

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.46 & 47 of 2016

S.A.No.46 of 2016

Viswanathan ..Plaintiff/ Appellant

Vs.

1.Gurumurthy  
2.Masthan Beevi  
3.Najimudin  
4.Jalaludin  
5.Jabarudin  
6.Merrie On Rita  
7.Sumathi  
8.Minor Abirami ..Defendants/Respondents  
(Rep.by her mother and  
next friend Sumathi)

S.A.No.47 of 2016

Viswanathan ..Plaintiff/Appellant

Vs.

1.Gurumurthy  
2.Sumathi  
3.Minor Abirami  
(Rep.by her Mother and  
next friend Sumathi)  
4.Masthan Beevi  
5.Najimudin  
6.Jalaludin  
7.Jabarudin  
8.Merrie On Rita ..Defendants/Respondents

Prayer :- Second Appeal have been filed under Section 100 of CPC against the Judgement and Decree dated 27.02.2015 passed in A.S.Nos.41 & 43 of 2014 on the file of the Principal Subordinate Court, Mayiladuturai, modifying the Judgment and Decree dated 24.02.2014 passed in O.S.No.32 of 2010 on the file of the Additional District Munsif, Mayiladuturai.

For Appellant in : Mr.S.Sounther  
both second appeals

For Respondent Nos.1,7&8 : Mr.N.A.Nissar Ahamed  
in S.A.No.46 of 2016

Respondent Nos.2 to 6 in : No appearance  
S.A.No.46 of 2016 & R1 to Set exparte vide  
R8 in S.A.No.47 of 2016 order dt 19.06.2019

#### JUDGMENT

Challenge in these second appeals are made to the Judgement and Decree dated 27.02.2015 passed in A.S.Nos.41 & 43 of 2014 on the file of the Principal Subordinate Court, Mayiladuturai, modifying the Judgment and Decree dated 24.02.2014 passed in O.S.No.32 of 2010 on the file of the Additional District Munsif, Mayiladuturai.

2.Both the abovesaid second appeals have been admitted on the following substantial question of law:

"(a).Whether the judgment of lower appellate Court is vitiated by its holding that the appellant's vendor is entitled only 1-1/16<sup>th</sup> share in the suit property on the assumption that the father of plaintiff's vendor was survived by other heirs apart from plaintiff's vendor, when there is no plea or evidence in support of the same?"

3.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4.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.

5.The suit has been laid by the plaintiff against the defendants for the relief of partition as regards the plaint "A" schedule property and for the reliefs of declaration and permanent injunction as regards the plaint "B" schedule property.

6.It is not in dispute that the total extent available in survey No.15/1 in the suit village measuring an extent of 15 cents originally belonged to Sulaiman Rawuthar. Now, the contesting parties are claiming title to their respective properties in the abovesaid 15 cents of land lying in survey No.15/1 on the footing that they have purchased their respective properties from the legal heirs of the deceased

Sulaiman Rawuthar. The plaintiff has put forth the case that he has purchased the plaint "A" schedule property of an extent of 2-1/8 cents by way of a sale deed dated 29.08.2005 from the second defendant and the certified copy of the sale deed has been marked as Ex.A6. Furthermore, the plaintiff also claims to have purchased the plaint "B" schedule property of an extent of 6 ½ cents by way of a sale deed dated 10.01.2008 from the 4<sup>th</sup> defendant and the certified copy of the abovesaid sale deed has been marked as Ex.A1. It is not in dispute between the parties that the total extent available in Survey No.15/1 is only 15 cents.

