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IN THE HIGH COURT OF JUDICATURE AT MADRAS

09.08.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.429 of 2021

Harikrishnan

... Appellant/Plaintiff

Vs.

1. Munusamy
2. T.G.Gopinath
3. Chandrammal
4. Vinayagam
5. Uthirakoti
6. Venkatesan
7. Devaki
8. Punitha
9. K.Chandrammal
- 10.D.Chelammal
- 11.D.Kumar
- 12.D.Gandhimathi @ Muniammal

... Respondents/Defendants 1 to 6 & 8 to 13

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree dated 01.10.2019 passed in A.S.No.32 of 2017 on the file of the Principal District Judge, Kanchipuram at Chengalpattu, confirming the judgment and decree dated 17.02.2016 passed in O.S.No.117 of 2006 on the file of the Principal Subordinate Judge at Chengalpattu.

For Appellant : Mr.Durai Eswar for
Mr.G.RM.Palaniappan

JUDGMENT

The plaintiff who had filed a suit in O.S.No.117 of 2006 before the Principal Subordinate Judge, Chengalpattu, claiming partition of his 1/9th share in the suit property is now before this Court having failed in both the Courts below. The plaintiff and the defendants are referred to in the same ranking as before the trial Court.



2. It is the case of the plaintiff that the suit properties originally belonged to Rajagopal Naicker, Varadharaja Naicker, Thalasaayana Naicker. Rajagopal Naicker had a son, Kali Naicker and Kali Naicker's son was the first defendant. The plaintiff and defendants 4 and 5 who are siblings, are the son of Varadharaja Naicker and the sixth defendant is the son of Thalasaayana Naicker. The case of the plaintiff is that he and defendants 4 and 5 were together entitled to a $1/3^{\text{rd}}$ share and the first defendant and sixth defendant was entitled to a $1/3^{\text{rd}}$ share each. The three brothers viz., Rajagopal Naicker, Varadharaja Naicker and Thalasaayana Naicker were in joint possession and enjoyment of the suit properties and after their demise, their legal heirs became entitled to their respective shares. Defendants 2 and 3 who allege to have purchased the suit properties from Kali Naicker and his legal heirs are now attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties. The other defendants are colluding with them. The plaintiff would submit that he is in joint possession of the property and he comes under the branch of Varadharaja Naicker and he and his brothers are each entitled to a $1/3^{\text{rd}}$ share jointly and each of them were entitled to $1/9^{\text{th}}$ share in the suit properties. Since the defendants were not coming forward to have the properties on partition amicably, the plaintiff was filing the suit for partition. He would further submit that the second defendant had purchased 1.87 acres from Duraivel and others on 27.03.1996 and the same is not a true and valid document.

3. The second defendant had filed a written statement contending that the plaintiff has come forward with a false case and that the suit properties are not the joint family properties as put out by the plaintiff but is the exclusive property of Rajagopal Naicker. The grand father of the first defendant Varadharaja Naicker and Thalasaayana Naicker have no right to the said property. Kali Naicker the son of Rajagopal Naicker had sold the suit property to Ramanjulu Naicker under a registered sale deed dated 21.12.1972. After the death of Ramanujulu Naicker, his widow Chenjulakshmi Ammal and her children had filed a suit in O.S.No.585 of 1981 on the file of the District Munsif Court, Chengalpattu, seeking their $1/3^{\text{rd}}$ share in the property. This suit was decreed in their favour and a preliminary decree was passed. The challenge to the said decree, by brothers of Ramanjulu Naicker in A.S.No.44 of 1988 on the file of the Principal Sub Court, Chengalpattu, also ended in dismissal. Thereafter, a final decree was passed and $1/3^{\text{rd}}$ share of the suit properties was allotted to Chenjulakshmi Ammal and $2/3^{\text{rd}}$ to her children. The second defendant had purchased an extent of 1.87 acres out of 2.52 acres in the suit property by virtue of a registered sale deed dated 27.03.1996. The property was thereafter subdivided and the property purchased by the



defendant is comprised in S.No.281/2A and a separate patta was issued to him. The defendants would further submit that the plaintiff's brother who has been arrayed as fifth defendant in the instant suit had earlier filed a suit in O.S.No.842 of 1988 on the file of the District Munsif Court, Chengalpattu, which was thereafter transferred to District Munsif Court, Tirukazukundram and renumbered as O.S.No.38 of 1996. This suit was filed to declare the suit property as the joint family property of Rajagopal Naicker, Varadharaja Naciker and Thalasyana Naicker. The suit was dismissed by judgment and decree dated 05.04.2005 and the appeal in A.S.No.56 of 2005 to the Additional Subordinate Judge, Chengalpattu also ended in dismissal. The plaintiff was therefore bound by this judgment.

