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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :13.02.2020
Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1650 of 1997

- 1.Kamalammal
- 2.Krishnaveni
- 3.Indrani
- 4.Usha rani

...Appellants/Plaintiff/Respondents 1 to 4

Vs.

- 1.Subbarayan(died)
- 2.Adhilakshmi
- 3.Kamalammal
- 4.Rukmani ammal
- 5.Chinnammal
- 6.Ramados
- 7.Janardhanam
- 8.Mohan
- 9.Loganathan
- 10.Deivanai

(RR5 to 10 brought on record LR's of the deceased R1, Viz., Subbarayan vide order of court dated 20.01.2020 made in CMP.No.11605, 11606 and 11609 of 2019 in SA.No.1650 of 1997)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 06.09.1996, in A.S.No.47 of 1994 on the file of the Additional Subordinate Court, Chengalpattu reversing the decree and judgment dated 29.09.1994 in O.S.No.704 of 1982 on the file of the District Munsif Court, Madurantakam.

For Appellants : Ms.S.Janani,
for Mr.R.Parthasarathy



For Respondents

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R1	: Died
R2	: Notice served
	- No appearance
For R3	: No appearance
R4	: exparte
R5	: Not ready in notice
	- No appearance
For R6 to R10	: Mr.J.Hariharan, for Mr.V.Nicholas

JUDGMENT

This second appeal is directed as against the judgment and decree dated 06.09.1996, in A.S.No.47 of 1994 on the file of the Additional Subordinate Court, Chengalpattu reversing the decree and judgment dated 29.09.1994 in O.S.No.704 of 1982 on the file of the District Munsif Court, Madurantakam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for declaration, partition and permanent injunction. The first plaintiff is the wife and the plaintiffs 2 to 4 and the third defendant are the daughters of one, Kanniappa Pandithar. The said Kanniappa Pandithar and the second defendant are the sons of the first defendant. The first defendant had one brother by name Ellappa Pandidhar. The first defendant and his brother Ellappa Pandidhar constituted a joint family and there was a small extent of ancestral property. The said Ellappa Pandidhar left the family and had gone to Madras. Thereafter, the first defendant and his two sons and also the father of the plaintiffs 2 to 4 and the third defendant cultivated the ancestral property and due to their hard work amassed wealth by several properties. Therefore, they became rich and divided their self acquired property among themselves by way of kiurchit dated 13.05.1976 into three shares. Accordingly, the second defendant Subbarayan, Kanniappa Pandidhar and the deceased Balaraman were in possession and enjoyment of the property. The said Kanniappa Pandidhar died in the year 1976. After his demise, the plaintiffs and the third defendant are in possession and enjoyment of the suit schedule properties item Nos.1 to 9. The first defendant relinquished his right in the schedule mentioned property and also other properties shared between the second defendant, Kanniappa and



the said Balaraman. Therefore, the first defendant had no title or interest in the schedule mentioned property.

3.2 Further stated that in fact, it is categorically admitted along with the second defendant in O.S.No.327 of 1979 on the file of the Principal Subordinate Court, Chengalpattu. In fact, in the said suit, he deposed that the suit property and other properties were acquired by all the members of the family out of their hard-work. The said suit was decreed as it related to ancestral properties of the father of the first defendant and Ellappa Pandidhar, and in respect of the other claims, were dismissed. Thereafter, another sharer, Balaraman filed a suit in O.S.No.312 of 1982 against the plaintiffs and the defendants for declaration and injunction and also for partition of one item of the property, in which compromise memo was filed and accordingly it was decreed on 10.11.1982. The defendants herein who are parties in the said suit admitted the partition deed dated 03.05.1976 between the second defendant, the deceased Kanniappan and Balaraman with regards to the suit properties and the other properties, etc. Now the second defendant colluded with the first defendant and brought into existence of the sham and nominal settlement deed purporting to settle the suit properties and along with other properties in the name of the second defendant by the first defendant, as if the first defendant is the owner of the properties. In fact, the first defendant already relinquished his rights as early as on 03.05.1976 and having acquired title in the shares, namely the second defendant, the deceased Kanniappan and Balaraman on 16.11.1982. The said settlement deed was also registered. Though it was registered, it does not convey any right or interest in the suit property and other properties, since the first defendant has no title or interest in the property. On the strength of the settlement deed, the defendants 1 and 2 are trying to interfere with the peaceful possession and enjoyment of the suit properties by the plaintiffs and the third defendant. Hence, the suit for declaration, partition and permanent injunction.

