



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **02.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A(MD)NO.200 OF 2015

and

M.P(MD)No.1 of 2015

S.Thanu Pillai : Appellant/Appellant/Plaintiff

.vs.

1.Gengammal

2.S.Thani Pillai

3.T.Sankaralingam Pillai

4.R.Lekshmi

: Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.70 of 2004, dated 23.12.2014, on the file of the Principal Subordinate Court, Nagercoil, confirming the judgment and decree made in O.S.No.715 of 2008, dated 10.4.2014, on the file of Principal District Munsif, Nagercoil.

For Appellant

: Mr.E.V.N.Siva

For Respondents

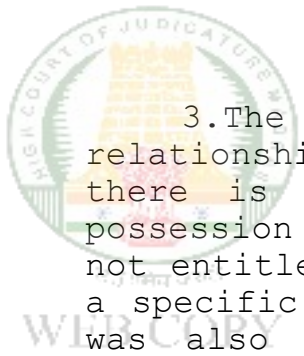
: Mr.K.Govindarajan

1 to 4

JUDGMENT

Being aggrieved by the dismissal of a suit for declaration of title, recovery of possession of 'B' schedule property, mandatory injunction to remove the illegal construction made by the defendant in the suit 'B' schedule property and for other reliefs, the plaintiff is on appeal.

2.According to the plaintiff, the suit property belonged to his father Sankaralingam Pillai and even during his life time, he has divided the suit properties and allotted a particular share to each of his children, through his 'Will', dated 3.5.1996. It is also claimed that the heirs of the said Sankaralingam Pillai have accepted the said division made by him and the plaintiff is in possession of 1-1/6 cent towards his share. Contending that the defendants have trespassed into the property and put up construction, the plaintiff sought for the relief as aforesaid.



3.The defendants resisted the suit. While accepting the relationship between the parties, defendants would contend that there is no partition effected and the parties were in joint possession of the property in question. Therefore, the plaintiff is not entitled to seek declaration that he is the absolute owner of a specific extent of the property, having specific boundaries. It was also further contended that the suit property being the ancestral property of Sankaralingam Pillai, he had no right to execute a 'Will'. It was also admitted that the plaintiff has a share to the properties of Sankaralingam Pillai.

4.Both the Courts below, on consideration of evidence on record, concluded that the factum of partition pleaded by the Plaintiff is not true. It was also found that all the legal heirs of Sankaralingam Pillai are necessary parties to the suit and the declaratory relief as prayed for by the plaintiff cannot be granted in the absence of all the other legal heirs of Sankaralingam Pillai. It was also pointed out that the earlier suit in O.S.No.859 of 1996 for partition was dismissed for default. The Courts below took note of the report and plan of the Advocate Commissioner appointed by the trial Court. Aggrieved by the dismissal of the suit by the Courts below, the plaintiff has come up with the present Second Appeal.

5.At the time of admission,the following Substantial questions of law are framed for consideration:

a)Whether the Courts below are justified in law in rejecting appellant calim when the respondents herein have categorically admitted the appellant's entitlement to 1-1/6 cent share in the entire property?

b)When admitted facxts need not be proved, whether the Courts below are justified in law in holding that appellant failed to prove the claim when there is a clear admission of appellant's entitlement to 1-16/6 cent share in the entire property by the respondents?

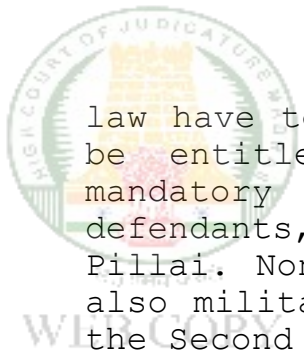
c)When the appellant's father, being a co-owner of the ancestral properties is legally entitled to transfer any interest therein as per Section 44 of the Transfer of Property Act, whether the Courts below are justified in law in rejecting appellant's calim made in pursuance to such transfer through registered Will No.89/1996, dated 3.5.1996?

6.I have heard Mr.E.V.N.Siva, learned counsel for the appellant and Mr.K.Govindarajan, learned counsel for the respondents 1 to 4.

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9. I have heard the rival submissions made on either side.

10. The Courts below have categorically found that there was no partition of the properties left behind by Sankaralingam Pillai. The ancestral property or self acquired property of a deceased person would devolve upon all the legal heirs of the deceased, by relevant rule of succession, as joint owners of the property. One of the legal heir cannot exclude the other by seeking the relief of declaration and injunction. It is for the plaintiff to establish that there was a partition of the suit property and he was allotted a particular portion of the suit property in the said partition. As rightly found by the Courts below, there is no evidence to show that any partition of the estate of Sankaralingam Pillai took place between the plaintiff and the defendants, who are admittedly the legal heirs of the said Sankaralingam Pillai. There are other heirs of Sankaralingam Pillai who are entitled to a share in the suit properties. In the absence of other legal heirs, the question as to whether the properties were divided or not cannot be decided. However, the Courts below have found that there was no partition and the plaintiff, therefore, cannot seek for declaration of title of a specific portion of the suit property, more particularly, in the absence of other legal heirs of Sankaralingam Pillai. The finding of the Courts below regarding the absence of partition is undoubtedly a factual finding. Unless it is shown to be perverse, the same cannot be interfered with in a Second Appeal. I therefore, uphold the finding of the Courts below that there has been no partition of the estate of Sankaralingam Pillai between his legal heirs. In the absence of other legal heirs, the said conclusion is affirmed, the questions of law are answered in favour of the plaintiff.



law have to be answered only against the appellant, as he will not be entitled to seek for declaration, recovery of possession, mandatory injunction and permanent injunction as against the defendants, who are admittedly the legal heirs of Sankaralingam Pillai. Non-impleading of the other legal heirs in the suit would also militate against the appellant. I therefore find no merit in the Second Appeal.

11. Accordingly, the Second Appeal stands dismissed. However, considering the relationship between the parties, there will be no order as to costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

vsn

To

- 1.The Principal Subordinate Judge,
Nagercoil.
- 2.The Principal District Munsif,
Nagercoil.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-103127[F] dated 03/12/2019)

+1 CC to Mr.E.V.N.SIVA, Advocate (SR-103174[F] dated 03/12/2019)

JUDGMENT MADE IN
S.A(MD)NO.200 OF 2015
and
M.P(MD)No.1 of 2015
02.12.2019

MK (24.01.2020) 4P 7C