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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.02.2021

PRONOUNCED ON :18.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 1310 of 2008

1. Bhoopalan
S/o, Murugesan,
Residing at
Chinnakozhappalur Koot Road,
Vandavasi Taluk,
Thiruvennamalai District.
2. Palani,
S/o, Poongavanam,
Residing at
Kodanallur village,
Vandavasi Taluk,
Thiruvennamalai District.
3. Mannu,
S/o, Annamalai,
Residing at Kizhakovalaivedu Village,
Vandavasi Taluk,
Thiruvennamalai District.
4. Sundaram
S/o, Chinnasami,
Residing at
Maduraiveeran Koil Street,
Pudueri Village,
Chengalput Taluk & District. ... Appellants

Vs.

Govindasami,
S/o, Muniyan,
Residing at
Mariamman Koil Street,
Melacheri Village & Post,
Vandavasi Taluk,
Thiruvennamalai District. ... Respondent



Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 15.02.2008 made in A.S.No.27 of 2006 on the file of the Court of the Subordinate Judge of Cheyyar, Thiruvennamalai District reversing the judgment and decree dated 31.10.2006 made in O.S.No.121 of 2003 on the file of the Court of the Additional District Munsif of Vandavasi.

For Appellants : Mr.T.Dhanasekar

For Respondent : Mr.K.G.Senthilkumar

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 15.02.2008 passed in A.S.No.27 of 2006 on the file of the Subordinate Court, Cheyyar, reversing the judgment and decree dated 31.10.2006 passed in O.S.No.121 of 2003 on the file of the Additional District Munsif Court, Vandavasi.

2. The parties are referred to as per the rankings in the trial court. The plaintiffs in O.S.No.121 of 2003 are the appellants in this second appeal.

3. Suit for partition.

4.The case of the plaintiffs in brief is that the suit property belonged to the plaintiffs and the defendant's grandfather Muthuramalinga Thambiran and enjoyed by him and after his death, enjoyed by the plaintiffs' father and the defendant's father jointly and whileso, the plaintiffs had gone out of the suit village for eking out their livelihood and taking advantage of the same, the defendant endeavored to claim the entire right over the suit property without any basis. The plaintiffs and the defendant each have 1/5th share in the suit property and claiming partition, the first plaintiff issued a notice on 21.03.2003 and it was duly acknowledged by the defendant and he sent a reply on 23.04.2003 containing false allegations. Though Panchayat was convened, the defendant has failed to effect the partition and handover the due shares to the plaintiffs and hence the plaintiff's have been necessitated to levy the suit for appropriate reliefs.

5.The defendant resisted the plaintiffs' suit contending that it is true that the suit property originally belonged to the plaintiffs' and the defendant's grandfather Muthramalinga Thambiran, however false to state that after his death, the suit property was enjoyed by the plaintiffs and the defendant's



father jointly. According to the defendant, the defendant's father and the first plaintiff's father had equally divided the suit property and enjoyed their respective shares separately and each enjoyed 2 ½ cents respectively and therefore it is false to state that the plaintiffs and the defendant had been jointly enjoying the suit property. Whiles, the father of the plaintiffs 2 to 4 settled in various other villages permanently prior to 40 years and therefore having no right to claim their shares in the suit property. The defendant's father had constructed a thatched house in the suit property and after his death, the defendant had put up a terraced house and patta had also been issued in favour of the defendant and he has been enjoying the property by paying house tax etc., It is only the first plaintiff's father and the defendant's father who had been enjoying their respective shares as abovestated and Muthuramalinga Thambiran during his life time had equally divided the suit property between the first plaintiff's father and the defendant's father and even when the first plaintiff left to another village, it is only the defendant who had been cultivating the suit property and when the defendant claimed his share in the same, the first plaintiff has filed the present suit by instigating the other plaintiffs. No Panchayath was convened as alleged in the plaint. The defendant sent a suitable reply to the notice issued by the first plaintiff and therefore, according to the defendant, there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiffs' case, P.Ws.1 to 2 were examined. Exs.A1 to A5 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B19 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth by them, the trial court was pleased to declare that the plaintiffs and the defendant are each entitled to 1/5th share in the suit property and accordingly granted the preliminary decree in favour of the plaintiffs. Impugning the same, first appeal has been preferred by the defendant. The first appellate court, on an appreciation of the materials available on record and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, resultantly dismissed the plaintiffs' suit. Aggrieved over the same, plaintiffs have preferred the present second appeal.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.



