

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.185 of 2014

and

M.P.No.1 of 2014

R.ShanmughaSundaram

..Appellant/Defendant

Vs.

1. S.P.Sampoornam

2. R.Rajeswari

3. R.Selvaraj

..Respondents/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Principal District Judge, Coimbatore, dated 13.09.2013 in A.S.No.73 of 2011, confirming the judgment and decree of the learned II Additional Subordinate Judge, Coimbatore, dated 11.02.2011 in O.S.No.738 of 2006.

For Appellants : Mrs.S.Suseela devi

For Respondents : Mr.V.Chinnasamy

J U D G M E N T

The defendant who suffered decree in partition in O.S.No.738 of 2006 which was confirmed in A.S.No.73 of 2011, has come forward with this second appeal.

2. The plaintiffs in O.S.No.738 of 2006 sought for partition and separate possession of their 3/4th share (¼ share each) in the suit property. According to the plaintiffs, the suit properties were purchased by their parents Rangasamy and Thayammal on 13.12.1974. Rangasamy and Thayammal died on 01.05.1993 and 26.04.2002 respectively, leaving behind the plaintiffs and the defendant as their Class I legal heirs. The plaintiffs claim partition as Class I legal heirs of the deceased Rangasamy and Thayammal .

3. The defendant resisted the suit contending that the plaintiffs 1 and 2 who are the daughters of the deceased Rangasamy and Thayammal relinquished their right over the suit

properties and the 3rd plaintiff and himself had entered into a memorandum of partition on 09.01.2003, dividing the suit property into two equal shares. Therefore, they were in possession and enjoyment of the suit property as per the partition Deed dated 09.11.2003. On the above contention, the defendant sought for the dismissal of the suit.

4. The Courts below found that the theory of oral relinquishment pleaded by the defendant cannot be accepted. The Courts below has also found that the so called memorandum of oral arrangement, dated 09.11.2003 had neither been registered nor been proved by proper evidence, hence, the same cannot be relied upon. The evidence of D.W.2 the alleged Panchayatdar was also rejected by the Courts below. On the above said conclusion, the Courts below decreed the suit for partition. Aggrieved, the defendant has preferred this appeal.

5. Notice of motion was ordered on 06.03.2014. Pursuant to said notice, the learned counsel for respondents has entered appearance.

6. I have heard Mrs.S.Suseela Devi, learned counsel for appellant and Mr.V.Chinnasamy, learned counsel for respondents.

7. Mrs.S.Suseela Devi, learned counsel appearing for the appellant would draw my attention to the evidence of P.W.1, Mrs.S.P.Sampoornam/ 1st plaintiff wherein she has deposed that she does not know any thing about the suit and during the cross examination admitted that she is aware of the fact that the 3rd plaintiff and the defendant had divided the suit properties in 2003 and the 3rd plaintiff had let out the portion that was allotted to him, to one Kalidass. The 1st plaintiff as P.W.1 had further deposed that she knew about the partition that took place in 2003.

8. According to the learned counsel, the cumulative effect of the evidence would show that it is the 3rd plaintiff who conducted the case, the plaintiffs 1 and 2 are only puppets in his hands. She would contend that the oral partition had taken place on 09.11.2003 and the suit was filed only in 2006, i.e., after three years. Therefore, according to her, the defendant's case of relinquishment of right by the plaintiffs 1 and 2 of the partition, dated 09.11.2003 stood probalised.

9. I am unable to agree with the contention of the learned counsel. The ownership of the property by Rangasamy and Thyammal is admitted. The fact that the plaintiffs and the defendant are the children of the deceased Rangasamy and Thayammal is also admitted. It is not in dispute that they died intestate. The plaintiffs and the defendant are the class I

heirs, entitled to equal shares in the suit property. What is pleaded by the defendant is oral relinquishment and there cannot be an oral relinquishment of interest in immovable property. It can only be by way of a registered instrument. No such document is available. The memorandum of partition dated 09.11.2003 is also disbelieved by the Courts below and I do not see any error in the conclusion of the Courts below regarding the validity of the oral partition dated 09.11.2003, since the conclusion was arrived at based on the evidence on record. The so called admissions made by P.W.1 cannot denude her right to claim partition as a legal heir.

10. In view of the same, I do not find any valid reason to interfere with the conclusions of the Courts below. I do not find any any question of law, much less a substantial question of law, to enable this court to entertain this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Principal District Judge,
Coimbatore.
2. The II Additional Subordinate Judge,
Coimbatore.

+lcc to Mr.S.Suseeladevi, Advocate, S.R.No. 78839

+lcc to Mr.V.Chinnasamy, Advocate, S.R.No.79043

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GP(CO)
GN(10/02/2020)