4. The first defendant resisted the plaintiffs' case by filing written statement stating that the first defendant is the absolute owner of the suit property. All the suit properties are self acquired properties of the first defendant. The second defendant alone assisted the first defendant to acquire the suit properties. The said Kanniappa Pandidhar and Balarama Pandidhar had never worked with the first defendant and as such the allegations and averments made in the plaint are false and frivolous. He further submitted that even after the earlier suit in O.S.No.327 of 1979, there was a mediation in the



village and suggested for different type of arrangements and that was not accepted. The first defendant has been in possession and enjoyment of the suit property and he has executed registered settlement deed dated 16.11.1982 in favour of the second defendant and it is valid and binding the plaintiffs. After the settlement deed, the second defendant became absolute owner of the suit property and he has been in possession and enjoyment of the same, and therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 and P.W.2 were examined and forty documents were marked as Ex.A.1 to Ex.A.40. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.117 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the second defendant preferred an appeal suit in A.S.No.47 of 1994 before the Additional Subordinate Court, Chengalpattu. The first appellate Court on appreciating the materials placed on records, partly allowed the appeal in respect of the suit items 5, 10 and 11, and in respect of other items of the suit properties, dismissed. Challenging the same, the plaintiffs have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the first appellate court was right and justified in law in reversing the judgment and decree of the trial court in regard to suit items 5, 10 and 11, when the second defendant could not question the validity of the family arrangement dated 03.05.1976 (wrongly typed as 13.05.1976) having admitted in O.S.No.327 of 1979?

b) Whether the first appellate court was right in law in placing reliance on the settlement deed dated 16.11.1982 when the entire properties were joint family properties even assuming that the document dated 03.05.1976 was invalid.

7. The learned counsel appearing for the plaintiffs and the defendants are present and they reiterated the averments set out in the plaint as well as the written statement.



8. Heard Ms.S.Janani, learned counsel appearing for the plaintiffs and Mr.J.Hariharan, learned counsel appearing for the defendants.

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9. This Court considered the rival submission made by the learned counsel on either side.

10. The suit is filed for declaration, partition and permanent injunction. The learned counsel for the plaintiffs restricted her claim only insofar as item No.5 of the suit property and in respect of item Nos. 10 and 11, she has not pressed. Item No.5 of the suit property is a well comprised in survey No.19/4 and 19/5 admeasuring 12 cents along with electric motor, pumpset, shed, in which the plaintiffs are entitled to have half share. The trial court decreed the suit insofar as all the items of the suit property. The first appellate court dismissed the suit insofar as the item Nos.5, 10 and 11. Both the courts below concluded that the partition deed dated 13.05.1976 was admitted and accordingly, the suit property was allotted to Subbarayan, Kanniappan and Balaraman. In fact, it was also categorically admitted in the suit in O.S.No.327 of 1979. Further, item No.5 of the suit property was not allotted either to Kanniappan or Balaraman. In fact, the said Balaraman filed O.S.No.312 of 1982 alleging that the item No.5 of the suit property situated in survey No.19/6 and thereafter it was compromised. The plaint copy of the said suit was marked as Ex.A.39. Subsequently, the suit was transferred to the file of the District Munsif Court, Maduranthakam and renumbered as O.S.No.469 of 1982, which was marked as Ex.A.40. In the said compromise decree, the suit item No.5 had been excluded and Balaraman's right over the same had been denied. Therefore, the suit property was not allotted to the said Balaraman as such item No.5 is owned by the second defendant and the plaintiffs or Balaraman has no right over the same. Therefore, the first appellate court concluded that item No.5 of the suit property cannot be partitioned.

11. Now the plaintiffs have restricted their prayer insofar as item No.5 alone. It is nothing but a well comprised in survey No.19/4. The first appellate court failed to see that the said property was allotted to the second defendant by oral partition. On perusal of Ex.A.39 and Ex.A.40, it revealed that item No.5 of the suit property was allotted to the second defendant.



12. It is seen that the partition was effected in the year 1977 by partition deed dated 03.05.1976. Though the second defendant denied the said partition in O.S.No.327 of 1979, the second defendant is the party to the suit and he affixed his signature. Therefore, the suit property was divided into three shares, Kanniappan, Subburayan and Balaraman. Item Nos.1 to 9 were allotted to share of the Kanniappan. In fact, the second defendant also admitted his signature found in Ex.B.36. Therefore, the trial court rightly decreed the suit insofar as item Nos.1 to 9 should be declared as that of plaintiff and the third defendant and the item Nos.10 and 11 should be divided into four and two equal parts respectively and one such share should be allotted to the plaintiffs and the third defendant. Whereas the first appellate court reversed the findings of the trial court insofar as item Nos.5, 10 and 11 are concerned and dismissed the suit on the ground that the second defendant marked Ex.B.11, B.17 and B.18 to 59, 66, 67 to 76, 102, 106 to 109 and 115 receipts pertaining to usage of electricity motor pumpsets in item No.5 and as such the said property is in possession and enjoyment of the second defendant.

13. In view of the above discussion, this Court constrains to interfere with the findings of the first appellate court insofar as item No.5 alone of the suit properties. Accordingly, all the substantial questions of law formulated by this Court in this Second Appeal are answered in favour of the plaintiffs and as against the defendants insofar as item No.5 of the suit properties alone. Accordingly, the judgment and decree dated 06.09.1996 in AS.No.47 of 1994 passed by the first appellate court are set aside insofar as the item No.5 of the suit properties alone, and resultantly, the judgment and decree dated 29.09.1994 passed in O.S.No. 704 of 1982 is restored insofar as the item No.5 of the suit properties.

14. In fine, the Second Appeal stands partly allowed. No order as to costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Additional Subordinate Court,
Chengalpattu

2. The District Munsif Court,
Madurantakam.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 CC to Mr.R.Parthasarathy, Advocate sr 17891

+1 CC to Mr.V.Nicholas, Advocate sr 17489.

S.A.No.1650 of 1997

AD(CO)
SP(10/12/2021)