(a) When once it is admitted that the suit properties belonged to the ancestors of the plaintiffs and the defendant, is not the burden on the defendant to prove partition and on his failure to do so will not presumption as the joint-ness arise.

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(b) Is not the burden on the defendant who sets up partition to prove the same?

(c) Is the Lower Appellate Court correct and justified in relying on revenue records to prove title and partition and whether revenue records by them prove partition?

9. It is not in dispute that the suit property had been purchased by the grandfather of the plaintiffs and the defendant namely Muthuramalinga Thambiran, by way of a sale deed dated 04.03.1913 marked as Exs.A3/A4 and according to the plaintiffs, after his demise, the father of the plaintiffs and the defendant and thereafter the plaintiffs and the defendant had been enjoying the suit property jointly and when the plaintiffs left to other villages to eke out their livelihood, according to the plaintiffs, the defendant set up independent claim of title to the entire suit property without any authority and failed to effect the partition and allot the shares due to the plaintiffs, despite notice and Panchayath. Hence, according to the plaintiffs, suit has come to be levied.

10. The defendant resisted the plaintiffs' suit contending that during the life time of Muthuramalinga Thambiran, the suit property had been divided equally between the first plaintiff's father and the defendant's father, each having been allotted 2 ½ cents and they had been enjoying their respective shares and subsequent to them, the first plaintiff and the defendant had been enjoying their respective shares and therefore according to the defendant, when the suit property had been already divided and the first plaintiff's father and the defendant's father had been allotted independent shares and as the father of the plaintiffs 2 to 4 left to other villages and settled there permanently for several years, they had not been allotted any share and further put forth the case that the defendant's father put up a thatched hut and thereafter the defendant had put up the terraced house in the property allotted to him and enjoying the same by paying house tax and therefore put forth the case that the plaintiffs' suit is misconceived and the suit is liable to be dismissed.

11. When it is noted that the suit property originally belonged to the grandfather of the parties namely Muthuramalinga Thambiran, as rightly put forth by the plaintiffs' counsel, the plaintiffs and the defendant are found to be each entitled to 1/5 share in the suit property. However the abovesaid case of the plaintiffs had been challenged by the defendant contending



that even during the lifetime of Muthuramalinga Thambiran, the partition had been effected orally qua the suit property, the first plaintiff's father and the defendant's father had been allotted 2 ½ cents each. When the defendant has pleaded the oral partition to resist the plaintiffs suit claiming partition and when admittedly the suit property originally belonged to the common ancestor, as rightly put forth by the plaintiffs counsel, the onus is heavy upon the defendant to establish the plea of partition put forth by him. The defendant has not come out clearly as to when actually the oral partition had been effected as put forth by him. Very vaguely he has come out with the case that during the lifetime of Muthuramalinga Thambiran, the oral partition had been effected. When it is found that the relationship between the parties is not in dispute and in such view of the matter, when Muthuramalinga Thambiran had five sons, if he really had effected the partition in respect of the suit property, he would have allotted equal share to all his sons. The contention put forth by the defendant that inasmuch as, the father of the plaintiffs 2 to 4 had settled in other villages permanently for several years, they had not been allotted any share in the suit property as such, as rightly held by the trial court, cannot be countenanced in any manner. As rightly appreciated by the trial court, the witnesses examined on behalf the defendant namely D.Ws.2 and 3 are unable to state anything about the oral partition put forth by the defendant and on the other hand, they would only plead total ignorance about the same and accordingly their evidence with reference to the abovesaid case of the defendant would not in any manner be useful to establish that the first plaintiff's father and the defendant's father had alone enjoyed the respective shares since the date of oral partition. Absolutely no acceptable and convincing material is forthcoming on the part of the defendant pointing to the same. The defendant has marked Exs.B1 to B19 to buttress his case and Ex.B1 is said to be the patta issued by the Tahsildar in the name of the defendant. Exs.B2 to B19 are the house tax receipts. As rightly concluded by the trial court, there is nothing available in Exs.B2 to B19 to indicate that the same relate to half share of the suit property said to have been allotted to the defendant. The patta document projected by the defendant marked as Ex.B1 would not serve any purpose as the patta cannot be considered as a document of title. When particularly the defendant has not established as to which half share in the suit property had been allotted to his father and which half share in the suit property had been allotted to the first plaintiff's father and when he has not come out clearly as to the boundaries within which the share allotted to his father is located, in such view of the matter, the documents projected by the defendant by themselves would not serve any purpose as held by the trial court.