7.As abovenoted, the plaintiff claims the reliefs of declaration and permanent injunction in respect of the plaint "B" schedule property and the plaint "B" schedule property is described as measuring an extent of 6 ½ cents out of the total extent of 15 cents in survey No.15/1. As could be seen from the materials available on record, the legal heirs of Sulaiman Rawuthar had divided the properties by way of a partition deed dated 13.10.1953, the copy of which deed has been marked as Ex.A5. As per Ex.A5, it is found that Jainub Kani had been allotted 2 ¼ cents and the other legal heirs of Sulaiman Rawuthar had been each allotted 2 -1/8 cents in the suit survey number. Therefore, when it is found that the 4<sup>th</sup> defendant Madhina Beevi had been allotted only 2-1/8 cents under Ex.A5 partition deed, the claim of the plaintiff that he had purchased 6 ½ cents from the 4<sup>th</sup> defendant by way of Ex.A1 sale deed, as such, cannot be accepted. Furthermore, as could be seen from the materials placed on record, when by way of a sale deed dated 01.02.1987, the copy of which has been marked as Ex.B10, which sale transaction is not in dispute, it is found that Thangaprakasam, the husband of the 10<sup>th</sup> defendant had purchased 8 ½ cents in the suit survey number from Jaidun Beevi, Mathina Beevi and others in the suit survey number and therefore, when the executants of Ex.B10 sale deed had already conveyed their share in the suit survey number to Thangaprakasam, it does not stand to reason as to how thereafter, the 4<sup>th</sup> defendant Mathina Beevi would be entitled to convey the extent of 6 ½ cents or 2-1/8 cents in the suit survey in favour of the plaintiff by way of Ex.A1 sale deed. Therefore, the Courts below had rightly held that the sale transaction projected by the plaintiff marked as Ex.A1 for claiming title to the extent of 6 ½ cents in the suit survey number is found to be not a true and valid sale deed and therefore, the Courts below are totally justified in declining the reliefs of declaration and permanent injunction in favour of the plaintiff based on Ex.A1 sale deed and no interference is warranted to disturb the abovesaid determination of the Courts below declining the reliefs of declaration and permanent injunction prayed for by the plaintiff.

8. By way of Ex.A6 sale transaction dated 29.08.2005, the plaintiff claims to have acquired the extent of 2-1/8 cents in the suit survey number from the second defendant Masthan Beevi, Masthan Beevi is not the direct heir of the deceased Sulaiman Rawuthar and on the other hand, Masthan Beevi is the daughter of Mohammed Hakkim, the son of Sulaiman Rawuthar. As per Ex.A5 partition deed, Mohammed Hakkim had been allotted only an extent of 2-1/8 cents in the suit survey number. Furthermore, when the plaintiff has not come forward with the clear case that the second defendant is the only daughter of the deceased Mohammed Hakkim and that Mohammed Hakkim has no other legal heirs and in such view of the matter, as per the Mohammdin Law, when the second defendant, the daughter of the deceased Mohammed Hakkim, would be entitled to obtain only ½ share belonging to Mohammed Hakkim, in such view of the matter, the second defendant as the legal heir of Mohammed Hakkim, as such, would not be entitled to alienate the entire extent of 2-1/8 cents in favour of the plaintiff by way of Ex.A6 sale transaction and on the other hand, at the most, she would be entitled to alienate only an extent of 1 - 1/6 cents belonging to her as per Mohammdin Law in favour of the plaintiff and therefore, the claim of the plaintiff that he is entitled to 2 - 1/18 cents by way of Ex.A6 sale transaction has been rightly turned out by the first appellate Court. When it is not the case of the contesting parties that either Mohammed Hakkim or the second defendant had alienated the share belonging to them in the suit survey number, in such view of the matter, when the second defendant as the legal heir of Mohammed Hakkim would be entitled to obtain only 1-1/6 cents in the suit survey number, in such view of the matter, based on the abovesaid sale transaction, the plaintiff, as determined by the first appellate Court, would be entitled to secure the relief of partition as only as regards the extent of 1- 1/6 cents in the suit survey number and not in respect of the entire share belonging to Mohammed Hakkim i.e. 2-1/8 cents in the suit survey number.

