

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.555 of 2014 &
M.P.No.1 of 2014

N.Rajagopalan .. Appellant/Appellant/Defendant

Versus

1.K.Indirani
2.Kalavathy .. Respondents/Respondents/Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 27.09.2013 made in A.S.No.94 of 2011, on the file of the Additional District Judge No.III, Dharapuram, confirming the judgment and decree dated 13.09.2011 in O.S.No.163 of 2007, on the file of the Sub Court, Dharapuram.

For Appellant : Mr.R.Asokan

For Respondents : Mr.R.Nalliyappan

JUDGMENT

This appeal is directed against the Judgment and Decree of the Additional District Judge-III, Dharapuram made in A.S.No.94 of 2011, confirming the Judgment and Decree of the Sub Court, Dharapuram passed in O.S.No.163 of 2007.

2. The unsuccessful defendant in O.S.No.163 of 2007 is the appellant herein. The said suit was filed by the respondents for partition and delivery of separate possession.

3. The brief facts necessary for disposal of the Appeal would run thus:-

The suit properties and other properties were jointly purchased by the husband of the first plaintiff and the father of the second plaintiff, viz., Mysamy @ Gurusamy and the defendant herein by virtue of the sale deed, dated 12.04.1966. The said Mysamy @ Gurusamy settled his undivided half share in favour of the plaintiffs by way of a registered settlement deed, dated 25.06.1974. Since then, the plaintiffs have been in possession and enjoyment of the same along with the defendant. The plaintiffs would further state that the said Mysamy @ Gurusamy left the family in the year 1975 due to his

mental depression and he could not be found out thereafter, and hence, a suit in O.S.No.89 of 2006 was filed for declaration to declare the civil death of Mysamy @ Gurusamy. The suit was decreed on 22.09.2006.

4. It is alleged that the defendant and his son borrowed a sum of Rs.50,000/- from the plaintiffs, but failed to repay the same. When the plaintiffs asked him to repay the amount, there was a scuffle and thereafter, the defendant prevented the plaintiffs from enjoying the property and hence, a notice dated 07.11.2007 was issued, for which, a false reply was given on 20.11.2007. It is further stated that the plaintiffs are entitled for half share in the suit property.

5. The first respondent filed a written statement denying and disputing the averments contained in the plaint. It is stated that the said Mysamy @ Gurusamy borrowed a sum of Rs.1,00,000/- from the defendant and surrendered his possession in the year 1997. Since then, the defendant is in possession and enjoyment of the property and prayed for dismissal of the suit.

6. On the basis of the pleadings, the trial Court framed necessary issues. On the side of the plaintiff, the first plaintiff examined herself as P.W.1 and examined two other witnesses as P.W.2 and P.W.3 and marked Exs.A1 to A13. The defendant examined himself as D.W.1 and produced Exs.B1 and B22.

7. After analyzing both the oral and documentary evidence, the trial Court decreed the suit. Aggrieved over the same, the defendant preferred an Appeal. The Appellate Court confirmed the finding of the trial Court. Challenging the same, the present appeal.

8. The following questions of law are framed for consideration in the Second Appeal:-

"(a) Whether the Courts below are right in decreeing the suit for partition when the plaintiffs have no cause to file the suit and the suit is not maintainable in law?

(b) Whether the Courts below were right in decreeing the suit for partition when the plaintiffs have failed to establish the death of Gurusamy @ Mysamy, the husband of the first plaintiff and the father of the second plaintiff?"

9. Mr.R.Ashokan, learned counsel for the appellant would submit that the Judgment and Decree of the Courts below are against law. It is further contended that the Courts below had committed manifest error in decreeing the suit for partition and passing the preliminary decree in favour of the respondents herein. He further added that the death of the first plaintiff's husband and father of the second plaintiff

was not proved and hence, the suit is not maintainable.

10. Per contra, Mr.R.Nalliyappan, learned counsel for the respondents made submissions in support of the findings of the Courts below.

11. In the case on hand, according to the plaintiffs, the suit schedule property and other properties were purchased by Mysamy @ Gurusamy and the defendant jointly by way of registered sale deed dated 12.04.1966. Though the defendant contested the suit, but the factum of purchase of the suit property by the defendant and the said Mysamy @ Gurusamy under Ex.A1-sale deed was not seriously disputed either in the written statement or in the evidence.

12. It is the further case of the plaintiffs that in view of the joint purchase, Mysamy @ Gurusamy is entitled for 50% share in the suit property and his right over the property has been settled in favour of the plaintiffs by way of the settlement deed, dated 25.06.1974. To prove their case, Ex.A1-sale deed, dated 12.04.1966 and Ex.A2-settlement deed, dated 25.06.1974 were marked.

13. The plaintiffs would further contended that the said Mysamy @ Gurusamy left the family in the year 1975 and he could not be traced for more than 30 years and the civil death of the said Mysamy @ Gurusamy was declared by the Munsif Court, Udumalpet in O.S.No.89 of 2006. The certified copy of the judgment in O.S.No.89 of 2006 was marked as Ex.A3. Exs.A4 to A13 would show that the plaintiffs were in joint possession of the property along with the defendant in pursuance of the Ex.A2-settlement deed.

14. In the written statement, it is stated that in the year 1997, the said Mysamy @ Gurusamy had borrowed a sum of Rs.1,00,000/- from the defendant in the presence of Mariappan S/o.Rangasami Pillai and Nachimuthu, S/o.Arumuga Gounder, but none of the witnesses were examined to substantiate the same. On the other hand, during the cross examination, the defendant deposed that he could not remember when the said Mysamy @ Gurusamy borrowed Rs.1,00,000/-.

15. It is to be noted that since the defendant failed to prove his case, the trial Court and the appellate Court came to the conclusion that the plaintiffs are entitled for half share in the suit property and granted a preliminary decree in favour of the plaintiffs. In view of the above, this Court does not find any substance in the contention of the learned counsel for the appellant and I find no good reason, warranting interference in the Second Appeal. The questions of law are answered against the appellant.

16. In fine, the appeal is dismissed as devoid of merits. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge No.III,
Dharapuram.
2. The Sub Court,
Dharapuram.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.3801

S.A.No.555 of 2014 &
M.P.No.1 of 2014

NRL (CO)
GMY (05/10/2020)



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