

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2020

Date of Verdict : 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.789 of 2002

1.Ravanan

2.Selvaraj

rep.by power agent, Kaveri ...Appellants/Appellants/Plaintiff
(cause title amended as per
order of court dated 24.04.2002
made in CMP.No.5588 of 2002)

Vs.

1.Mangayarkarasi

2.Kalavathi

3.Renuka

4.Pushppavalli

5.Chitra

6.Santha

7.Padmavathi

8.Palani

9.Balu

10.Kannan(died)

11.Lakshmi

12.Kalyanasundaram

13.Kannan

14.Logambal

15.Ganesh

16.Thillaipandiyan

17.Sekar

18.Saroja

19.Nagarathinam

20.Rajendran

21.Ravichandan

22.Usharani

23.Meena

...Respondents/Respondents/Defendants
(RR19 to 23 brought on record as
LR's of the deceased R10 viz.,
Kannan vide order of court dated
09.01.2020 made in CMP.No.
11575 to 11577 of 2018
in SA.No.789 of 2002 (GKIJ))

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.11.2000, in A.S.No.57 of 2000 on the file of the Principal District Judge of Nagapattinam, confirming the decree and judgment dated 06.01.2000 in O.S.No.120 of 1998 on the file of the Additional Sub Court, Mayiladuthurai.

For Appellants : Mr.S.Sounthar

For Respondents

For R1to3,11 to13,

17 to 21 and 23 : Not ready in notice

For R4to9,14 to 16 : Mr.M.Ganesan

R10 : died

JUDGMENT

This second appeal is directed as against the judgment and decree dated 28.11.2000, in A.S.No.57 of 2000 on the file of the Principal District Judge of Nagapattinam, confirming the decree and judgment dated 06.01.2000 in O.S.No.120 of 1998 on the file of the Additional Sub Court, Mayiladuthurai.

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 partition. The suit property originally belonged to one, Vadivelu, who is the grand father of the plaintiffs. The said Vadivelu and Chandrahasu are brothers. The plaintiffs' father is one, Ramanujam and the fourth defendant is the said Chandrahasu's wife. The defendants 5 to 10 are the children of the fourth defendant. The defendants 1 to 3 are sisters of Vadivelu. The defendants 11 to 18 are the tenants of the suit property. After demise of the said Vadivelu, the plaintiffs' father and the fourth defendant were jointly enjoying the suit property as common, since they were elder members of the family. While being so, the plaintiffs' father also died and thereafter the plaintiffs along with the fourth defendant commonly enjoying the suit property. The defendants 1 to 3 and 5 to 10 are not residing in the suit property. The defendants 5 to 7 already got married and are residing with their husband's house respectively. In the suit property, there are nine huts, in which the plaintiffs are residing in one hut and the fourth defendant is residing in part of another hut. The other eight huts were leased out in favour of defendants 11 to 18 for monthly rent. In fact, while the

said Ramanujam was alive, the rental income was equally shared by the plaintiffs father and the fourth defendant. After demise of the said Ramanujam, the fourth defendant refused to share the rental income received from the defendants 11 to 18. Therefore, the plaintiffs demanded partition and also caused notice to the fourth defendant on 30.06.1998 claiming 5/16 share, which was returned by the fourth defendant. Hence, the suit.

4. The fourth defendant resisted the plaintiffs case by filing written statement, which was adopted by the defendants 5 to 9 and 11 to 18 stating that the tenth defendant is not the brother of the defendants 8 and 9 nor he is the son of the fourth defendant. He is the son of Chandrahasu born through his first wife. Further the suit property is not an ancestral one as enjoyed by the said Vadivelu and Chandrahasu. This suit property was purchased by one, Duraisamy on 16.11.1922 and thereafter it was inherited by his daughter by name Pattayee. She conveyed the property in favour of Chandrahasu for the valid sale consideration. Therefore, it is a self acquired property by the said Chandrahasu. Neither the Vadivelu nor his legal heirs do not have any right over the property. Further the defendants 1 to 3 are also not having right over the suit property and they are not entitled for any share. In fact, the first plaintiff was inducted as tenant on the monthly rent of Rs.20/- by oral agreement and other tenants are continuously paying rent to the fourth defendant. 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 to P.W.3 were examined and six documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.23 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 dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.57 of 2000 before the Principal District Judge of Nagapattinam along with an application to receive additional evidence under Order 41 Rule 27 of CPC in I.A.No.157 of 2000. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. 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 judgment of the courts below are vitiated in dismissing the suit for partition on the ground that the suit

properties are not joint family properties of the appellant over looking express mention about joint family nature of the property in Ex.B.3 produced by the respondents?

b) Whether the courts below erred in law in dismissing the suit partition overlooking legal principal that descendants of a tenant can partition the subject matter of tenancy among themselves for their convenient enjoyment so long as real owner chooses to terminate the tenancy?

c) Whether the courts below erred in dismissing the suit for partition, when the respondents/ defendants admitted that appellants and respondents 1 to 9 are descendants, of common ancestor and failed to establish the plea of separate title set up by them?