9. The trial Court is found to have granted the relief of partition in favour of the plaintiff holding that he is entitled to 2-1/8 cents towards his share in the plaint "A" schedule property. The abovesaid determination of the trial Court is based on the footing that the contesting defendants have not placed documents to hold that Mohammed Hakkim died leaving behind the other legal heirs than his daughter Mathan Beevi viz., the second defendant. However, the abovesaid reasonings of the trial Court is unacceptable. When according to the plaintiff, he had purchased the extent of 2-1/8 cents in the suit survey number from the second defendant by way of a sale transaction marked as Ex.A6 and when there is no pleading put forth by the plaintiff that the second defendant alone is the legal heir of Mohammed Hakkim and that Mohammed Hakkim did not leave behind the other legal heirs than the second defendant and more particularly, when the contesting defendants have pleaded that the second defendant would be

entitled to alienate only her legal share and not the share of others and if so alienated, the same is invalid and also impugned the sale deed dated 29.08.2005 in toto, in such view of the matter, the plaintiff having laid the suit seeking the specific relief based on his vendor's entitlement to the property covered under Ex.B5 sale transaction and when the same is controverted and challenged by the contesting defendants, in such view of the matter, it is for the plaintiff to establish by acceptable and reliable materials to show that Mohammed Hakkim died leaving only the second defendant as his legal heir and that he has no other legal heirs. Therefore, the trial Court is not justified in accepting the sale transaction Ex.A6 straightaway on the footing that the second defendant is the only legal heir of Mohammed Hakkim and entitled to alienate 2 -1/8 cents in the suit survey number in favour of the plaintiff. Accordingly, the first appellate Court is justified in holding that as per the Mohammdin Law, the second defendant being entitled to obtain only ½ share belonging to her father, in such view of the matter, I do not find any valid reason to interfere with the determination of the first appellate Court holding that the plaintiff, at the most, would be entitled to claim partition only in respect of 1-1/6 cents in the suit survey on the strength of Ex.A6 sale transaction.

10.The first defendant has claimed title to the extent of 7 cents in the suit survey number based on the purchase from the Manickka Padaiyachi under Ex.B5 sale deed dated 04.08.1999. However, from the materials placed on record, Manicka Padayachi is found to be only an agreement holder with the legal heirs of Sulaiman Rawuthar and not as such purchased, the extent of 7 cents from them. The same has also been accepted by the first defendant. In such view of the matter, the claim of the first defendant that he had acquired title to the extent of 7 cents by way of the sale deed executed Manicka Padayachi has been rightly discountenanced by the Courts below. As abovenoted, the Courts below have also noted that by way of Ex.B10 sale transaction, Thangaprakasam, the husband of the 10<sup>th</sup> defendant had purchased the extent of 8 ½ cents and when the 10<sup>th</sup> defendant is found to have purchased the abovesaid extent from the lawful owners of the same, the abovesaid sale transaction is found to be accepted by the Courts below. As such, there is no material projected in the present second appeals to deviate from the abovesaid findings of the Courts below as regards the sale transactions marked as Exs.B5 & B10

11.In the light of the abovesaid discussions, the Courts below are found to be totally justified in not accepting the sale deed projected by the plaintiff dated 10.01.2008 marked as Ex.A1 for granting the reliefs of declaration and permanent injunction and equally, justified in determining that the plaintiff has failed to establish his vendor's possession and enjoyment of the extent of 6 ½ cents in the suit survey number

and rightly determined that the plaintiff is not entitled to secure any relief as regards the plaint "B" schedule property. Furthermore, the first appellate Court is found to be justified in determining that the plaintiff's vendor Masthan Beevi would be entitled to obtain only 1 -1/6 cents in the suit survey number as the legal heir of her father Mohammed Hakkim under Mohammadin Law and rightly, determined that thereby, the plaintiff is entitled to claim partition in respect of the abovesaid extent of 1 -1/6 cents alone by modifying the judgment and decree of the trial Court. In the light of the above position, I do not find any valid reason to interfere with the abovesaid judgment and decree of the first appellate Court.

12. In the light of the abovesaid discussions, the substantial question of law formulated in the second appeals is accordingly answered against the plaintiff and in favour of the defendants.

In conclusion, both the second appeals fail and are, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Court, Mayiladuturai.

2. The Additional District Munsif, Mayiladuturai.

Copy to:

The Section Officer, V.R. Section,  
High Court, Madras.

+1 cc to M/s.S.Sounthar, Advocate, sr.53032

+1 cc to M/s.N.A.Nissar Ahmed, Advocate, sr.52560.

Rp(co)  
krd 22/9

S.A.Nos.46 & 47 of 2016