



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

SA (MD).No.232 of 2010 and MP (MD).No.1 and 2 of 2010

Subbiah

Appellant / Appellant / 7th defendant

Vs.

1.Antonyammal
2.Libanon Arulmani
3.Arulmani
4.Niraimathi Inbaraj
5.Valarmathi Kirubakaran
6.Nimmathi Jeyakumar
7.Mathiraj Arulmani

.. Respondents 1 to 7/
Respondents 1 to 7/Plaintiffs

8.Esther Negomiah
9.Ezhilmani
10.Susila Valarmathi
11.Paul Sundar Singh
12.Nicholas
13.Elango

.. Respondents 8 to 13 /
Respondents 8 to 13/Defendants 1 to 6

Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree, dated 13.02.2008 made in A.S.No. 33 of 2005 on the file of Additional District Judge, Tuticorin confirming the Judgment and Decree, dated 07.11.2003 made in O.S.No. 5 of 1998 on the file of the Subordinate Judge, Kovilpatti.

For appellant	: Mr. J. Parekhkumar
For R1 & R3	: Mr. S. Suresh for M/s. Ayyar and Dolia
For R2,R4 to R7	: Mr. R. Vijayakumar
For R9 and R10	: No appearance



JUDGMENT

As against the concurrent findings of the Courts below, the present Second Appeal has been filed challenging the decree and Judgment granting preliminary decree in favour of the plaintiffs in the suit viz., the respondents 1 to 7 herein.

2. The appellant is the 7th defendant in the suit in O.S.No. 5 of 1998, on the file of the Subordinate Court, Kovilpatti. He said to have purchased the property from the defendants 1 to 6, who are the legal heirs of the first branch viz., Chinna Muthaiah and the legal heirs of the other branch viz., Periya Muthaiah. This facts is not disputed.

3. It is the case of the plaintiffs that the property remain un-divided and they are also entitled to equal share in the property. The defendants 1 to 6 have remained ex parte. The 7th defendant, who is the purchaser, contended that there was an oral partition between the two families. The suit property was allotted to the defendants 1 to 6. Therefore, he has purchased the first schedule of property as a bonafide purchaser and half of the second schedule property and he is in possession of the property purchased by him. On the side of the plaintiffs, PW.1 is examined and Exs.A1 to A14 marked. On the side of the defendants, DW.1 to DW.3 were examined and Exs.D1 to D4 marked.

4. It is to be noted that the appellant, who was the 7th defendant in the suit also filed a suit in O.S.No. 42 of 2003, on the file of the Subordinate Court, Kovilpatti seeking permanent injunction against the plaintiffs and others in respect of the property purchased. Both the suits were tried together and disposed of by a common Judgment. As against the dismissal of the permanent injunction suit, no appeal whatsoever has filed by the appellant, whereas, challenging the preliminary decree granting partition in favour of the plaintiffs, appeal was filed, the first appellate Court has dismissed the same. The second appeal is filed and pending for admission for more than 9 years.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The only contention of the appellant / 7th defendant before the Trial Court is that there was an oral partition between the parties, between his vendor and other sharers. On a perusal of the written statement, absolutely there is no details as to the nature of the partition like year, date etc., To prove such plea of oral partition, the entire burden lies on him and admittedly, the appellant is only a third party to the family and admittedly,



alleged partition has not been established by him. He is only a third party purchaser, when the persons purchased the undivided joint family property, third party cannot seek exclusive possession of the property purchased and is only entitled to seek for partition. Therefore, the court below has rightly dismissed the suit filed by the appellant for bare injunction, which is also not challenged and it has reached its finality. Such being the position, when the sharers admitted the relationship between the parties is not in dispute, the Preliminary Decree for partition is also passed as per the entitlement of the parties. Such being the position, this Court does not find any substantial question of law to entertain the present Second Appeal.

7. It is the contention of the appellant that without seeking the declaration to set aside the sale deed in his favour, the partition cannot be granted. It is well settled that other co-owners are not a party to the document and only few of the sharers sold the properties and the same will not bind the remaining co-sharers. Therefore, there is no need whatsoever arose seeking to set aside the document. The sharers who are rightful owner of the property can ignore the said sale deed and seek for partition. Accordingly, the contention of the appellant cannot be countenanced, as there is no substantial question of law is involved.

8. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar (CS)

trp

To

1. Additional District Judge, Tuticorin.

2. The Subordinate Judge, Kovilpatti.



copy to
The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-105944[F] dated
19/12/2019)

+1 CC to M/s.J.PAREKHKUMAR, Advocate (SR-106204[F] dated
20/12/2019)

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