellants : Mr. R.Siddharth

For Respondents : Mr.S.Thiruvengadam

JUDGMENT

Aggrieved over the first appellate court's decree and judgment dated 20.01.2012 passed in A.S.No.35 of 2011 by the Additional Subordinate Judge, Vellore reversing the decree and judgment dated 16.12.2010 passed in O.S.No.554 of 2009 by the District Munsif, Katpadi, the appellant came up with the present appeal.

2. This appeal is admitted with the following question of law.

Whether the learned first appellate Judge is erred in not appreciating the exhibits in Ex.A1, Ex.A2, Ex. A4, Ex.A5 and Ex.A8 which evidence oral partition.?

3. For the sake of convenience, the parties are referred to as per their original rank in the suit.

4. The brief facts of the plaint is as follows. The plaintiffs are the sons of one Chitta Chenga Reddy and the defendants are the sons of one Chitta Konda Reddy born through his second wife. The suit properties originally belonged to one Gengu Reddy and he had two sons i.e. the father of the plaintiffs and the father of the defendants. After the death of Gengu Reddy, his two sons namely Chitta Chenga Reddy and Chitta Konday Reddy divided the properties by an oral partition in the year 1952. In the above oral partition, the suit properties fell to the share of plaintiffs' father. Subsequently, on 09.06.1973, the said Konday Reddy and his son Raghunatha Reddy, who born through his first wife had entered into a registered partition deed, wherein, reference was also made with regard to the oral partition that took place in the year 1952. Similarly, the plaintiffs also divided the properties fell to the share of their father Chitta Chenga Reddy under oral partition that took place in the year 1952, by a registered partition deed dated 10.06.1996. Subsequently, a registered agreement dated 14.07.1981 was also entered into between Chitta Chenga Reddy, Chitta Konday Reddy and Raghunatha Reddy with regard to the usage of water. In the said agreement also, the above oral partition that took place in the year 1952 was admitted. When the matter stood thus, the defendants all of a sudden, tried to interfere with the possession of the properties of the plaintiffs on 30.11.2003. Hence the suit for declaration and injunction.

5. It is the contention of the defendants that no oral partition was effected in the year 1952. Though some of the properties were settled in favour of their brother Ragunatha Reddy, who born through the first wife of their father Konda Reddy, there was no effective partition with regard to the other properties. Merely because the documents, namely the revenue records are stand in the name of the plaintiffs and the defendants, it cannot be presumed that an oral partition was effected. Hence, they prayed for dismissal of the suit.

6. The trial court framed the following the issues.

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for?
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
3. What relief the plaintiffs are entitled to?

Additional issue framed on 18.09.2010

1. Whether this court is having pecuniary jurisdiction to try this suit?

7. Before the trial court, the plaintiffs examined two witnesses and marked Ex.A1 to Ex.A25 on their side, while the

defendants examined three witnesses and marked Ex.B1 to Ex.B9. Also, Ex.X1 and Ex.X2 were marked.

8. Based on the evidence on record, the trial court decreed the suit in favour of the plaintiffs. However, the first appellate court reversed the said decree and judgment. Hence, the plaintiffs have come up with the present second appeal.

9. The learned counsel appearing for the appellants would submit that there is no dispute with regard to the relationship between the parties and that the suit properties and other properties were divided in the year 1952 by an oral partition between two brothers namely Chitta Chenga Reddy and Chitta Konda Reddy. He would further submit that ever since the date of the said oral partition, the plaintiffs are enjoying their respective properties allotted to the share of their father Chitta Chenga Reddy and the oral partition is evident from the subsequent documents executed by the members of the family. In fact, Ex.A1, Ex.A2 and Ex.A5 and the evidence of PW1 clinchingly established the factum of the oral partition which took place in the year 1952. His specific contention is that the parties to the oral partition themselves accepted the said oral partition in subsequent documents, however, the first appellate court ignored the above documents and placed the burden on the plaintiffs to prove the oral partition and that such approach of the first appellate court is not on the proper appreciation of the documents and evidence of the parties. Hence, he prayed to allow this second appeal.

10. On the other hand, the learned counsel appearing for the respondents would submit that merely because some properties were allotted in favour of Raghunatha Reddy, first wife's son of Konda Reddy on 09.06.1973 through a registered partition deed, the same cannot be the ground to assume that the oral partition was took place in the year 1952. It is the contention of the learned counsel appearing for the respondents that oral partition has to be established by the plaintiffs and the burden of proof lies on them. He would further submit that the first appellate court after taking into consideration of the various facts, rightly reversed the decree and judgment of the trial court and hence he prays for dismissal of the appeal.

