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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.353 OF 2008

AND

M.P.NO.1 OF 2008

1. Amul Raj (died)
2. Pushparani
3. Maria Arputharaj
4. Selvan George Stephen
5. Nancy Rani

... Defendants/
Respondents/Appellants

[Appellants 2 to 5 brought on Record as LRS of the deceased sole Appellant Viz. Amulraj, vide order of the court dated 27.11.2019 made in CMP.25175 TO 25177/2019 in SA.353/2008 (AQJ)]

versus

Irana Abraham

...Plaintiff/Appellant/Respondent

Second Appeal filed to set aside the judgment and decree dated 07.01.2008 made in A.S.No.75 of 2006 on the file of the learned Principal Subordinate Judge, Tiruvannamalai reversing the judgement and decree dated 28.04.2006 and made in O.S.No.926 of 1996 on the file of Principal District Munsif Court, Chengam.

For Appellants : Mr. T.R.Rajaraman

For Respondent : Mr. R.Rajarajan

JUDGMENT

The unsuccessful defendant in the Court below is the first appellant before this court.

2. The parties are referred to in the litigative status in which they have been arrayed in the suit.



3. The brief facts necessary for disposing of the above Second Appeal are as follows:

Plaintiff's Case:

3.1. The suit O.S.No.926 of 1996 was instituted on the file of the District Munsif, Chengam by Selvaraj Naidu, Catharina and Irana Abraham, of the three plaintiffs, first two are no more and the third plaintiff is none other than the daughter of the plaintiffs 1 and 2.

3.2. The suit has been instituted against the defendant Amulraj, who is none other than the son of the first plaintiff's brother Joseph Kamburaj.

3.3. The case of the plaintiff was that the suit schedule property and other properties belonged to the family consisting of the plaintiff, his mother Mariyammal, the defendant and one Lurdhumeri Ammal, sister of the defendant. They had been in joint possession and enjoyment of the suit schedule property as joint owners.

3.4. On 17.12.1793, the first plaintiff, his mother Mariyammal, the defendant and his sister Lurdhumari ammal had entered into a registered partition deed. Under this partition, the suit schedule property and other properties were allotted to the share of the first plaintiff who since then has been in separate possession and enjoyment of the same by mutating the revenue records and paying the kist thereafter.

3.5. The plaintiff would further submit that under an UDR Scheme, patta No.71 has been allotted in the name of the first plaintiff in respect of the suit property. The defendant who had no right over the suit schedule property had started making claim over the suit properties stating that the properties were purchased in the name of his father and therefore, it belonged to him exclusively.

3.6. The plaintiff would submit that the suit schedule property had been purchased out of the joint exertion of the defendant's father Joseph Kamburaj, the first plaintiff and their mother Mariyammal. Besides the suit property, other properties were also purchased by them and they were enjoying the same as co-owners.



3.7. The defendant's father died in the year 1948 leaving behind him his son the defendant and daughter Lurdhumeri Ammal. After the death of Joseph kamburaj the properties were being jointly enjoyed by the first plaintiff, defendant, Mariyaaamal and Lurdhmeri Ammal and it is in these circumstances that the partition deed had entered into between the parties.

3.8. Since the defendants had started asserting a right over the suit schedule properties, the plaintiffs have come forward with the instant suit.

3.9. Pending the suit, plaintiffs 1 and 2 passed away and the suit was continued by their daughter, the third plaintiff.

4. Defendant's Case:

4.1. The defendant had filed a written statement inter alia contending that the first plaintiff was employed in the army and the father of the defendant in the air force. Out of their separate income, they had purchased properties in their name. There was no joint exertion for the purchase of the suit schedule property.

4.2. The defendant would further submit that when his father passed away both defendant and his sister were very young and gullible and they had implicit faith in their parental uncle and had therefore not questioned the actions taken by the first plaintiff. It is the case of the defendant that he had signed the partition deed without comprehending its contents.

4.3. He would further argue that the first plaintiff had cleverly kept out the properties purchased in his name in the partition. He would further submit that though the partition is said to have been effected in the year 1973, the defendant continued to be in possession and enjoyment of the suit properties and therefore the partition in question was only a sham and nominal one.

5. Trial Court:

5.1. The District Munsif, Chengam had framed the following issues:

"1. Whether the allegation of the plaintiff that the family of plaintiff at his mother the defendant and his sister Lourdmary wherein joint possession and enjoyment of suit property as co-owner is true?

2. Whether partition deed dated



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17.12.1973 is true and genuine ?

3. Whether the plaintiff is in possession of suit property ?

4. Whether the plaintiff has perfected his title by adverse possession to this suit property?

5. Whether the plaintiff is entitled for suit claim?

6. To what relief ?"

5.2. On the side of the plaintiff, three witnesses were examined and Exs. A1 to A.17 were marked. On the side of the defendant, six witnesses were examined and Exs. B1 to B8 were marked.