12. The sum and substance of the defence version is that on account of the long possession and enjoyment of the half share in the suit property, according to the defendant, the plaintiffs are not entitled to claim any share as sought to be projected by them. As rightly held by the trial court, even assuming that the father of the plaintiffs 2 to 4 had left to other villages for their livelihood and settled there permanently for several years that by itself would not lead to the conclusion that they had been ousted from the possession and enjoyment of the suit property. The defendant has not taken the plea of adverse possession in the written statement, even otherwise, as held by the trial court, the defendant has not placed acceptable and reliable material to hold that he had been enjoying the suit property ie., the alleged half share allotted to his father openly, continuously and uninterruptedly by exhibiting animus attitude towards one and all including the plaintiffs and their enjoyment is coupled with Animus possidendi, in such view of matter, the case of the defendant that the suit property had been already partitioned between the first plaintiffs' father and the defendant's father during the life time of Muthuramalinga Thambiran cannot be accepted in any manner and rightly disbelieved by the trial court. In such view of the matter, the plaintiffs could not deprive of their legal right in claiming their lawful share qua the suit property.

13. The defendant having pleaded the oral partition and when as above pointed out, admittedly the suit property belonged to the ancestor of the plaintiffs and the defendant, the burden is only upon the defendant to prove the case of the partition and on his failure to establish the same, as rightly contended by the plaintiffs' counsel, the presumption as to the jointness of the property as belonging to the plaintiffs and the defendant arise and the defendant having failed to dislodge the presumption and when the revenue records putforth by him do not advance the defence version, the first appellate court is found to have totally erred in upholding the defence version based on the revenue documents projected by the defendant and more particularly when the alleged patta said to have been issued in favour of the defendant has not been established to have been issued to him lawfully after issuing notice to all the sharers of the suit property particularly the plaintiffs and in such view of the matter, the reasonings and conclusions of the first appellate court for upholding the defence version based on the revenue documents projected by the defendant particularly when they are found to be not pointing to the possession and enjoyment of the alleged half share said to have been allotted to the defendant's father, hence the reasonings and conclusions of the first appellate court could only be termed as perverse, illogical and irrational and liable to be set aside. The substantial questions of law involved in the second appeal



are accordingly answered in favour of the plaintiffs and against the defendant.

14. For the reasons aforestated, the judgment and decree dated 15.02.2008 passed in A.S.No.27 of 2006 on the file of the Subordinate Court, Cheyyar are set aside and resultantly, the judgment and decree dated 31.10.2006 passed in O.S.No.121 of 2003 on the file of the Additional District Munsif Court, Vandavasi are confirmed and accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge of Cheyyar,
Thiruvennamalai District.

2.The Additional District Munsif,
Additional District Munsif Court,
Vandavasi.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.10387

S.A.No.1310 of 2008

SSV(CO)
CB(03/09/2021)