



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021

PRONOUNCED ON : 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1425 of 2008

C.Periyasamy ... Appellant/2nd Respondent

.Vs.

1.Thangammal ... 1st Respondent/Appellant

2.Nallasamy Gounder ... 2nd Respondent/1st Respondent

Prayer:-

Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 01.08.2008 passed in A.S.No.69 of 2007 on the file of the Principal Subordinate Court, Erode, Erode District, reversing the Judgment and Decree dated 28.07.2006 passed in O.S.No.284 of 2004 on the file of the District Munsif - cum- Judicial Magistrate Court, Perundurai, Erode District.

For Appellant : Mr.V.Kathirvelu

For Respondents : Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 01.08.2008 passed in A.S.No.69 of 2007 on the file of the Principal Subordinate Court, Erode, Erode District, reversing the Judgment and Decree dated 28.07.2006 passed in O.S.No.284 of 2004 on the file of the District Munsif - cum- Judicial Magistrate Court, Perundurai, Erode District.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The second defendant in O.S.No.284 of 2004 is the appellant in the second appeal.



4.Suit for partition.

5.The case of the plaintiff, in brief, is that the plaintiff is the daughter and the defendants 1 & 2 are the sons of Chinnappa Gounder and Palaniammal and the suit properties belonged to Chinnappa Gounder and the suit properties and the other properties belonged to the defendants and Chinnappa Gounder as their ancestral properties and in the family partition effected orally about 30 years back, the suit properties had been allotted to the share of Chainnappa Gounder separately and he was enjoying the same exclusively and died intestate leaving his wife and his children viz., the plaintiff and the defendants 1 & 2 and his wife also having died intestate, according to the plaintiff, she is entitled to obtain 1/3 share in the suit properties and as the defendants had failed to effect the partition and hand over her share, despite the issuance of notice, according to the plaintiff, she has been necessitated to institute the suit against the defendants for appropriate reliefs.

6.The second defendant resisted the plaintiff's suit contending that the relationship of the parties set out in the plaint is true and also admitted that an oral partition took place between the defendant, his brother and their father about 30 years back and also the fact that the suit properties had been allotted to the share of Chinnappa Gounder and according to the defendant, in April, 1972, there was a family arrangement between the defendants and their father and on that basis, a registered partition deed was effected on 07.09.1973 by way of which, Chinnappa Gounder was allotted specific extent of 25 1/4 cents in 5 places in Old Survey No.948/3 and he did not retain any right or interest in any of the other properties and he did not have any right or share in the first item of the suit properties at the time of his death and he did not leave behind the suit properties as put forth in the plaint. The second item of the suit properties is an undivided common 33 cents and therefore, the plaintiff is not entitled to seek partition in the same and furthermore, there is a dwelling house in the suit properties and therefore, not entitled to seek the partition of the suit properties and according to the second defendant, the plaintiff has laid the present suit in collusion with the first defendant and therefore, prayed for the dismissal of the plaintiff's suit.

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A5 were marked. On the side of the second defendant' DWs1 & 2 were examined and Exs.B1 to B11 were marked.



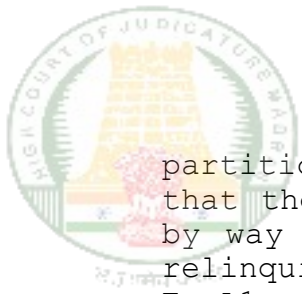
8. On an appreciation of the materials placed on record and the submissions put forth by the respective parties, the trial Court was pleased to grant the relief of partition only in respect of the second item of the suit properties and dismissed the plaintiff's suit as regards the first item of the suit properties and accordingly, granted the preliminary decree in favour of the plaintiff. Impugning the judgment and decree of the trial Court, the plaintiff had preferred the first appeal and 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 as regards the first item of the suit properties and by way of allowing the appeal preferred by the plaintiff, consequently, held that the plaintiff is also entitled to obtain 1/3 share in the first item of the suit properties and accordingly, granted the relief in favour of the plaintiff. Impugning the same, the present second appeal had been preferred.

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

"a. Has not the Lower Appellate Court committed an error of law to the facts and circumstances of the case in not dismissing the appeal in view of the admission made by the plaintiff that she has been living with her husband and not in good terms with the Appellant for over 15 years and that there is no document to show her joint possession?

b. Has not the Lower Appellate Court committed an error of law to the facts and circumstances of the case in not holding that the case of the Appellant regarding oral relinquishment of the 'A' Schedule property has been proved by the documentary evidence of Exs.B1 to B11 which are issued by the Revenue Authorities?"