5.3. The learned District Munsif at the outset took note of the fact that the parties to the suit were Christians to whom the concept of joint family was alien. Ultimately the Court had held that the property was being enjoyed by the first plaintiff, his mother, defendant and sisters, the learned Judge upheld the Partition deed which had not been questioned by the defendant.

5.4. He further observed that the plaintiff has not proved possession to the suit property. The Court had also held that the defendant has proved possession and the suit was dismissed.

6. Appellate Court:

6.1. Challenging the same, the plaintiff had filed A.S.No.75 of 2006 on the file of the Principal Subordinate Judge, Tiruvannamalai.

6.2. The learned Subordinate Judge considering the evidence on record, both oral and documentary, held that the dismissal of the suit in toto by the Trial Court was erroneous and contrary to the evidence on record.

6.3. The learned Judge had observed that the Partition Deed has been proved by the plaintiff and consequently her title has been proved and that apart she had also filed revenue documents to show possession. Therefore, the judgment and decree of the Trail Court was reversed and the Appeal allowed. It is challenging this judgment and decree, the appellant is before this Court.

7. Submission:

7.1. Heard Mr. T.R. Rajaraman, learned counsel for the defendant/appellant. He would contend that the suit property is the property of his father that had been partitioned. The first plaintiff being the paternal uncle had taken advantage of the age of the defendant and his sister to create the partition deed



marked as Ex.A.1.

7.2. He would further contend that the defendant at that point of time was not wordily wise and the partition deed entered into by the defendant was on account of the position of trust the first plaintiff was placed by the plaintiffs and by misrepresentation. Further, it is his argument that possession of the property continued to remain with the defendant since the plaintiffs were living away from the suit property. He would also draw the attention of the Court to the oral evidence of the plaintiffs' witnesses who would admit that the plaintiffs are not residing in the suit village but elsewhere. He would therefore submit that since possession continued to be with the defendant, the only presumption that can be drawn is that the partition deed was non est and not acted upon. Therefore, the finding of the Lower Appellate Court was totally erroneous. He would argue that the Appellate Court had erred in reversing the well considered judgment and decree of the Trial Court.

7.3. The said arguments have been refuted by the learned counsel for the plaintiff who would contend that the partition deed has not been challenged to date and the same has been acted upon. It does not lie in the mouth of the defendant to now question the partition that had taken place as early as in the year 1973.

8. Heard the counsel and perused the papers.

9. Discussion:

9.1. Admittedly, the partition deed has been entered into as early as in the year 1973 and that same had not been called in question earlier and for the first time it is only in this suit that the deed is said to be a sham and nominal one.

9.2. A perusal of the signature of the defendant in the partition deed would clearly show that the same has been affixed by a educated person. The signature is in the English language and well formed. Be that as it may, the defendant has not chosen to question the deed till the institution of this suit by the plaintiffs. Even in the suit, there is no counter claim by the defendant. Therefore, the execution of the partition deed is with the full knowledge and consent of the defendant and no exception can be taken to the same. His sister has also not questioned the same though she is a signatory to the said deed. This can only lead us to the logical conclusion that the Partition Deed was entered into with the full knowledge and consent of its signatories.

9.3. The plaintiffs had filed documents to show mutation of revenue records in their name and the fact that they have been



paying the kist receipts in respect of the suit property which clearly proves their possession of the property. The defendant has filed the kist receipt which is of the year 1996 that is the year of the suit. The Lower Appellate Court has rightly considered the evidence. The partition deed having been executed by the plaintiff with open eyes and not having been challenged to date, question of law No.1 is answered against the defendant/appellant. The documentary evidence let in on the side of the plaintiff substantiate their claim of possession and the defendant who claims to be in continuous possession has not produced any documents to prove the same. Therefore, the substantial question of law No.2 is also answered against the appellant. The Lower Appellate Court has rightly upheld the right of the plaintiffs to the suit property based on Ex.A.1, taking into account the fact that no contrary evidence has been let in by the defendant to disprove the contents of the Partition Deed Ex.A.1 as well as possession. The Lower Appellate Court has rightly set aside the observation of the Trial Court invoking Section 37 of the Specific Relief Act. Therefore, substantial question of law No.3 is also answered against the plaintiff.

9.4. In fine, the Second Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

mrn Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Tiruvannamalai
2. The Principal District Munsif Court, Chengam.

+1cc to Mr. T.R.Rajaraman, Advocate, S.R.No.29442
+1cc to Mr.G.Rajan, Advocate, S.R.No.29301

S.A.No.353 of 2008
and
M.P.No.1 of 2008

PMK (CO)
PM/10/11/2021