



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

S.A. (MD) .No.371 of 2015

1.R.Alphonse
2.R.Santanam

.. Appellants/Appellants/Plaintiffs

Vs.

Ayyamperumal

.. Respondent/Respondent/Defendant

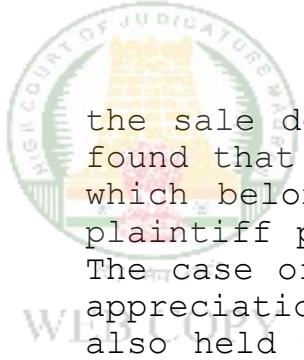
Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 25.09.2014, passed in A.S.No.123 of 2011 on the file of the Subordinate Judge, Thoothukudi confirming the decree and Judgment, dated 23.03.2011, made in O.S.No.74 of 2009 on the file of the District Munsif, Sathankulam.

For Petitioners : Mr.T.Vadivelan
For Respondents : No Appearance

JUDGMENT

The plaintiffs in the suit in O.S.No.74 of 2009 on the file of the District Munsif Court, Sathankulam, are the appellants in the second appeal.

2.The case of the appellants is that they have filed a suit in O.S.No.74 of 2009 for declaration of title and for consequential injunction in respect of the suit property which are described as item 1 and 2 having an extent of 30 $\frac{1}{4}$ cents out of 4 acres 24 cents in S.No.274/1 and an extent of 8 $\frac{1}{4}$ cents out of the same property with reference to four boundaries. The appellants claimed title on the basis of a sale deed alleged to have been obtained by the plaintiff's father from one Arumuga Nadar, dated 03.11.1970. Similarly, suit item 2 was also stated to have been purchased by plaintiff's father under a sale deed, dated 25.11.1968. Though it is admitted in the plaint that the suit property was not divided by metes and bound at the time of getting the sale deed, it is the specific case of the plaintiff that there was a oral partition held in the family, in which the suit property was allotted to the plaintiff's father. The suit was contested by the defendant who is also one of the co-owner entitled to a share in the family property stated to have been purchased by father of plaintiff. Since the plaintiff himself admits that the property originally belonged to the joint family and that there was a oral partition subsequent to

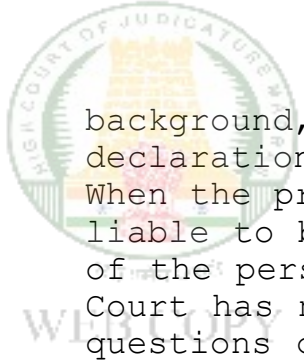


the sale deed obtained by him, the trial Court and Appellate Court found that the plaintiff had purchased only a share in the property which belonged to the joint owners. It is also admitted that the plaintiff purchased only the un-divided share in the suit property. The case of oral partition was disbelieved by both the courts after appreciation of the entire pleadings and evidence on record. It was also held that the plaintiff is not in exclusive possession of the property as it is contended by the plaintiff. No document was produced either to prove oral partition or the exclusive possession of the plaintiff. Even the parties who are interested or entitled to a share in the suit properties were not impleaded in the suit. Hence there is no scope for the courts below to entertain the suit and ultimately the relief claimed by the appellant was rejected by the courts below. Aggrieved by the judgment and decree of the courts below the above second appeal has been preferred by the appellant.

3. The learned counsel for the appellants has formulated the following substantial questions of law.

1. Whether the Courts below are right in dismissing the suit without considering the specific admissions made by the defendant both in the written statement as well as during his cross examination?
2. Whether it is mandatory on the part of the plaintiffs to get separate patta in their name to substantiate their title over the suit schedule property?
3. Whether joint computerised patta under Exhibit A3 is not an evidence of possession? Whether the names of siblings included in the joint patta, bars the plaintiffs from any way claiming the title over properties they obtained through partition?
4. Whether the existence of joint computerised patta under Exhibit A3 in the name of plaintiffs and their siblings disproves the Oral Partition between them?
5. Is it necessary for any person to maintain all the documents in his name before instituting a suit for declaration and injunction?

4. The counsel for the appellant submitted that the lower Court failed to appreciate the documents and came to the erroneous conclusion that the appellants have not established his case of title. The counsel has further submitted that the documents like patta, revenue records would show the title of plaintiff and that the courts below have mis-directed themselves to negative his relief. The learned counsel however unable to convince this Court that the findings of the court below are erroneous or perverse. He has not produced any document to dislodge the facts that the appellant's father had purchased only undivided share in the property and that there was no partition at the time when the property was purchased by the appellant's father. The oral partition was not proved. The courts below have found that the plaintiff did not prove the oral partition and the revenue records also indicate the joint ownership of many persons. In these factual



background, there is no scope for entertaining a suit for declaration of title and injunction in respect of specific property. When the property belongs to several individuals, the suit itself is liable to be dismissed for non joinder of necessary parties. None of the persons who are interested as sharers is not impleaded, this Court has no other option to dismiss the second appeal. Hence, all questions of law have been answered against the appellant. However the submission of learned counsel for the appellant that liberty may be given to the plaintiffs to file a fresh suit for partition by impleading all necessary parties is reasonable.

5. Accordingly, this second appeal is dismissed and the judgment and decree of the court below are confirmed. However, it is open to the appellant to file a fresh suit for partition by impleading all the necessary parties.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Munsif, Sathankulam.
2. The Sub Judge, Thoothukudi.

COPY TO:

The Section Officer, E.R/V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.VADIVELAN, Advocate (SR-74855[F] dated 11/07/2019)

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TM
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