4. The learned Principal Subordinate Judge, Chenglepet, had framed the following issues:

"1. Whether the suit property was joint family property of Rajagopal and his two brothers?

2. Whether the plaintiff is in joint possession of suit property?

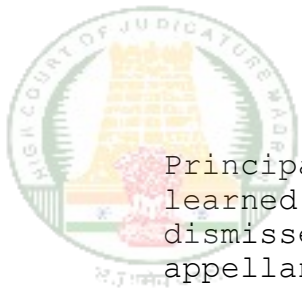
3. Whether the court fee paid in the plaint is correct?

4. Whether the plaintiff is entitled partition as prayed?

5. For what relief, the plaintiff is entitled to?"

5. The plaintiff examined himself as PW1 and marked Exs.A1 to A4. On the side of defendants, DW1 and DW2 were examined and Exs.B1 to B41 were marked. DW1 was the second defendant and 10th defendant was examined as DW2.

6. Both the Courts below have taken into the consideration the fact that the plaintiff had failed to prove the existence of the joint family and joint possession and enjoyment of the properties whereas the defendants had proved the partition and that apart, the suit in O.S.No.585 of 1981 filed by the window of Ramanuja Naicker has ended in a final decree proceedings and Ramanuja Naicker had purchased the property from the son of Rajagopal Naicker viz., Kali Naicker who is the father of the first defendant herein. Further, the plaintiff's brother had himself filed a suit to have the properties declared as joint family properties and for an injunction in O.S.No.38 of 1996 which was dismissed and the appeal filed thereon in A.S.No.56 of 2005 also ended in dismissal. The learned Principal Subordinate Judge therefore dismissed the suit. The learned Judge held that the suit property was the absolute property of the second defendant. This judgment and decree was taken on appeal to the



Principal District Judge, Kanchipuram in A.S.No.32 of 2017. The learned Judge confirmed the findings of the trial Court and dismissed the suit. Challenging the same, the appellant/plaintiff is before this Court.

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7. The learned counsel for the appellant had made his submissions for admitting the above second appeal. Heard his submissions and perused the records.

8. The plaintiff's case is that the propriety which originally belonged to Rajagopal Naicker, Varadharaja Naicker and Thalasyana Naicker, has not been partitioned and it continues to be joint property. The plaintiff has proved his case through Ex.A1 patta book. However, the Courts below have found that in Ex.A1, the name of the plaintiff's father does not feature. Another vital fact that has been taken note of by the Courts below is that the plaintiff's own brother who has been arrayed as fifth defendant had filed a suit in O.S.No.842 of 1988 on the file of the District Munsif Court, Chenglepet which was thereafter transferred to the District Munsif cum Judicial Magistrate Court, Thirukazhukundram and re-numbered as O.S.No.38 of 1996 wherein the prayer was to declare the suit property as the joint family property of Rajagopal Naicker, Varadharaja Naicker and Thalasyana Naicker. This suit was dismissed on 05.04.2005 and the appeal preferred by the fifth defendant herein in A.S.No.56 of 2005 on the file of the learned Additional Subordinate Judge, Chengalpattu, also ended in dismissal. Therefore, the claim that the properties continued to be joint has been dismissed. The plaintiff has come forward with the suit by moulding the relief to one for partition once again on the basis that the properties continued to be a joint family properties of Rajagopal Naicker, Varadharaja Naicker and Thalasyana Naicker. The plaintiff is therefore bound by the earlier judgment in the suit filed by his own brother. The Courts below have rightly dismissed the suit filed by the plaintiff and I do not see any reason for interfere with the same. The plaintiff has not made out any question of law much less a Substantial Questions of law warranting interference of this Court. Consequently, the Second Appeal stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The Principal District Judge,
Kanchipuram, Chengalpattu.

2.The Principal Subordinate Judge,
Chengalpattu.

+1cc to Mr.G.RM.Palaniappan, Advocate Sr No.39069

S.A.No.429 of 2021

GP (CO)
PR (26/10/2021)