11. I have perused the records. The suit has been filed for declaration and injunction on the ground that the suit properties were originally divided by one Chitta Chenga Reddy and Chitta Konday Reddy through an oral partition in the year 1952. No doubt, the parties to the oral partition have to establish the oral partition. At the same time, the concept of oral partition is not alien to Hindu Law. Oral partitions are recognised by the court, provided, the same is proved properly before the court of law.

12. The specific case of the plaintiffs is that in the year 1952, the suit properties and other properties were partitioned among two brothers namely Chitta Chenga Reddy and Chitta Konday Reddy and the suit properties were fell in the share of their father Chitta Chenga Reddy and other properties fell in the share of Chitta Konda Reddy. From the pleadings of the respective parties, there is no dispute with regard to the relationship between them. The Plaintiffs are the sons of Chitta Chenga Reddy and the defendants are the sons of Chitta Konda Reddy born through his second wife and Ragunatha Reddy is the son of Chitta Konda Reddy born through his first wife. It is the main contention of the defendants that there was no effective partition. The crux of the issue revolves around the suit is whether there was an oral partition in the year 1952. It is to be noted that on 09.06.1973, a registered partition deed was entered into between one Konda Reddy and his son Ragunatha Reddy, born through his first wife. When carefully ie Ex.A5, it is clear that the father of the defendants has entered into a partition with his son Ragunatha Reddy, born through his first wife, wherein a specific reference has been made in respect of oral partition that took place in the year 1952. Similarly, Ex.A3 a registered agreement was entered into between Chitta Chenga Reddy, Chitta Konda Reddy and Ragunatha Reddy with regard to the usage of water, wherein also the two brothers namely Chitta Chenga Reddy and Chitta Konda Reddy have admitted the oral partition between themselves took place in the year 1952. It is pertinent to note that in Ex.A2 and Ex.A17, partition deed entered into among the defendants, the partition is only in respect of the properties allotted to the share of their father Konda Reddy. If really there was no oral partition effected in the year 1952 as contended by the defendants, there is no reason as to why they confined themselves only to the specific properties allotted to their father Konday Reddy in the year 1952. These facts coupled with the admission of the oral partition in Ex.A3 and Ex.A5 vouched the fact that there was an oral partition in the year 1952 between two brothers namely Chitta Chenga Reddy and Chitta Konday Reddy. It is also to be noted that in Ex.A1, the defendants and others have executed a mortgage deed in respect of the properties allotted to their father. Besides, Ex.A8 sale deed also executed by the defendants in respect of the properties allotted to them. These documents coupled with the conduct of the parties, particularly the defendants entering into the partition in respect of the properties allotted to their father Konda Reddy and mortgaging the property, clearly established the factum of the oral partition took place in the year 1952. It is also curious to note that the revenue records also stand in the name of the respective parties with regard to their respective properties, which has not been disputed. All

these facts clearly proved the fact that there was a factum of oral partition in the year 1952. Further, the conduct of the defendants in entering into partition and mortgaging some properties which fell to the share of Konda Reddy clearly proved the factum of oral partition. Therefore, it is proved that the plaintiffs have discharged their burden in establishing the factum of oral partition. The first appellate court ignored these documents particularly Ex.A1, Ex.A2, Ex. A4, Ex.A5 and Ex.A8 and came to the conclusion that oral partition cannot be believed. Such approach of the first appellate court is non appreciation of facts properly. Inview of all the above, the substantial question of law is answered in favour of the appellants.

13. In the result,

(i) The second appeal is allowed. No costs. The connected miscellaneous petitions are closed.

(ii) The decree and judgment passed by the Additional Subordinate Judge, Vellore (first appellate court) in A.S.No.35 of 2011 dated 20.01.2012 is set aside.

(iii) The decree and judgment passed by the District Munsif, Katpadi in O.S.No.554 of 2009 (Vellore D.M.C.O.S.No.675 of 2003) dated 16.12.2010 are confirmed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Subordinate Judge, Vellore

2. The District Munsif, Katpadi

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

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.11006

+1cc to Mr.T.R.Rajaraman, Advocate SR.No.11048

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PP(CO)
GMY(17/09/2019)