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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.06.2019

PRONOUNCED ON: 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. Nos.643 & 644 of 2019

and

CMP Nos.11470 & 11472 of 2019

Kumar @ Sasikumar

...Appellant in both second appeals

Vs.

S.R.Palanisamy

... Respondent in both second appeals

Common Prayer: Second Appeals filed under Section 100 of C.P.C., against the judgment and decree dated 11.01.2019 made in A.S.Nos.21 & 23 of 2014, on the file of the Sub-Court, Gobichettipalayam, confirming the judgment and decree dated 09.06.2014 made in O.S. Nos. 147 & 148 of 2008, on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr. P.Saravana Sowmiyan
in Both appeals

C O M M O N J U D G M E N T

Second appeal Nos.643 and 644 of 2019 are directed against the judgment and decree dated 11.01.2019 passed in A.S.Nos.21 & 23 of 2014, on the file of the Subordinate Court, Gobichettipalayam, confirming the judgement and decree dated 09.06.2014 passed in O.S. Nos. 147 & 148 of 2008, on the file of the District Munsif Court, Gobichettipalayam.

2. The appellant is the plaintiff in O.S.No.147 of 2008. The above suit has been levied by the appellant against the respondent for declaration and permanent injunction as well as for partition. The respondent is the plaintiff in O.S.No.148 of 2008. The above suit has been levied by the respondent against the appellant for declaration and permanent injunction.



3. Inasmuch as the same property is involved in both the suits and as both the parties claim title to the property on the various grounds as projected in their respective suits, accordingly, both suits were taken up together jointly for trial in the trial Court and it is seen that common evidence has been recorded in both suits.

4. Based on the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the case of the respondent and accordingly granted the reliefs in favour of the respondent as prayed for in the suit preferred by him and resultantly dismissed the suit levied by the appellant. Aggrieved over the same, the appellant has preferred these second appeals.

5. As could be seen from the pleas put forth by the respective parties, even as per the case of the appellant, the suit property had been acquired by Ramasamy as per the partition arrangement effected between Ramasamy and his brother Muthusamy. Furthermore, as could be seen from the materials placed on record, it is found that the suit property is the ancestral property of Ramasamy. Further, according to the appellant, the suit property had been derived by Ramasamy by virtue of the partition effected with his brother and accordingly, it is found that the Courts below had determined that the suit property assumes the character of ancestral property as well as the separate property of Ramasamy.

6. The appellant claims himself to be the son of Ramasamy and accordingly contended that inasmuch as the suit property is the ancestral property, he is entitled to $\frac{1}{2}$ share in the suit property and Ramasamy is not entitled to alienate the suit property in entirety in favour of the respondent and inasmuch as Ramasamy had alienated the suit property in entirety in favour of the respondent on 23.08.2006, particularly, during the pendency of the partition suit levied by the appellant against Ramasamy in O.S.No.276/2006, according to the appellant, he is entitled to $\frac{1}{2}$ share in the suit property and accordingly, seeking claim of right to the $\frac{1}{2}$ share of the suit property, he has come forward with the suit for appropriate reliefs in O.S.No.147 of 2008.

7. Per contra, it is the specific case of the respondent that the appellant is not the legitimate son of Ramasamy and the appellant is only an illegitimate son of Ramasamy born through the illicit relationship of Ramasamy with the appellant's mother and hence, according to the respondent, the appellant is not



entitled to claim any share in the suit property claiming to be the legitimate son of Ramasamy and furthermore, according to the respondent, Ramasamy, for valid consideration and necessity, alienated the suit property in his favour on 23.08.2006 and following the same, it is only the respondent who has been in possession and enjoyment of the suit property and inasmuch as the appellant without any entitlement or authority, attempted to interfere with the possession and enjoyment of the respondent, hence, he has been necessitated to lay the suit against the appellant for appropriate reliefs in O.S. No.148 of 2008.

8. As could be seen from the materials available on record, it is found that when Ramasamy was alive, the appellant claiming to be the son of Ramasamy, is found to have laid the suit for partition in O.S. No.276/2006, on the file of the District Munsif Court, Gobichettipalayam. The same could be gathered from the document marked as Ex.B2. Furthermore, pending the above suit, it is found that Ramasamy had alienated the suit property in favour of the respondent and consequently, it is further seen that the appellant had levied the suit against both Ramasamy and the respondent for the relief of permanent injunction in O.S.No.337/2006 and the said fact could be gathered from Ex.B3. However, it is found that the appellant had not prosecuted the abovesaid suits and left it as not pressed/ go for dismissal for default. In the abovesaid suit levied by the appellant against Ramasamy seeking for partition, the stand had been taken by Ramasamy that the appellant is not his legitimate son and Ramasamy had also pleaded that when he had got separated from his wife, he had developed intimacy with the appellant's mother and through the illicit relationship, the appellant had been born to him. Therefore, it is found that as determined by the Courts below, Ramasamy, during his lifetime itself, has disputed the status of the appellant and contended that he is not his legitimate son. Despite the above position, the appellant has not placed any acceptable and reliable materials that there had been a lawful marriage between Ramasamy and his mother and through the said lawful wedlock he had been born. The appellant had not even chosen to examine his mother to buttress his case. On the other hand, as could be seen from the materials placed on record and from the evidence of PW2, Palaniammal, the first wife of Ramasamy, it is seen that Ramasamy had married only PW2 and during the subsistence of the abovesaid marriage, following the estrangement from PW2, it is found that Ramasamy had developed intimacy with the appellant's mother and out of the said relationship the appellant is found to have been born to Ramasamy. In addition to that PW2 is also found to have levied maintenance claim against Ramasamy and accepting her status, it is found that Ramasamy had also agreed to give life time maintenance in her favour and the same could be gathered from the materials placed on record marked as



