

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.138 of 2020
and CMP.No.3137 of 2020

Boorasamy

..Appellant/Plaintiff

Versus

1. Annasamy
2. Mathialagan
3. Palaniammal

..Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 13.11.2019 made in A.S.No.17 of 2018, on the file of the Principal Subordinate Court at Ariyalur, partly dismissing the judgment and decree dated 08.03.2018 made in O.S.No.137 of 2011 on the file of the Principal District Munsif Court at Ariyalur.

For Appellant:M/s.Usha Ramman

JUDGMENT

The plaintiff in O.S.No.137 of 2011 on the file of the Principal District Munsif Court at Ariyalur is the appellant herein.

2. The suit was instituted seeking declaration of his right over the suit schedule property and for consequential permanent injunction. It is the case of the plaintiff that the first defendant and the plaintiff's father Kandasamy are brothers and about 50 years ago, in a oral partition, the suit property was allotted to his father. On 25.06.2007, a settlement deed was executed by his father in favour of the plaintiff. Thereby, he has been in possession and enjoyment of the same. But the defendants by creating forged documents, attempted to interfere with his possession. Hence, the suit.

3. The third defendant filed written statement, which was adopted by the defendants 1 and 2. According to the third defendant, the second defendant is a deaf and dumb and he could not live with his wife and thereafter, the second defendant married the third defendant about 12 years ago. At the time of second marriage in order to pay permanent alimony and to discharge the family debt, the defendants 1 and 2 sold

12 1/2 cents to the third defendant by a registered sale deed dated 24.09.2011. In pursuance of the sale deed, the mutation in the revenue records had taken place and prayed for dismissal of the suit.

4. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B7 were produced. After evaluating the evidence adduced by the parties, the Trial Court dismissed the suit. However, the Appellate Court partly allowed the appeal preferred by the plaintiff. Assailing the findings, the present appeal has been filed.

5. Ms.Usha Ramman, learned counsel for the appellant submitted that the entire suit property measuring 25 cents was allotted in an oral family arrangement to the plaintiff's father and he was also issued with patta marked as Ex.A2 on 09.09.1980, but the Lower Appellate Court without properly appreciating the evidence, granted decree only for 12 1/2 cents based on the fictitious sale made under Ex.B1, dated 29.04.2011.

6. In the case on hand, the plaintiff filed the suit for declaration to declare the entire suit property measuring an extent of 25 cents belongs to him absolutely. It is the case of the plaintiff that in a oral partition, the suit schedule property was allotted to his father. In order to prove the same, he gave evidence as PW1 and examined his father as PW2. PW1 in his evidence has stated that he did not have personal knowledge about the oral partition, which took place between his father and the first defendant. PW2 deposed that he is not aware of the share allotted to the first defendant in the oral partition. The plea of oral partition was rejected by the Courts below on the ground that it was not established by the plaintiff.

7. Though the plaintiff sought for decree of declaration in respect of the entire property, the defendants resisted the suit contending that they are entitled for 12 1/2 cents in pursuance of the sale deed Ex.B1 dated 29.02.2011. A careful perusal of Exs.B2 to B7 would show that subsequent to the sale deed, Ex.B1, a joint patta was issued in favour of the third defendant. The plea of oral partition was rejected by the Courts below after analysing the evidence produced by the parties in threadbare. Hence, I do not find any ground to interfere with the factual finding arrived at by the Courts below. In my view, no substantial question of law arises for consideration in this appeal.

8. For the foregoing reasons, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs

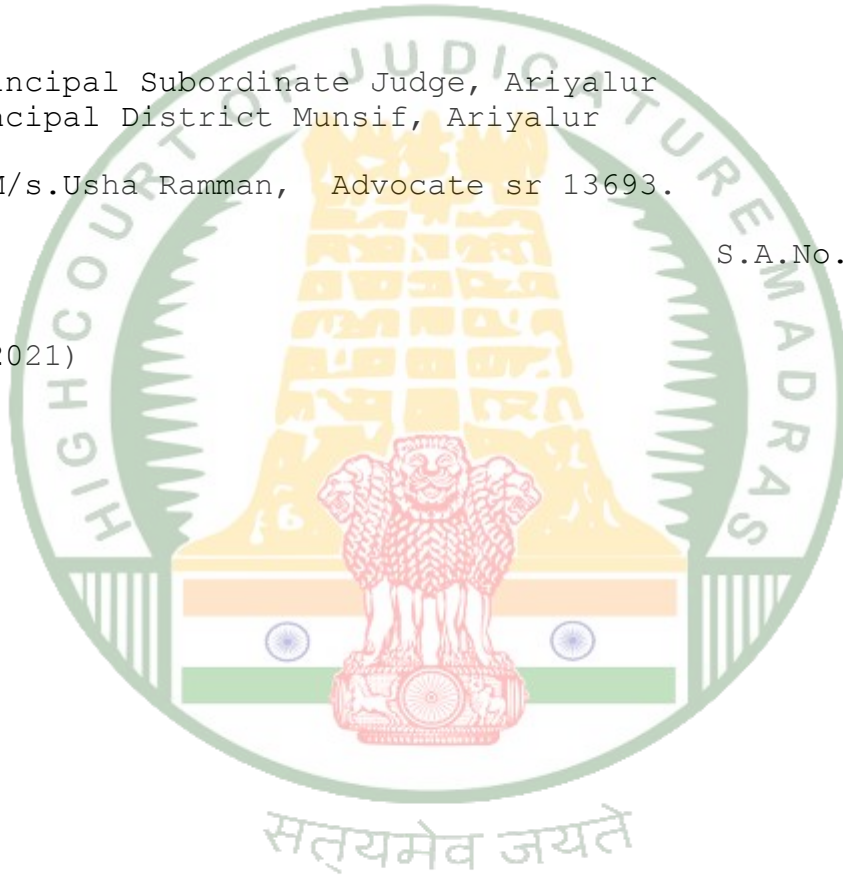
To

1. The Principal Subordinate Judge, Ariyalur
2. The Principal District Munsif, Ariyalur

+1 CC to M/s.Usha Ramman, Advocate sr 13693.

S.A.No.138 of 2020

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