

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1086 of 2019
and
C.M.P.No.23662 of 2019

K.Kandappa Gounder @ Kandasamy Gounder ..Appellant/1st Defendant

Vs.

1.Muthusamy ..1st Respondent/Plaintiff
2.Velusamy
3.Kannusamy
4.Pavayammal

..Respondents 2 to 4/Defendants 2 to 4

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 15.06.2017 made in A.S.No.71 of 2014 on the file of the learned Sub Court, Bhavani confirming the judgment and decree dated 25.09.2014 made in O.S.No.392 of 2011 on the file of the learned First Additional District Munsif Court, Bhavani.

For Appellant : Mr.N.Manoharan

J U D G M E N T

The 1st defendant in O.S.No.392 of 2011 having suffered a decree for partition and separate possession of the suit properties at the hands of the courts below has come up with this Second Appeal.

2. The plaintiff sued for partition pleading that the suit properties originally belonged to one Palanimalai Gounder who died leaving behind four sons viz., Muthusamy Gounder, Petha Gounder, Kolandhaisamy Gounder and Sengoda Gounder. The 1st defendant had purchased 1/4th share from Petha Gounder and his children on 28.11.1975. He had also purchased another 1/4th share belonging to Kolandhaisamy Gounder on 21.09.1994. The plaintiff has purchased 1/4th share of Sengoda Gounder, the fourth son of Palanimalai Gounder under a sale deed dated 13.06.1994. One Rakkiya Gounder husband of the 4th defendant and father of defendants 2 and 3 had purchased 1/4th share from Muthusamy Gounder's heirs under the sale deed dated 03.10.1994.

Thus, the plaintiff would claim that he is entitled to 1/4th share, while the 1st defendant has ½ share and the defendants 2 to 4 put together have got 1/4th share. Claiming that the properties remained undivided, the plaintiff had sought for partition.

3. The defendants 2 to 4 conceded the case of the plaintiff and also sought for a decree for partition and separate possession of their 1/4th share.

4. The 1st defendant viz., purchaser from two of the sons of Palanimalai Gounder resisted the suit contending that there had been a partition and the parties are in possession of separate portions of the property. He would rely upon the recitals in the sale deed in his favour dated 28.11.1975 which conveys 31 ½ cents in S.No.895/B within specific boundaries. He would also claim that the sale deed dated 21.09.1994 executed by Kolandhaisamy Gounder which recites conveyance of 32 ¾ cents in S.No.37/4 (Old S.No.895/B) within specific boundaries. Therefore, according to the 1st defendant there had be division of properties and the parties are in possession of specific items of properties within the specific boundaries and hence the prayer for partition is untenable.

5. The courts below upon consideration of the evidence on record had concluded that there was no partition by metes and bounds of the properties of Palanimalai Gounder between his sons or the purchasers. In coming to the said conclusion, the courts below relied upon the description of the properties in the sale deeds executed by Sengoda Gounder in favour of the plaintiff and Muthusamy Gounder in favour of Rakaia Gounder, the predecessor in interest of the defendants 2 to 4. The courts below also took note of the evidence of the 1st defendant as DW1, wherein, he had stated that there was no partition by metes and bounds and it is possible that the parties could be in possession of larger extent than what they are entitled to under the sale deeds.

6. The lower appellate court has also took note of the fact that the suit filed by the 1st defendant in O.S.No.845 of 1994 seeking permanent injunction was dismissed on 12.06.1998 concluding that there was no partition by metes and bounds between the parties and as such the plaintiff therein viz., the 1st defendant herein cannot seek for permanent injunction against the co-owners.

7. The said judgment of the trial court dated 12.06.1998 was confirmed in appeal in A.S.No.124 of 1998. The lower appellate court also pointed out that the plaint in O.S.No.845 of 1994 was filed on 20.09.1994 and on the very next day i.e.,

on 21.09.1994, the 1st defendant had purchased the properties from Kolandhaisamy Gounder reciting specific boundaries. The lower appellate court took note of the contentions of the 1st defendant as plaintiff in O.S.No.845 of 1994 to conclude that the sale deed Ex.A2 dated 21.09.1994 has been brought about by the 1st defendant with evil intention.

8. I find that the conclusions of the courts below to the effect that there had been no partition of properties of Palanimalai Gounder between his children or the purchasers are sound and they are supported by material evidence. They cannot be termed as perverse. The very fact that the 1st defendant himself has admitted that there was no partition by metes and bounds and the parties are enjoying specific portions of the properties as per convenience would de-rail his defence of there being actual partition by metes and bounds.

10. I do not find any question of law much less a substantial question of law in order to enable me to entertain the Second Appeal. Hence, this Second Appeal is dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

1. The Subordinate Judge,
Bhavani.

2. The I Additional District Munsif,
Bhavani.

+1cc to Mr.N.Manoharan, Advocate SR.No.92298

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.91945

S.A.No.1086 of 2019

MP (CO)
GMY (19/08/2020)