10. The relationship between the parties is not in dispute. It is also noted that the defendants 1 & 2 have executed the relinquishment deed dated 20.06.1970 in favour of Chinnappa Gounder and it is also admitted that by way of the partition deed dated 07.09.1973 marked as Ex.B1, the parties had effected



partition. The second defendant examined as DW1 has admitted that the defendants and Chinnappa Gounder had effected partition by way of Ex.A1 relinquishment deed, though Ex.A1 is styled as relinquishment deed and also further admitted that following Ex.A1, the parties had been separately enjoying the properties allotted to them and thereby, clearly admitted that Items 1 & 2 of the suit properties had been allotted only to Chinnappa Gounder. Therefore, considering the abovesaid admission of the second defendant, when according to the plaintiff, the suit properties are the separate properties of Chinnappa Gounder and the same has also not been controverted by the second defendant in the written statement, particularly, he having been admitted that in the partition, the suit properties had been allotted to the share of Chinnappa Gounder, the first appellate Court is found to be justified in holding that the suit properties are the separate properties of Chinnappa Gounder.

11.The second defendant would claim that by way of the family arrangement effected during 1973, he and the first defendant had been enjoying their separate shares in the first item of the suit properties. However, as rightly concluded by the first appellate Court, evidencing the abovesaid arrangement, no material worth acceptance has been produced by the second defendant and also no material has been produced to show that it is only the defendants 1 & 2, who had been separately enjoying the distinct shares in the first item of the suit properties. Therefore, the claim of the second defendant that he has been in the possession and enjoyment of the distinct share in the first item of the suit properties based on the family arrangement has been rightly disbelieved and rejected by the first appellate Court. The Kist receipts marked as Exs.B2 to B11, as rightly held by the first appellate Court, would not advance the defence version projected by the second defendant. The second defendant would claim that the enjoyment of the first item of the suit properties by him and his brother viz., the first defendant is only on the permission granted by his father Chinnappa Gounder. However, when the same is not the plea of the second defendant and on the other hand, he would claim that the first item of the suit properties has been allotted to the defendants 1 & 2 by way of the family arrangement and when the plea of permission put forth in the course of evidence having not been sustained by him by adducing acceptable material and when the Kist receipts projected by him are not shown to be established as relating to the share said to have been allotted to the second defendant in the first item of the suit properties and when the first defendant has also admitted that he had paid the kist in respect of the lands lying on the eastern side, all put together, the first appellate Court is justified in not accepting the defence version. As rightly held by the first appellate Court, in Ex.B1



partition deed, there is nothing mentioned that Chinnappa Gounder had handed over the possession of the first item of the suit properties to the defendants and when the same is also admitted and accepted by DW1, in all, the first appellate Court has rightly held that the defendants as such and in particular, the second defendant has failed to establish that he has been in the exclusive possession of the first item of the suit properties, following the family arrangement as put forth by him. In the light of the abovesaid factors, when it is found that the first item of the suit properties had been admittedly allotted to Chinnappa Gounder by way of Ex.A1 deed, the inevitable conclusion is that the first item of the suit property is the separate property of Chinnappa Gounder and on his demise, the plaintiff and the defendants being his legal heirs, as held by the first appellate Court, the plaintiff is entitled to claim 1/3 share in the first item of the suit properties also. In such view of the matter, the first appellate Court is justified in declaring the share of the plaintiff in the first item of the suit properties also by setting aside the judgment and decree of the trial Court.

12.The only argument put forth by the second defendant's counsel is that there is no material projected on the part of the plaintiff to hold that she has been in the joint possession and enjoyment of the first item of the suit properties. When the plaintiff is also one of the legal heirs of Chinnappa Gounder and the possession and enjoyment of the first item of the suit properties by the defendants could also be construed as the joint possession of the plaintiff, particularly, the plaintiff being a sharer, the abovesaid contention raised by the defendants in the second appeal do not merit acceptance. When the second defendant has failed to establish the plea of oral relinquishment qua the first item of the suit properties and the documents projected by him marked as Exs.B1 to B11, would not advance the abovesaid case, all put together, and the determination of the first appellate Court in granting the preliminary decree in favour of the plaintiff, even in respect of the first item of the suit properties, being based on the appreciation of the factual matrix and not involving any substantial question of law, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal, are accordingly answered against the second defendant and in favour of the plaintiff.

13.In conclusion, the Judgement and Decree dated 01.08.2008 passed in A.S.No.69 of 2007 on the file of the Principal Subordinate Court, Erode, Erode District, reversing the Judgment and Decree dated 28.07.2006 passed in O.S.No.284 of 2004 on the file of the District Munsif - cum- Judicial Magistrate Court,



Perundurai, Erode District, are confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

WEB COPY

Sd/-
Deputy Registrar (C.S)

//True Copy//

Sub Assistant Registrar

sms

To:

1. The Principal Subordinate Judge,
The Principal Subordinate Court,
Erode, Erode District.
2. The District Munsif - cum- Judicial Magistrate,
The District Munsif - cum- Judicial Magistrate Court,
Perundurai, Erode District,
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.10348

S.A.No.1425 of 2008

BR(CO)
CS/02/09/2021