

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.393 of 2014

1.Venkatachalam

2.Ayyandurai

.. Appellants

Versus

1.P.Pachamuthu

2.P.Palanivel

3.A.T.Raja

4.Pavayee @ Ranjitham

5.Kamala

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.127 of 2012, dated 21.08.2013, on the file of the Principal Subordinate Judge, Salem in confirming the Judgment and Decree in O.S.No.1150 of 2007, dated 22.06.2012 on the file of II Additional District Munsif, Salem.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.C.Emalias for R-1

No appearance for R-2 to R-5

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JUDGMENT

The unsuccessful plaintiffs in O.S.No.1150 of 2007, on the file of II Additional District Munsiff, Salem are the appellants herein. The suit was filed for partition of the suit property into two equal shares and allot one such share to the plaintiffs and for possession.

2. The undisputed facts are that the suit properties and other properties were originally owned by Porappa Gounder. He had two sons viz., Vellaiyan @ Marimuthu Gounder and Sadayan @ Porappa Gounder. The said Vellaiyan @ Marimuthu Gounder has one son-Pachamuthu and

the said Sadayan @ Porappa Gounder has one son-Ponnusamy Gounder. The plaintiffs are the sons of Ponnusamy Gounder and the defendants are the legal-heirs of Pachamuthu Gounder. Both the parties have admitted that on 13.10.1980, the properties belonged to Porappa Gounder were partitioned between Pachamuthu Gounder and Ponnusamy Gounder. 'A' schedule properties in the partition deed were allotted to Pachamuthu Gounder and his sons, while 'B' schedule property was allotted to Ponnusamy Gounder and his sons.

3. The case of the plaintiffs is that Item Nos.22, 23, and 24 in 'A' schedule property in the partition deed were kept as common as legal proceedings were pending in respect of those items. It is further stated that the legal-proceedings ended in favour of the defendants and hence, they are entitled for half share in the suit property.

4. In the written statement filed by the defendants 1 and 2, the allegations and averments made in the plaint were denied. It is stated that under the partition deed, dated 13.10.1980, the suit properties are allotted to Pachamuthu Gounder, son of Vellaiyan @ Marimuthu Gounder. The plaintiffs and the defendants are in enjoyment of their respective shares as per the partition deed, dated 13.10.1980 and hence, the plaintiffs are not entitled to half share in the suit property.

5. The defendants 4 and 5, who are the daughters of the said Ponnusamy Gounder filed written statements claiming equal share in the suit properties.

6. On the basis of the above pleadings, the trial Court framed necessary issues. On the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A4 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B1 to B7 were marked.

7. After considering the evidence adduced by the parties, the trial Court dismissed the suit. The Judgment and Decree of the trial Court was confirmed in the Appeal preferred by the plaintiffs in A.S.No.127 of 2012. Challenging the same, the present appeal has been filed.

8. Mr.V.Raghavachari, learned counsel for the appellants submitted that the decision of the Courts below in dismissing the suit is palpably erroneous and it should have appreciated that the partition deed, dated 13.10.1980 excludes suit Items 22, 23 and 24 from division and they were kept in common awaiting the result in the litigation. It is further submitted that the Courts below have not properly appreciated Ex.A1 and erroneously non-suited the plaintiffs.

9. Per contra Mr.C.Emalias, learned Senior counsel appearing for the first respondent submitted that the suit properties form part of 'A' schedule properties allotted to the father of the defendants, viz., Pachamuthu Gounder. The recital in Ex.A1 would make it clear that the suit items were not kept in common and a reference has been made only with regard to pendency of the litigations over the suit properties and hence, the plaintiffs are not entitled for share in the suit properties, as claimed.

10. In the instant case, the suit came to be filed seeking 50% share in the suit properties. It is the case of the plaintiffs that a partial partition had taken place in the family of Pachamuthu Gounder and Ponnusamy Gounder under Ex.A1-partition deed and the suit schedule items have been kept common in view of the pendency of the litigations. On the other hand, the defendants have specifically stated that the suit schedule properties were allotted to Pachamuthu Gounder under Ex.A1-partition deed. It is not disputed that the suit properties belonged to Porappa Gounder and the relationship of the parties is also not in dispute. From a perusal of Ex.A1, it is seen that while Pachamuthu Gounder and his sons were allotted 26 items in 'A' schedule property, Ponnusamy Gounder and his sons were allotted 13 items in 'B' schedule property. It is further seen that the land in S.No.14/14 was kept for common usage as cart track. Indisputably, in respect of Item Nos.22, 23, and 24, litigation was pending, and the same was referred to in the document.

11. It is not out of place to mention that under Ex.B7 partition deed, dated 30.04.1999, the legal-heirs of Pachamuthu Gounder partitioned 'A' schedule property among themselves. In pursuance of Ex.A1 and Ex.B7 partition deeds, the mutation in the revenue records had taken place and under Ex.B2 to B5, pattas were issued in the name of the defendants.

12. It is appropriate to point out that P.W.1 during his cross-examination admitted that he is not aware of the sub divisions and the boundaries of the suit properties and the litigations pending in respect of the suit properties. This shows that P.W.1 was ignorant of the proceedings and he was unable to tell the legal proceedings ended in favour of the defendants. D.W.1 and D.W.2 have categorically deposed about the partition effected in the year 1980 and 1999.

13. On appreciation of the entire evidence adduced by the parties in proper perspective, the Courts below

rejected the plea of the plaintiffs that there was a partial partition in the year 1980 under Ex.A1. Even before this Court, the plaintiffs are unable to establish that the suit schedule properties were not subjected to partition in Ex.A1 partition deed. In my considered opinion, there is no illegality or perversity in the findings of the Courts below. Further, no substantial questions of law arises, warranting interference in this Appeal.

14. In such view of the matter, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Principal Subordinate Judge,
Salem.

2.The II Additional District Munsif,
Salem.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Ragavachari, Advocate SR.No. 16499

+2ccs to Mrs.Thamim, Advocate SR.No. 16822

S.A.No.393 of 2014

A.SK(03/12/2020)

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