

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1163 of 2019
and CMP Nos.25609 and 26005 of 2019

1. Munusamy
2. Valarmathi
3. Prabhakaran
4. Yashwanth Kumar

(Appellants 3 & 4 Minors, represented by
their mother and next friend,
Valarmathi, the 2nd Appellant herein)

..Appellants/Defendants 1,5 to 7

Vs.

1. Perumal @ Suruttaiyan ...1st Respondent/Plaintiff
2. Velaiyan
3. Muniammal
4. Murugamma ..Respondents 2 to 4/Defendants 2 to 4
5. Vel
6. Sankar ..Respondents 5 & 6/Defendants 8 & 9

PRAYER: Second Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 12.02.2019 in A.S.No.40 of 2017 on the file of the Learned Sub-Judge, Palacode, confirming the Judgment and decree dated 02.03.2017 in O.S.No.147 of 2013 on the file of the Learned District Munsif, Palacode.

For Appellants : Mr.R.Selyakumar
For Respondents : No appearance

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

2. The defendants 1, 5, 6 and 7, in OS No.147 of 2013 who suffered a decree for partition and separate possession of the plaintiff's 1/5th share in the suit properties have come up with this Second Appeal.

3. According to the plaintiff, the suit properties belonged to the plaintiff's father Mari ancestrally. The plaintiff and defendants 1 and 2 are the sons of Mari. The defendants 3 and 4 are his daughters. Mari died about 22 years ago, leaving behind the plaintiff and defendants 1 to 4 as his legal heirs. The mother of the plaintiff and defendants 1 to 4, Pachaiammal died on 30.07.2013. The plaintiff would further claim that defendants 5 to 9 are strangers to the suit property. Since the defendants made it impossible for the plaintiff to enjoy the properties along with them, the plaintiff made a demand for partition on 10.08.2013. The defendants refused to comply with the said demand. Thereafter, upon obtaining the encumbrance certificate, the plaintiff learnt that the first defendant had created a settlement in favour of his daughter/the fifth defendant in respect of 67 cents of land and a Well on 15.11.1999. The first defendant and the fifth defendant have together sold an extent of 27 cents in favour of the eighth defendant. The defendants 5 to 7 had sold an extent of 2176 sq. feet of land in the suit properties in favour of the ninth defendant on 16.07.2013. The plaintiff also sought for declaration that these documents are null and void.

4. The suit was contested by all the defendants except the fourth defendant. The fifth defendant filed a written statement. The fifth defendant admitted that the suit properties are ancestral properties of the plaintiff's father Mari. The death of Mari 22 years prior to the suit and the death of Pachaiammal, wife of Mari on 30.07.2013 were also admitted. It was also claimed that the first defendant as the Manager was in charge of the properties and he was always sharing the income and the proceeds with the other defendants. It was also claimed that there was an oral partition in respect of the properties about 20 years ago and in that partition, the properties that were sold and dealt with by the first defendant, were allotted to the first defendant. It was also claimed that the first defendant was allotted 94 cents of land and the plaintiff and defendants 1 and 2 had built up their houses in the properties that were allotted to them. Therefore, according to the defendants, after the said oral partition, the first defendant had executed a Gift Deed dated 15.11.99 and the same is legally valid.

5. At trial, the plaintiff examined himself as P.W.1. Perumal and Alraj were examined as P.Ws. 2 and 3. The fifth defendant was examined as D.W.1, while Manikam, Kandan and Gopal were examined as D.Ws. 2 to 4. Exhibits A1 and A2 were marked on the side of the plaintiff and Exhibits B1 to B3 were marked on the side of the defendants.

6. The Trial Court upon a consideration of the facts and circumstances of the case concluded that the oral partition has not been established. Upon the said conclusion, the Trial Court found that the Settlement Deed and the Sale Deeds are also invalid and not binding on the plaintiff. On the said findings, the Trial Court decreed the suit. Aggrieved the defendants 1, 5, 6 and 7 filed an Appeal in AS No.40 of 2017 on the file of Sub Court, Palacode.

7. The learned Subordinate Judge, upon a reconsideration of evidence on record, concurred with the findings of the Trial Court and dismissed the Appeal. Aggrieved, the defendants 1, 5, 6 and 7 have come up with this Second Appeal.

8. I have heard Mr.R.Selvakumar, learned counsel appearing for the appellants.

9. Mr.R.Selvakumar, learned counsel appearing for the appellants would contend that the Courts below were not right in disbelieving the partition pleaded by the defendants. The Lower Appellate Court had concluded that once the character of the properties is admitted, it is for the defendants who pleaded a oral partition to prove the same. The Trial Court as well as the Lower Appellate Court have examined the evidence of D.Ws.2, 3 and 4, who were examined in support of the case of the defendants that there was an oral partition, and come to the conclusion that their evidence is wholly unreliable in order to conclude that there was a oral partition.

10. The learned Subordinate Judge had considered the evidence of the said witnesses and has concluded that the same is not reliable apart from being self-contradictory. In fact the learned Appellate Judge had come to the conclusion that D.Ws. 2 and 3 were not even present at the time of the alleged oral partition. Since the oral partition itself was disbelieved, the Courts below also held that the settlement of undivided interest in joint family property cannot be accepted. On the above findings, the Lower Appellate Court has rejected the claim of the defendants. I do not see any error in the appreciation of evidence by the Courts below. I am unable to conclude that there is any perversity in the findings of the Courts below regarding the proof of oral partition.

11. Mr.R.Selvakumar, learned counsel appearing for the appellants would contend that the Courts below were not right in declaring the documents which were not produced before them as null and void. Those documents were admittedly executed by the first defendant and defendants 4 and 5. The plaintiff is not a party to those documents. He need not have sought for the relief of declaration, he could have very well ignored the

documents. The existence of those documents was not denied by the defendants. It is the capacity of the first defendant to execute the documents that was in question. Therefore, I do not see any error in the judgments of the Courts below in declaring those documents as null and void.

12. In the light of the above, I do not see any question of law much less substantial question of law in order to enable me to entertain the Appeal. The Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently the connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

jv
To

1. The Subordinate Judge
Palacode.

2. The District Munsif,
Palacode.

+1 CC to Mr.R.Selvakumar, Advocate sr 24721.

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