Exs.A12 and A13. Therefore, it is found that when Ramasamy had married Palaniammal (PW2) as his lawfully wedded wife and when there is no material to hold that a valid marriage had been performed between Ramasamy and the appellant's mother and on the other hand, as could be seen from the materials placed on record, the appellant is found to have been born through the illicit relationship of Ramasamy and his mother, in such view of the matter, the Courts below are right in determining that the appellant's mother is not the lawful wife of Ramasamy and that the appellant is not the legitimate son of Ramasamy.

9. As per the pleas set out by the appellant in his suit, Ramasamy is found to have acquired the right in the suit property based on the partition arrangement between him and his brother Muthusamy on 30.06.1981. However, it is found that Ramasamy had described the suit property as belonging to him ancestrally in the sale deed executed by him in favour of the respondent dated 23.08.2006 marked as Ex.A1. Be that as it may, as rightly determined by the trial Court, in particular, considering the nature of the property, the same being ancestral in nature and when even as per the case of the appellant, the same had been acquired by Ramasamy by way of partition arrangement with his brother, in such view of the matter, the trial Court is found to be correct in holding that the suit property belongs to Ramasamy both ancestrally as well as separately as he had acquired the same by way of partition arrangement effected with his brother.

10. As above noted, claiming share in the suit property, the appellant had levied the partition suit against Ramasamy in O.S.No.276 of 2006. However, the abovesaid suit was not prosecuted by the appellant and the same had been dismissed as not pressed. The same had been admitted by the appellant. Pending the abovesaid suit, it is found that Ramasamy had alienated the suit property in favour of the respondent. Considering the recitals contained in the sale deed marked as Ex.A1, it is found that Ramasamy, claiming absolute right in the suit property, had alienated the same in favour of the respondent for valid consideration and for legal necessity and in such view of the matter, when the suit property assumes the character of both the ancestral as well as the separate property of Ramasamy and in such view of the matter, when Ramasamy is entitled to deal with the suit property as he desires and when the alienation effected by Ramasamy in favour of the respondent under Ex.A1 transaction, is not shown to be tainted with any illegality or immorality and it is further seen that Ramasamy had alienated the suit property for valid consideration and following the alienation, it is further seen that it is only the



respondent who has been in the possession and enjoyment of the suit property by obtaining patta, paying kist etc., in all, the Courts below are found to be fully justified in not accepting the case of the appellant that he is entitled to obtain the $\frac{1}{2}$ share in the suit property on the footing that he is the legitimate son of Ramasamy. As above pointed out, when the suit property is considered as the ancestral property of Ramasamy, in such view of the matter, the appellant having not established to be the legitimate son of Ramasamy, as determined by the Courts below, the appellant would not be entitled to claim any share in the suit property. If the suit property is admitted to be the separate property of Ramasamy, when it is found that Ramasamy had alienated the suit property for valid consideration and for legal necessity in favour of the respondent and following the same, when the suit property is found to be in the valid possession and enjoyment of the respondent and when the alienation effected by Ramasamy would also be equally binding upon his illegitimate son, the appellant, on the ground of pious obligation, in such view of the matter, it is found that the appellant is not entitled to challenge the alienation effected by Ramasamy in favour of the respondent and thereby seek $\frac{1}{2}$ share in the suit property.

11. Looked at from any angle it is found that the appellant is not entitled to seek the reliefs as prayed for in his suit and the Courts below are found to have analyzed the materials in the right perspective and considering the same, both factual wise as well as legal wise, correctly determined that the appellant is not entitled to obtain the reliefs prayed for in his suit and the respondent is entitled to obtain the reliefs prayed for in his suit. In such view of the matter, no interference is called for in the judgment and decree of the Courts below rejecting the appellant's case and accepting the respondent's case.

12. In support of his contentions, the appellant's counsel has placed reliance upon the decision reported in 2011 (2) CTC 810 Revanasiddappa & Another Vs. Mallikarjun & Others. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.



13. In the light of the above discussions, no substantial question of law is found to be involved in these second appeals. Accordingly, the second appeals are dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Subordinate Judge,
Sub-Court,
Gobichettipalayam.
2. The District Munsif Court,
Gobichettipalayam.

copy to:
The Section Officer,
VR Section,
High Court, Madras.

+2 cc to M/s.P.Saravana Sowmiyan Advocate sr45597,45596
S.A.Nos.643 & 644 of 2019
and
C.M.P. Nos.11470 & 11472 of 2019

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aa18/09/2019