

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.891 of 2019
and
C.M.P.No.18968 of 2019

Subramaniam (Died) by LR.

1.Sarasu

..Appellant/Appellant/Plaintiffs

Vs.

Arumuga Gounder (Died) by LRs

1.Vellingiri

2.Valliammal

3.Palanisamy

4.Rangammal

5.Kamalam

6.Rangasamy

7.Eswari

(Respondents 2 to 7 are Legal represented
of the 1st Respondent Arumuga gounder)

..Respondents/Respondent/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 25.01.2019 made in A.S.No.7 of 2011 on the file of the Subordinate Judge, Pollachi confirming the judgment and decree dated 05.10.2009 made in O.S.No.408 of 2003 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr.S.Kasirajan

J U D G M E N T

The plaintiff, whose suit for declaration that she is the absolute owner of the suit property subject matter of the suit in O.S.No.408 of 2003 and permanent injunction was dismissed by the trial court and the said dismissal was affirmed by the appellate court, has come forward with this Second Appeal.

2. The plaintiff claims that a larger extent of property measuring about 735 sq.ft belonged to the common ancestor of the plaintiff and the defendants. According to her, in the year

1995, there was a partition, in and by which, the Western portion measuring 245 sq.ft was allotted to her while the middle portion was allotted to the 1st defendant and the Eastern portion was allotted to 2nd defendant. She would also claim that the parties are in possession as per the said partition.

3. According to the plaintiff, in the year 1998, she came to know that patta in respect of S.No.449/20 namely, the suit property was granted in favour of the 1st defendant and two other female members Kunjathal and Mylathal. According to the plaintiff, she approached the Tahsildar and Village Administrative Officer for correction and since they did not come forward to rectify and misusing the said patta the 1st defendant attempted to interfere with her possession of the property, she was forced to file the present suit.

4. The suit was resisted by the defendants contending that the claim of the plaintiff that the property belong to the common ancestor itself is false. It was also claimed that the suit property belonged to the 1st defendant's father Palani Gounder, who had four sons namely, Devae Gounder, Ramasamy, Arumugha Gounder and Kaliappa Gounder. It is claimed that after the death of Palani Gounder, a oral partition was effected between the 1st defendant and his brothers. In the said partition, 449/17 and 449/20 were allotted to the 1st defendant and his brother Kaliappa Gounder, since they have been in possession and enjoyment of the property.

5. It is also claimed that even in 1949, precisely on 10.03.1949 the 1st defendant and his brother Kaliappa Gounder mortgaged the suit property under a registered mortgage deed with one Chinnathambi Pillai and had borrowed a sum of Rs.95/-. It is also claimed that the said mortgage was discharged on 08.09.1949. After the discharge, an oral partition was entered into between the 1st defendant and his brother Kaliappa Gounder. In the said oral partition, entire properties in 449/17 and 449/20 were allotted to the 1st defendant Arumugha Gounder. Therefore, according to the 1st defendant, the entire property is in possession of the 1st defendant and he is the absolute owner of the same.

6. The trial court framed necessary issues and concluded that the plaintiff had not established common ownership. The alleged partition Muchalika entered in 1995 was not even produced before the trial court. The trial court disbelieved the case of the plaintiff and dismissed the suit. Aggrieved the plaintiff had filed an appeal in A.S.No.7 of 2011.

7. In the lower appellate court an attempt was made by the plaintiff to produce the alleged unregistered partition deed.

The said attempt was rejected by the lower appellate court. The lower appellate court found that the conclusions of the trial court are just and reasonable based on the evidence that was available on record. Finding that no other conclusion was possible, the learned Subordinate Judge, Pollachi who heard the appeal, dismissed the appeal confirming the judgment and decree of the trial court. Aggrieved the the appellant has come forward with the Second Appeal.

8. I have heard Mr.S.Kasirajan, learned counsel appearing for the appellant.

9. Mr.S.Kasirajan would vehemently contend that the lower appellate court must have given an opportunity to the plaintiff/appellant to produce the partition Muchalika.

10. The document was not admittedly produced before the trial court. The lower appellate court has given sound reasons for rejecting the request for production of the document in the appellate court. Though the plaintiff claims 1/3rd share in the 735 sq.ft., it is seen that the suit property is shown as entire 735 sq.ft. This was also one of the grounds for the courts below for rejecting the claim of the plaintiff.

11. The courts below found that the plaintiff has not established that the property belonged to a common ancestor as claimed by her. The alleged partition Muchalika which came into existence in the year 1995 was not produced before the courts below. Therefore, I do not find any question of law much less a substantial question of law enabling me to entertain this Second Appeal.

12. Hence, this Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is also closed.

-s/d-

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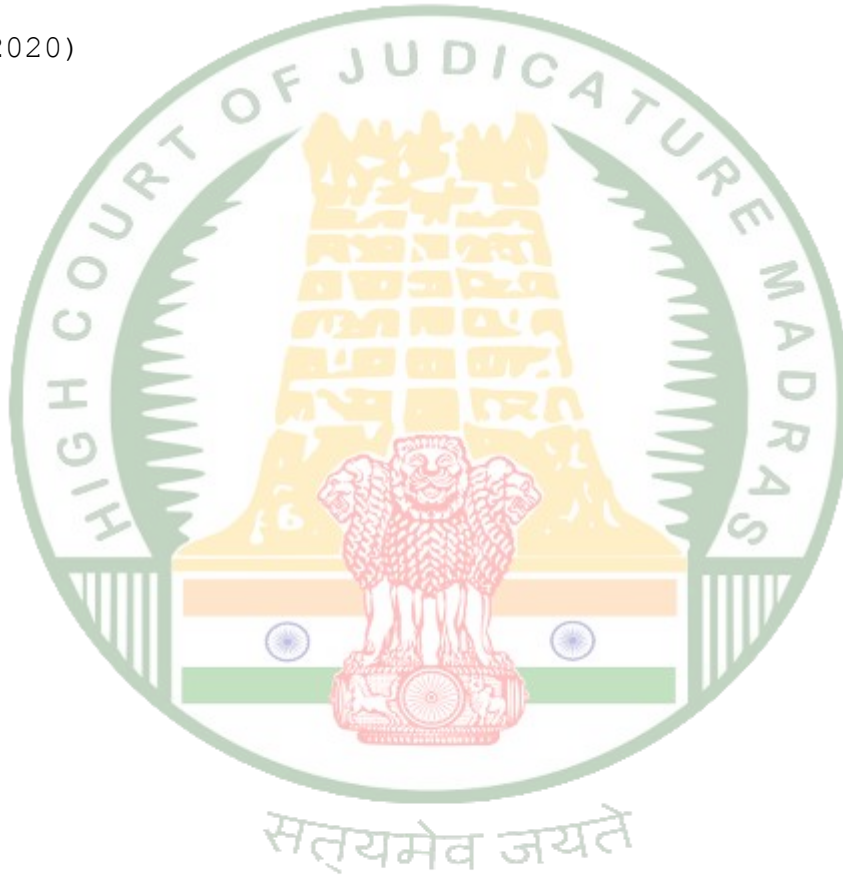
1. The learned Subordinate Judge,
Pollachi.

2. The learned District Munsif Court,
Pollachi.

+1 CC to Mr.S.Kasirajan, Advocate sr 77864.

S.A.Nos.891 of 2019

AD (CO)
SP (10/11/2020)



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