

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.1019 OF 2019

Thavamani

.. Appellant/Respondent/Defendant

Vs.

Ramadoss

.. Respondent/Appellant/Plaintiff

PRAYER:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Subordinate Judge, Thiruvarur, dated 27.03.2019 in A.S.No.20 of 2017, reversing the judgment and decree of the District Munsif, Thiruvarur, dated 12.01.2017 in O.S.No.135 of 2014.

For Appellant : Mr.N.Ramesh

For Respondent : Mr.M.Narayanasamy

J U D G M E N T

The defendant in O.S.No.135 of 2014 having suffered a decree for permanent injunction at the hands of the Appellate Court, though she was successful in getting a suit, dismissed has come up with the second appeal.

2. The plaintiff sued for permanent injunction contending that the suit property was allotted to him at a partition that took place between him, his brothers and sisters on 05.01.1959 and that he is in possession of the property right from the date of the said partition. Since the defendant attempted to usurp the possession of the property which belongs to the plaintiff and attempted to grab the land taking advantage of the absence of the plaintiff in the suit village, a complaint was lodged by the plaintiff before the Anti land Grabbing Cell, Thiruvarur. The defendant, who appeared before the Police officer accepted that she has no right over the suit property and gave a letter to that effect on 03.07.2014. However, the defendant again

attempted to interfere with the plaintiff's possession on 01.08.2014, the said attempt necessitated the plaintiff to sue for permanent injunction.

3. The suit was resisted by the defendant contending that the plaintiff has to prove that the suit property was allotted to him at a partition that took place on 05.01.1959. It is the further contention of the defendant that at a partition between the plaintiff and her husband which took place on 13.06.2007, the suit property measuring about 498 Kuzhies was divided into two equal halves towards east and west. Eastern half was allotted to the plaintiff and Western half was allotted to the defendant's husband. The plaintiff has settled the eastern part which is allotted to him in favour of a third party and come forward with this suit only to grab the property allotted to the defendant's husband.

4. At trial, the plaintiff has examined himself as P.W.1 and produced Exs.A1 to A6. The defendant examined herself as D.W.1 and examined three other witnesses of whom D.W.3 was her husband Srinivasan. No documents were produced by the defendant.

5. The trial Court, relying upon the evidence of D.W.2, Village Administrative Officer, accepted the claim of the defendant that 249 Kuzhies was allotted to the husband of the defendant, Srinivasan, and that he was in possession of the suit property. On the said conclusion, the learned District Munsif, Thiruvarur dismissed the suit, holding that the plaintiff has not proved his exclusive possession.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.20 of 2017 on the file of the Subordinate Court, Thiruvarur. The learned Subordinate Judge, Thiruvarur on a reconsideration of the evidence on record, concluded that the plaintiff has established his right to be in possession of the suit property as per the partition Deed dated 05.01.1959. The learned Subordinate Judge found that the suit property was shown in 'E' Schedule in the partition deed dated 05.01.1959, was set apart for performance of certain charities and the father of the plaintiff was to perform the charities, while the husband of the defendant was allowed to ensure performance of the Charities. In the partition deed dated 05.01.1959, it is made very clear that the husband of the defendant Srinivasan is not entitled to the possession of the property.

7. It is not in dispute that the father of the plaintiff Srinivasan died and the plaintiff is the eldest son. The lower appellate Court also found that as per the partition deed the eldest son of Sivasubramanian, should continue to be in possession of 'E' Schedule Property to perform the charities

mentioned in the said document. Therefore, the plaintiff's right to be in possession of the property was established, according to the appellate Court.

8. The defendant on the other hand would contend that there was a partition of the suit property in the year 2007 by way a written instrument dated 13.06.2007, in and by which the property was divided into two equal shares and the property in eastern half of 249 Kuzhies was allotted to the plaintiff and the western half of 249 Kuzhies was allotted to the defendant's husband. Though a claim was made based on the document dated 13.06.2007, the said document itself was not produced. The lower appellate Court also pointed out that the defendant's husband was examined as D.W.3. Despite having been examined as D.W.3, he has not chosen to produce the said partition document said to have been executed on 13.06.2007. The lower appellate court also found that the defendant has not produced any document to prove that either she or her husband are in possession of the suit property. The lower appellate Court faulted the trial Court for granting a decree based on the oral evidence of D.W.2, Village Administrative Officer, when a document of partition said to have been executed on 13.06.2007 was not produced by the defendant. On the above finding, the lower appellate Court allowed the appeal and decreed the suit as prayed for.

9. Aggrieved, the defendant has come forward with the second appeal.

10. I have heard Mr.N.Ramesh, learned counsel appearing for the appellant.

11. Mr.N.Ramesh, learned counsel appearing for the appellant would vehemently contend that the defendant has nothing to do with the property and plaintiff suppressed the relationship between himself and the defendant's husband. The defendant's husband is the paternal uncle i.e., brother of the plaintiff's father Sivasubramanian. Therefore, according to Mr.N.Ramesh, it is the husband of the defendant Srinivasan is a necessary party to the suit and the suit framed, as against the defendant, is not maintainable.

