



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A. (MD) No.605 of 2019

and

C.M.P (MD) No.12220 of 2019

Marimuthu ...Appellant/Appellant/1st Defendant
vs.
1.Amuldoss
Thaiyalnayaki (died) ... Respondents/Respondents/Plaintiffs
2.Ravichandran
3.Durairaj
4.The Sub-Registrar,
Office of the Sub-Registrar,
Thiruppanandal.
5.The District Registrar,
Office of the District Registrar,
Dr.Murthy Road, Kumbakonam Town & Munsif.
6.The Government of Tamil Nadu,
by its District Collector,
Office at Cutchery Road,
Kumbakonam Town and Munsif. ... Respondents/Respondents 3 to 7/
Defendants 2 to 6
7.K.Loganathan
8.R.Parvathi
9.P.Saraswathi @ Santhi ...Respondents/ Respondents 8 to 10

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.7 of 2015 dated 03.03.2016 on the file of the II Additional District and Sessions Judge, Thanjavur modifying the judgment and decree made in O.S.No.95 of 2011 dated 13.11.2014 on the file of the Principal Sub Court, Kumbakonam.

For Appellant : Mr.N.Balakrishnan

For R1 : Mr.H.Lakshmi Sankar

For R4, R5&R6 : Mr.M.Murugan, Govt.Advocate



JUDGMENT

The first defendant in O.S.No.95 of 2011, having suffered a decree for partition in respect of the suit schedule properties upon its partial modification by the lower appellate Court, restricting the decree only to 'A' and 'B' schedule properties, has come up with this second appeal.

2. The suit was laid by the plaintiffs, who are the daughter and son of late Kuppusamy seeking partition of their 1/3 share each, claiming that the property is the absolute property of Kuppusamy and upon his death in the year 1985, they along with the first defendant are entitled to 1/3 share each. It was further contended that the first defendant had executed the settlement deed in favour of the second defendant / his son. According to the plaintiffs, the said settlement deed will not bind them insofar as their interest in the properties concerned. On the above claim, the plaintiffs sought for partition.

3. The suit was resisted by the first defendant contending that though Kuppusamy was the owner of the 'A' and 'B' schedule property, he had effected partition even during his lifetime and allotted specific shares to his sons, namely the first plaintiff and the first defendant. It is further contended that Kuppusamy even during his life time, purchased about one acre Nanja land and house site for the second plaintiff and hence, the second plaintiff has given up her share in the properties of Kuppusamy. Insofar as 'C' schedule property is concerned, the first defendant would claim that Kuppusamy was tenant in respect of those properties and the second plaintiff, who was married long back and who does not contribute any physical labour in cultivation, cannot claim a share in 'C' schedule property.

4. The trial Court upon consideration of the evidence on record concluded that the partition, set up by the first defendant has not been established. The trial Court upheld the claim of the second plaintiff with reference to 'C' schedule property and granted a decree for partition in respect of 'A', 'B' and 'C' schedule properties. Aggrieved by the same, the first defendant, preferred an appeal in A.S.No.7 of 2015 on the file of the II Additional District and Sessions Court, Thanjavur. The lower appellate Court concurred with the findings of the trial Court in respect of the partition pleaded by the first defendant. However, the lower appellate Court found that the second plaintiff being a daughter, who was married, would not be entitled to claim a share in the 'C' schedule properties, which were in possession of Kuppusamy as cultivating tenant. Therefore, the lower appellate Court modified the decree of the trial Court granting 1/3 share to the plaintiffs in 'A' and 'B' schedule property and ½ share each to the first plaintiff and the first defendant in respect of 'C' schedule property. Aggrieved by the same, the first defendant has filed this



5. I have heard Mr.N.Balakrishnan, learned counsel for the appellants, Mr.H.Lakshmi Sankar, learned counsel for the first respondent and Mr.M.Murugan the learned counsel for the fourth and fifth respondents.

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6. The learned counsel for the appellant would submit that there is some evidence to show that there was a partition between the first defendant and the first plaintiff even during the life time of Kuppusamy. He would further contend that the alienees have not been impleaded as parties in the suit. Therefore, the suit would be bad for non joinder of necessary parties.

7. As regards the first contention of the learned counsel for the appellant, I find that there is absolutely no evidence to prove the partition claimed by the first defendant. The Courts below have found that the partition pleaded by the first defendant is not equal and natural. It was also found that, according to the claim of the first defendant, the first plaintiff was given properties, which were held in tenancy and the first defendant was given properties, which were held as absolute owner. This made the Courts below to disbelieve the claim of the first defendant regarding oral partition. The Courts below took note of the fact that there had been no mutation of the revenue records even after the death of Kuppussamy pursuant to the alleged oral partition. Having rejected the claim of oral partition, the lower appellate Court concluded that insofar as 'C' schedule property, which was held in tenancy, the second plaintiff being a daughter living away from the suit village with her husband cannot be termed as cultivating tenant in view of the definition of a cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act, 1995. On the said conclusion, the lower appellate Court decreed the suit granting 1/3 share in the 'A' and 'B' schedule property to the plaintiffs and ½ share to the first plaintiff and the first defendant in the 'C' schedule property.

8. On the second contention that the alienees were not made as parties, I find absolutely no plea in the written statement of the first defendant regarding the alienation made by him. Even otherwise, the alienees can claim only allotment of the properties purchased by them towards the share of the first plaintiff or the first defendant as the case may be. That would be taken care of during final decree proceedings. I therefore do not find any error of law in the approach of the lower appellate Court. The conclusion of the lower appellate court is based on the evidence. Despite best efforts, the learned counsel for the appellant is unable to show that the said conclusion can be termed as perverse. In the absence of perversity, I do not think that I can interfere with the findings of the Courts below sitting in second appeal. I do not find any question of law much less a substantial question of law in order to



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and it is accordingly, dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The II Additional District and Sessions Judge,
Thanjavur

2.The Principal Subordinate Judge,
Kumbakonam.

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-105439[F]

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-105517[F]

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