



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2019**

CORAM :

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A. (MD) No.431 of 2019

Bhavani ...Appellant/ Appellant/1st defendant

vs.

Mala ...1st Respondent/ 1st Respondent/Plaintiff

Chinniyan @ Murugesan (died)

...2nd Respondent/2nd Respondent/2nd Defendant

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 23.01.2019 made in A.S.No.56 of 2017 on the file of the Additional District Court, (Fast Track Court), Kumbakonam, Thanajavur District, confirming the judgment and decree dated 17.03.2016 in O.S.no.184 of 2010 on the file of the Additional Sub Court, Kumabkonam, Thanjavur District.

For Appellant : Mr.G.Gomathi Sankar

JUDGMENT

The unsuccessful first defendant is the appellant before this Court.

2.This second appeal emanates from the suit for partition filed by the first respondent herein/plaintiff in O.S.No184 of 2010 on the file of the learned Additional Subordinate Judge, Kumbakonam.

3.The case in brief of the plaintiff is that the suit property, which was part of a larger extent, was purchased by one Krishnamurthy/husband and Amsavalli Ammal/wife under three registered sale deeds. Though one sale deed is in the name of said Krishnamurthy and another sale deed is in the name of said Amsavalli Ammal, the entire property was treated as joint family property. The said Krishnamurthy and Amsavalli Ammal are the parents of the plaintiff and her brother, one Ganesan. After the demise of the plaintiff's mother, Amsavalli Ammal, her father had remarried the appellant herein/first defendant and the second defendant namely, Chinniyan @ Murugesan, was born out of their wedlock.



4.The plaintiff, the defendants and the plaintiff's brother one Ganesan, were all living as a joint family. After the plaintiff's marriage, she moved to her matrimonial home at Thanjavur. In the meantime, her father had died and thereafter, the plaintiff, her brother and the defendants had sold the property to an extent of 2170³/₄ sq.ft., to one Arokyaselvi on 17.12.2004 and 16.03.2005. The remaining portion, which is the suit property, has been jointly possessed by both the plaintiff and her brother and defendants. Her brother, the said Ganesan has sold his undivided share in favour of the plaintiff. Therefore, the plaintiff has a 2/4th share of the suit property.

5.At this juncture, the plaintiff found that the defendants were acting against her interest and therefore, the plaintiff has filed a suit for partition.

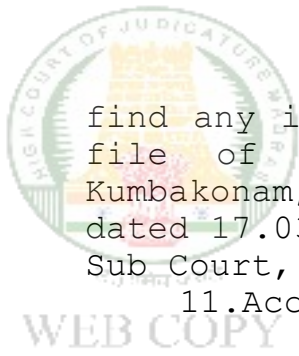
6.To defend the case, the defendants contended that the plaintiff's brother, Ganesan, was suffering from HIV, for which, the defendants had spent huge sums of money for his medical expenses and there was an oral partition, in which, the properties were partitioned. The plaintiff and her brother, who had sold the share allotted to them, are now seeking partition with reference to the portion which is allotted to the defendants. Further, the defendants contended that the plaintiff was never in joint possession of the said property and therefore, the defendants contended that the suit is liable to be dismissed.

7.Both the Courts below have concurrently held that the oral partition pleaded by the defendants had not been proved by them and therefore, the plaintiff was entitled for partition. Challenging the said judgment and decree, the first defendant is before this Court.

8.Mr.G.Gomathi Sankar, learned counsel appearing for the appellant would submit that both the Courts below have failed to appreciate the evidence that has been rendered by D.W2, who would speak about the oral partition and this factum has not been considered by the Courts below, as a result of which, erroneous judgment has come to be passed.

9.Heard the learned counsel and perused the records.

10.On perusal of the judgment dated 23.01.2019, it is seen that the Courts below particularly, the trial Court has considered the evidence of D.W2 and it came to the conclusion that very reading of the evidence of D.W2 clearly indicates that there was no complete partition between the parties. Further, the purchaser, namely, Arokya Selvi has also not been examined and the Courts below have drawn an adverse inference for the non examination. Though the defendants have come forward with the categorical case that there is



find any infirmity in the order passed in A.S.No.56 of 2017 on the file of the Additional District Court, (Fast Track Court), Kumbakonam, Thanjavur District, confirming the judgment and decree dated 17.03.2016 in O.S.no.184 of 2010 on the file of the Additional Sub Court, Kumabkonam, Thanjavur District.

11. Accordingly, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge,
Fast Track Court, Kumbakonam.

2.The Additional Subordinate Judge,
Kumbakonam.

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

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-88301[F] dated 20/09/2019)

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