

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2019

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.2113 of 2004
and
C.M.P.No.18038 of 2004

Parvathi Ammal (Died)

2.Devaraj

3.Vasantha

4.Amutha

5.Devika

6.Sathya

7.Mallika

8.Jayakumar

9.Jayanthi

10.Rajmohan

11.Shanti

12.Rithika

13.Vaishnavi

14.Mohan Raj

15.Danush

...Appellants/LRS of the Defendant
(Appellants 2 to 15 brought on record
LRs of the deceased sole Appellant viz.,
Parvathy Ammal Vide Court order dated
23/07/2019 made in CMP.No.13326 of
2018 in S.A.2113 of 2004 (NSSJ)

Vs.

Ravichandran

...Respondent/Plaintiff

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 04.04.2003 passed in A.S.No.21 of 2002 on the file of Principal District Judge, Thiruvannamalai confirming the Judgment and Decree dated 08.12.2001, made in O.S.No.327/1994 on the file of Additional District Munsif No.2, Thiruvannamalai.

For Appellants : Mr.B.Harikrishnan

For Respondent: Mr.S.Mukundan
for M/S.Sarvabhauman Associates

JUDGMENT

The defendant in a suit for partition, has come forward with this appeal, having suffered a preliminary decree concurrently before the Courts below. Parties would be referred to by their rank before the trial Court.

2.The facts fall within a narrow compass:

- The suit property is described as a block of agricultural land measuring 2.66 acres in Sy.No.107/2B/1B in Olaipadi Village, Thiruvannamalai District. According to the plaintiff, this property was assigned by the Government to a certain Kesava Udayar under Ext.A.2. Ext.A.3, is a copy of the Chitta issued in his name. Kesava Udayar's wife was one Muniammal and they had three sons namely, Govindasamy, Munusamy and Aathimoolam. While so, after the demise of Kesava Udayar, under Ext.A.1, sale deed dated 14.12.1980 Adimoolam's son Palani, along with his minor son Velu, had executed a sale deed in favour of the plaintiff. This sale deed covers an extent of 66 cents of the total area of 2.66 acres. According to the plaintiff, he is in enjoyment of this plot of land with well-marked boundaries and that he is also in joint possession of the property with the defendant.
- The suit was resisted by the defendant on the allegation that the entire suit property was originally assigned not to Kesava Udayar but, to his wife Muniammal. While so, Muniammal had executed a Will dated 14.11.1980, marked Ext.B.1 and bequeathed the entire suit property measuring 2.66 acres to her grandson Kathavarayan, who was born to her son Munusamy.
- On the demise of Munusamy, the property devolved on his legatee and Vide Ext.A.5, sale deed dated 18.12.1986, he sold the property to the defendant.

3.1 The dispute went to trial, and both sides adduced oral and documentary evidence. Before the trial Court, two Revenue Officials were examined as D.W.3 and C.W.1.

3.2 D.W.3, a Deputy Tahsildar, has deposed on the basis of Ext.A.14, a communication from another Deputy Tahsildar to the trial court, that Ext.A.2 and Ext.A.3 documents are fabricated documents. Noticing that, the defendant had not produced any document to show that the suit property was assigned to Muniammal, the trial Court proceeded to act on Ext.A.2 and

Ext.A.3 and granted a decree as prayed for. As already stated, this decree was unsuccessfully challenged by the defendant before the first Appellate Court.

4.The appeal is admitted on the following substantial questions of law;

a)Is the lower Appellate Court right in dismissing the Appeal confirming the Judgment and decree of the trial Court on the only ground that the suit schedule property belonged to Kesava Udayar and not his wife Muniyammal?

b)The Plaintiff being a stranger, is he entitled to maintain a suit for partition and separate possession particularly when the plaintiff has established his case that he is in possession of the suit property and no finding in this respect has been given by the Courts below?

c)Is the Lower Appellate Court right in dismissing the Appeal without traversing upon or giving any finding as to whether the suit is bad for non joinder of parties as also on the issue of suit valuation particularly when the Appellant herein had raised this plea in her defence and the Trial Court has framed issues on this aspect?

5.Heard both sides. The learned counsel for the defendant/appellants would submit that inasmuch the Revenue Officials, namely, D.W.3 and C.W.1 have spoken that Ext.A.2 and Ext.A.3 are shown to be fabricated documents, the courts below ought not to have relied on the same. He also added that in a suit for partition when the plaintiff says that he is in possession of a plot of land, with well defined boundaries then, there is no cause of action for seeking partition. This apart, in a suit for partition, the plaintiff ought to have impleaded all the other heirs of Kesava Udayar and Muniyammal.

6. Per contra, the learned counsel for the respondent would argue that both the Courts have categorically ignored the testimony of D.W.3, since it was not based on Revenue records, but on a letter written by a certain Deputy Tahsildar to the Court, which came to be marked as Ext.A.14. Secondly, the total extent available is 2.66 acres and according to the plaintiff, he had only purchased 66 cents whereas, the defendant claims that she had purchased the entire 2.66 acres. This would imply

as on today the dispute is only between two successors in interest, either of Kesava Udayar or of Muniammal, and hence, there is no need to implead their other heirs.

7.1. The Court is shocked to see Ext.A.14, a letter written by one K.Balasundaram, Tahsildar, Tiruvannamalai Taluk to the learned District Munsif. Under what authority has he written the letter is not known, but, it must be stated that he has no business to write a letter to the Court. It is unfortunate that the learned Munsif has received the same in evidence. If at all the Court wants to act on that, it has ample powers under Order 16 Rule 14 of the Civil Procedure Code to examine any stranger as Court witness.

7.2. Having made the statement, it is now necessary for this Court to move to the other aspect on the merit of the case. On merit, this Court finds that Ext.A.2 is seen to be issued to Kesava Udayar, under which, the suit property is seen assigned to him. If at all this document is a fabricated document then, it is upto the Government to proceed against the parties. But, so far as the parties to this litigation are concerned, they can hold possession against the whole world except the true owner, and in this context it is necessary to understand how parties are positioned. Here, the plaintiff claims right to 66 cents based on Ext.A.2. Since the defendant has not established to the satisfaction of the Court that Ext.A.2 is a fabricated document, she may not be able to resist plaintiff's title over this 66 cents. He cannot claim a better title over 66 cents covered by Ext.A.1. When this document goes, necessarily, this Court does not find any perversity in the findings of the Courts below.

8.The appeal is hence dismissed and the Judgment and Decree, dated 04.04.2003, passed in A.S.No.21 of 2002, on the file of the Principal District Judge, Thiruvannamalai confirming the Judgment and Decree dated 08.12.2001, made in O.S.No.327/1994, on the file of the Additional District Munsif No.2, Thiruvannamalai is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsg

To:

1.The Principal District Judge,
Thiruvannamalai.

2.The Additional District Munsif No.2,
Thiruvannamalai.

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

+lcc to Mr.B.Harikrishnan, Advocate Sr.74703

+lcc to M/s.Sarvabhauman Associates, Advocate Sr.74795

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