

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2019

PRONOUNCED ON : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.819 & 820 of 2019

K.N.Raman Kutty ...Appellant in both cases

Vs.

K.N.Usha ...Respondent in both cases

Prayer :- Second Appeals have been filed under Section 100 of CPC against the Judgements and Decrees dated 14.12.2018 & 20.12.2018 passed in A.S.Nos.14 of 2013 & 15 of 2013 on the file of the District Court, The Nilgiris at Udhagamandalam, confirming the Judgment and Decree dated 30.09.2013 passed in O.S.Nos.39 of 2011 & 121 of 2011 on the file of the Subordinate Court, Udhagamandalam.

For Appellant : Mr.B.Ramamoorthy
in both appeals

JUDGMENT

The second appeal Nos.819 & 820 of 2019 are directed against the Judgements and Decrees dated 20.12.2018 passed in A.S.Nos.14 of 2013 & 15 of 2013 respectively on the file of the District Court, The Nilgiris at Udhagamandalam, confirming the Judgment and Decree dated 30.09.2013 passed in O.S.Nos.39 of 2011 & 121 of 2011 on the file of the Subordinate Court, Udhagamandalam.

2.The respondent has laid the suit against the appellant in O.S.No.39 of 2011 for partition and permanent injunction.

3.The appellant has laid the suit against the respondent in O.S.No.121 of 2011 for the relief of permanent injunction.

4.Inasmuch as the subject matter involved in the abovesaid two suits is one and the same and also the parties are claiming their respective reliefs based on the same grounds as set out in both the suits, it is found that the abovesaid two suits were jointly tried by the trial Court and common evidence has been recorded and the trial Court, after an analysis of the materials placed on record by the respective parties and the submissions made, was pleased to decree the suit in favour of the respondent as prayed for in O.S.No.39 of 2011 and dismissed the suit laid

by the appellant in O.S.No.121 of 2011. Impugning the same, the appellant had preferred the first appeals. The first appellate Court had also concurred with the judgment and decree of the trial Court and resultantly, dismissed both the appeals preferred by the appellant. Challenging the same, the present second appeals have been preferred.

5.The relationship between the parties is not in dispute. It is found that the appellant and the respondent are the son and the daughter of the deceased Narayanan. It is further seen that as per Ex.A1 sale deed projected in the matter, the suit property stands in the names of the appellant as well as the respondent. Though it is pleaded by the appellant that the sale consideration for the abovesaid sale deed Ex.A1 had been paid by him exclusively out of his own earnings and only for the purpose of convenience, the name of the respondent has been included in the sale transaction, however, on a perusal of the sale deed projected in the matter, it is found that the suit property had been acquired jointly in the names of the appellant and the respondent and it is further seen that the respondent was a minor at the time of the purchase of the suit property. Furthermore, inasmuch as the suit property had been jointly purchased by both the appellant and the respondent and they had been enjoying the same in common, the chitta extract in respect of the suit property marked as Ex.A2 is also found to be standing in the names of the appellant and the respondent. That apart, even the documents marked as Exs.B4 & B5 on the side of the appellant go to disclose that the suit property jointly stands in the name of the appellant and respondent and accordingly, both of them, as determined by the Courts below, are found to be in the joint possession and enjoyment of the suit property.

6.Though the appellant would claim that the respondent had relinquished her right and interest in respect of the suit property in his favour, however to substantiate the abovesaid plea, no proof whatsoever has been placed by the respondent, particularly, to evidence that after the so-called relinquishment, the suit property has been in his exclusive possession and enjoyment.

7.Claiming her share in the suit property, the respondent is found to have issued the legal notice to the appellant marked as Ex.A3 and the same had been acknowledged by the appellant. Despite the same, the appellant has not repudiated the claim of the respondent in the abovesaid legal notice, particularly, not even endeavoured to deny the claim of the respondent that the suit property is in the joint possession and enjoyment of the both parties and the entitlement of the respondent to claim partition of her share in the suit property.

8. Furthermore, the respondent apprehending that the appellant has endeavoured to alienate the suit property to the third parties without any semblance of right had also sought for the relief of permanent injunction in order to protect her interest in respect of the suit property.

9. In the light of the abovesaid factors, the Courts below are found to be totally justified in coming to the conclusion that both the appellant and the respondent are the co-owners of the suit property and accordingly, the respondent is entitled to obtain her claim of half share in the suit property as prayed for. Further, the Courts below had also rightly determined that the appellant has failed to establish his claim of exclusive possession and enjoyment of the suit property as put forth by him. In such view of the matter, it is found that the Courts below, on an appreciation of the materials placed on record, both oral and documentary, rightly determined that the appellant is not entitled to seek the relief of permanent injunction as claimed by him and on the other hand, the respondent is entitled to seek the claim of partition as well as the relief of permanent injunction as prayed for in her suit. In the light of the abovesaid position, no reason is warranted to interfere with the abovesaid conclusions of the Courts below.

For the reasons aforesaid, no substantial question of law is found to be involved in the second appeals. Resultantly, both the second appeals are dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

sms
To

1. The District Judge, Appellate authority,
The Nilgiris at Udhagamandalam.

2. The Subordinate Court, Udhagamandalam.

+1 CC to Mr. B. Ramamoorthy, Advocate sr 68258.

S.A. Nos. 819 & 820 of 2019

RSV (CO)
SP (27/01/2020)