12. I have considered the submissions of the learned counsel for the appellant.

13. The plaintiff has come to the Court with a prayer for injunction on the specific allegation that the defendant attempted to interfere with the possession of the plaintiff. The recitals in the partition deed Ex.A1, dated 05.01.1959 are very clear to the effect that it is for Sivasubramanian to be in

possession of 'E' Schedule property and perform the charities. After his lifetime, his eldest son should continue to perform the charities and he was entitled to the possession of the suit properties. As already pointed out, there was no dispute that the plaintiff is the eldest son of Sivasubramanian. The partition Deed dated 05.01.1959, makes it clear that the husband of the defendant Srinivasan would be entitled to supervise the performance of Charities and she cannot interfere with the possession of Sivasubramanian or his sons. The recitals in the partition Deed dated 05.01.1959 reads as follows:

“இரண்டாவது பையன் சீனிவாசன் சரிவர நடக்கிறதா என்று பார்க்க வேண்டியதே தவிர இந்த தர்மத்தை நடத்தாமல் தடங்கல் செய்யவோ தடங்கல் ஆணை செய்யவோ அவனுக்கு அதிகாரம் கிடையாது, சிவசுப்பிரமணியன் ஆயுசுக்குப் பிறகு அவனுடைய ஆண் வாரிசு மூத்தவன் மேற்கண்ட தர்மங்களை நடத்தி வர வேண்டியது”

14. The above recitals would clearly establish that the plaintiff being the eldest son of Sivasubramanian is entitled to be in possession of the suit property and perform the charities. The defendant's husband Srinivasan has only right to supervise or oversee the performance of charities set out in the document. The defendant has no right to interfere with the possession of the plaintiff. Once it is found that the plaintiff is entitled to possession of the property, as per the partition deed dated 05.01.1959, and the defendant has failed to prove her case that there was a division of suit property on 13.06.2007, under which the western of 249 Kuzhies was allotted to her husband, she cannot claim that she or her husband were in possession of the suit property. The lower appellate Court has considered the evidence and came to a factual conclusion regarding the possession of the plaintiff. Unless the said finding could be termed as perverse, I cannot interfere with the said finding, sitting in the Second appeal. I do not find any question of law much less a substantial question of law to enable me to entertain the second appeal.

15. Hence, the second appeal is dismissed without being admitted. There will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Thiruvarur.

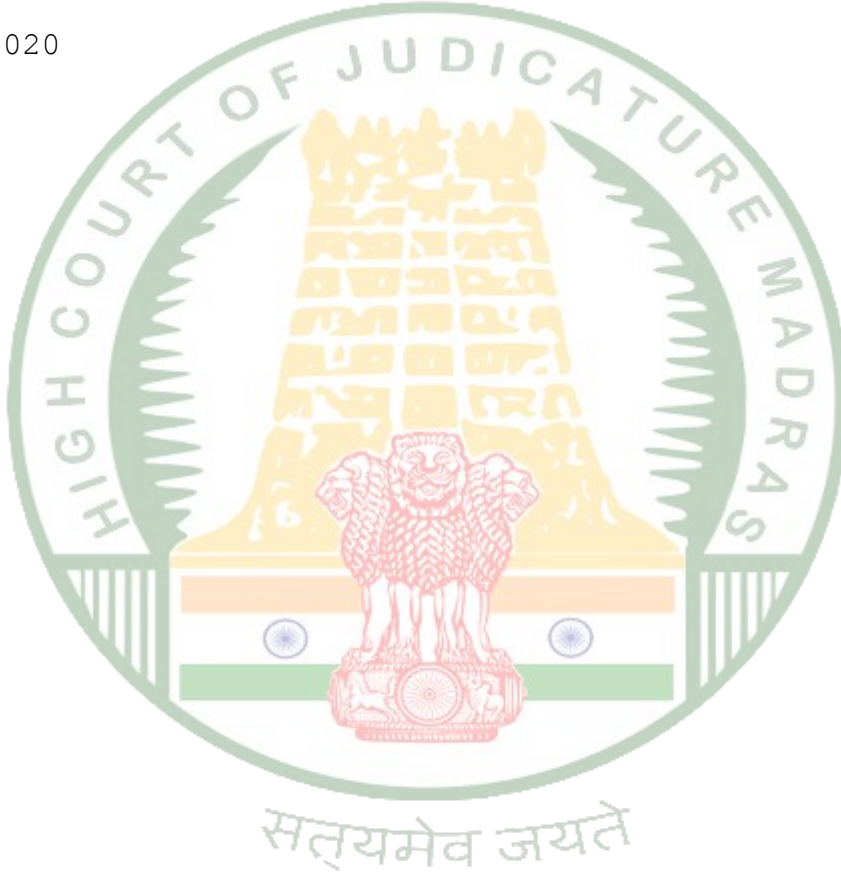
2. The District Munsif,
Thiruvarur.

+1cc to Mr.M.Narayanasamy Advocate, S.R.No.88400

+1cc to Mr.N.Ramesh, Advocate, S.R.No.89135

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