7. The learned counsel appearing for the plaintiffs submitted that the defendants 1 to 3 are the sons of the said Vadivelu, namely the grand father of the plaintiffs. The said Vadivelu and Chandrahasu are brothers. Originally, the suit property belonged to their grandfather and being his brother, the said Chandrahasu also jointly enjoyed the suit property. After death of the Chandrahasu, his wife namely, the fourth defendant and the grandfather of the plaintiff, namely Vadivelu were eldest members of the family. They were in joint possession and enjoyment of the suit property. In fact, both collected rents from the tenants, namely the defendants 11 to 18. Therefore, the plaintiffs are entitled to have 5/16 share in the suit property and the defendants 1 to 3 are entitled to have 3/16 share and the defendants 5 to 10 are entitled to have 8/16 share in the suit property. Further he submitted that Ex.B.1 lease deed was executed by the great grandfather of the plaintiffs in favour of Duraisamy. Therefore even leased out property can be partitioned and in support of his contention, he relied upon the judgment in the case of Rasappa Gounder Vs. G.N.Ramaswami reported in (1975) 2 MLJ 157.

8. Per contra, the learned counsel appearing for the defendants submitted that the suit property is not at all an ancestral property and it was a self acquired property by the said Chandrahasu and as such the plaintiffs are not at all entitled for any share in the suit property and the suit property cannot be partitioned and prayed for dismissal of the second appeal.

9. Heard Mr.S.Sounthar, learned counsel appearing for the plaintiffs and Mr.M.Ganesan, learned counsel appearing for the defendants.

10. This Court considered the rival submissions made by the learned counsel on either side.

11. One, Ponnusamy had two sons, namely Vadivelu and Chandrahasu. The said Vadivelu had son by name Ramanujam and three daughters. The daughters are the defendants 1 to 3 herein. The sons of Ramanujam are the plaintiffs 1 and 2. The wife of the said Chandrahasu is the fourth defendant. The defendants 5 to 9 are the children of the said Chandrahasu. The tenth defendant is the son of the said Chandrahasu born through his first wife. The defendants 11 to 18 are tenants of the suit property. According to the plaintiffs, originally the suit property was purchased by Vadivelu and thereafter it was enjoyed by common along with his brother, Chandrahasu. After demise of the said Chandrahasu, Vadivelu and the fourth defendant have commonly enjoyed the suit property and also rented out in favour of the tenants, namely the defendants 11 to 18 and they collected rents. After the demise of the said Vadivelu, his son Ramanujam and the fourth defendant were commonly enjoying the suit property. Therefore, they are claiming that the suit property is a joint family property and are seeking partition of their 5/16 share in the suit property. To prove their case, the plaintiffs have marked notice demanding partition as Ex.A.1. Except the notice and other communications, they did not mark any document to show that the suit property is an ancestral property.

12. On the side of the defendants, they have marked Ex.B.2 sale deed executed in favour of one, Duraisamy by Sabapathy dated 16.11.1922 in respect of the suit property. The recital states that the said Sabapathy purchased the property from one, Ponnusamy, who is none other than the great grandfather of the plaintiffs. On the same day, Ponnusamy and his son, Vadivelu executed rental agreement in respect of very same property in favour of one, Duraisamy which was marked as Ex.B.1. Therefore, these documents categorically show that the suit property is not an ancestral property.

13. Further, the grandfather and father of the plaintiffs executed usufructuary mortgage in favour of one, Marudhambal which was marked as Ex.B.3 and the recital is also very clear that they partitioned the property from the said Chandrahasu and for availing loan, it was mortgaged. Therefore, the said Vadivelu and Chandrahasu divided the suit property. Ex.B.4 is the sale certificate issued to one Sambandam and Ex.B.5 is the

decree in O.S.No.12 of 1961 in the suit filed to set aside the sale. In fact, the said suit was decreed and the appeal was also confirmed. Further the defendants also marked the documents as tax receipts, except the document Ex.B.10, which was rental agreement. Therefore, already the grandfather of the plaintiffs and the Chandrahasu have divided their property and the share of the grandfather of the plaintiffs was already sold out and the plaintiffs have no share in the suit schedule property. Accordingly, both the courts below rightly concluded that the suit property is not an ancestral one and the plaintiffs have no share in the suit property and dismissed the suit. Therefore, the judgment cited by the learned counsel for the plaintiffs is not helpful to the case of the plaintiffs.

14. In view of the above discussion, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiffs. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal are answered in favour of the defendants and as against the plaintiffs.

15. Accordingly, this Second Appeal is dismissed. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lok

To

1. The Principal District Judge,
Nagapattinam

2. The Additional Sub Court,
Mayiladuthurai.

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

+1 CC to Mr.S.Sounthar, Advocate sr 10785.

S.A.No.789 of 2002

NRL(CO)

SP(21/08/2020)