



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 10.09.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.31 of 2016
and C.M.P(MD)No.834 of 2016

J.Justin Rabi : Appellant/Appellant/1st Defendant

Vs.

1.J.Nelson : 1st Respondent/1st Respondent/
Plaintiff

2.J.Dennis

3.J.Sulochana Bai

4.J.Lilly Leelabai : Respondents 2 to 4/Respondent 2 to 4/
Defendants 2 to 4

PRAYER: Second Appeal filed under Section 100 of C.P.C, against the Judgment and Decree passed in A.S.No.22 of 2013 on the file of Sub-Court, Padmanabhapuram dated 11.10.2013 confirming the judgment and decree passed in O.S.No.264 of 2010 on the file of Additional District Munsif Court, Padmanabhapuram dated 08.02.2013.

For Appellant : Mr.M.P.Senthil

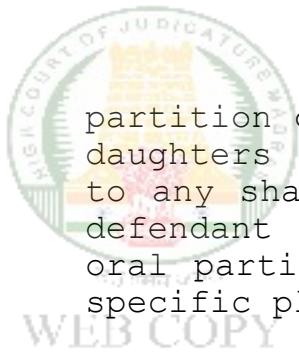
For Respondents: Mr.D.Christension Jugnu

J U D G M E N T

The first defendant in a suit for partition has preferred this appeal. The parties would be referred to by their rank before the trial Court.

2.The case is not yet admitted and only notice was ordered, pursuant to which, Mr.D.Christension Jugnu, learned counsel had appeared for the respondents.

3.A certain Joseph was entitled to a block of land measuring 2.52 acres. This was allotted to him under Ext.A1 partition deed. Joseph was married to Naomi. The couple had three sons and two daughters. The plaintiff, the first and second defendants are their sons while, defendants 3 and 4 are their daughters. Plaintiff laid the suit for



partition of 1/5 share. Initially, the plaintiff did not implead the daughters on the belief that they, as daughters, were not entitled to any share in the property of their father. The appellant/ first defendant contested the matter and according to him, there was an oral partition between the brothers and they were in occupation of specific plots.

4.The matter went to trial. Before the trial Court, even the plaintiff as P.W.1 had deposed that they were enjoying 1/3rd share each, and he also admitted that at that point of time, he did not know that defendants 3 and 4 were also entitled to seek share in their father's property.

5.After appreciating the evidence, the trial Court rejected the defence of the first defendant and decreed the suit. This came to be confirmed in an appeal preferred by the first defendant to the first Appellate Court. Hence, he has come before this Court with this appeal.

6.Heard, the learned counsel for the appellant as well as the respondents.

7.Except the statement of P.W.1 that each of the parties were enjoying 1/3rd share, there is nothing on record to indicate that there was an oral partition between them. Indeed, this enjoyment was on a misconception that the two daughters were not entitled to any share in the property. In these circumstances, this Court does not find any material as to warrant interference with the Judgment of the first Appellate Court.

8.At this juncture, the learned counsel for the appellant would submit that the first defendant had put up his residential house in the portion where he is in enjoyment and therefore, he may be allotted the same plot.

9.While co-sharers of a property cannot exclude each other from enjoying the property, yet, it is recognized in law that they can be in occupation of specific portion of a property for their convenient enjoyment. If they are in occupation of a certain portion, then equity requires that when the final decree is passed, the specific portion can be allotted to the co-sharer, who is in actual physical enjoyment of any specific portion, if convenience permits, subject however to all equities. This issue therefore, need not be addressed now and the same is left open for the Court that passes the final decree to consider at the appropriate stage, taking into account all equities affecting the property and the rights of the parties.

10.In conclusion, nothing survives for further adjudication in this appeal and the same is dismissed and accordingly, the Judgment and Decree passed in A.S.No.22 of 2013 on the file of Sub-Court, <https://hcds.cemilab.com/revin> dated 11.10.2013 confirming the judgment and decree



passed in O.S.No.264 of 2010 on the file of Additional District Munsif Court, Padmanabhapuram dated 08.02.2013 is upheld. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Padmanabhapuram.

2.The Additional District Munsif,
Padmanabhapuram.

Copy to:

The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-16528[F] dated 10/09/2020)

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NR (05.10.2020) 3P 6C