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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.03.2021	Pronounced on: 31.03.2021
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CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.365 of 2010

Krishnamoorthy ... Appellant /Appellant/Defendant

Vs.

Lakshmanan ... Respondent/ Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri, dated 24.11.2009 in A.S.No.15 of 2007 confirming the judgment and Decree of the learned District Munsif Cum Judicial Magistrate of Krishnagiri, dated 31.01.2007 in O.S.No.55 of 2006.

For Appellant : M/S.V.Nicholas

For Respondent : No appearance

JUDGMENT

This second appeal has been preferred against the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri, dated 24.11.2009 in A.S.No.15 of 2007 confirming the judgment and Decree of the learned District Munsif Cum Judicial Magistrate of Krishnagiri, dated 31.01.2007 in O.S.No.55 of 2006.

2. The Appellant is the Defendant in the suit.

3. The short facts of the Plaintiff /Respondent's case are as follows:-

The suit property originally belonged to one Chinathambi Mudaliyar. The said Chinnathambi Mudaliyar had got 2 sons by name Periyanna Mudaliyar and Balamudaliyar. Periyanna Mudaliyar had 2 sons by names Kannan @ Vediappan and Lakshmanan who is the plaintiff in the suit. Bala Mudaliyar he had got 2 sons by names Periya Muthu and Chinna Muthu. Thinna Muthu had got one son by name Krishnamoorthy who is the defendant herein. The family properties were partitioned



before 70 years between Periyanna Mudaliyar and Bala Mudaliyar. Then the suit property was allotted to the father of the plaintiff. Before 20 years there was an oral partition between the plaintiff and his brother. After partition the plaintiff is in possession and enjoyment of the same by paying the kist. Patta was also granted in the name of the plaintiff on 26.06.2006. The defendant and his men tried to lay PVC pipe line in the suit property. The action of the defendant is without any basis or right or title. The plaintiff prevented his attempt with the help of others. Hence the plaintiff was constrained to file the suit for declaration and permanent injunction.

4. The short facts of the written statement of the defendant's/ appellant's case are as under:

There was no partition as alleged by the plaintiff by way of oral partition. Both the families are enjoying the properties separately for the sake of convenient enjoyment and that will not amount to partition. No partition took place as alleged by the plaintiff by meets and bounds. Hence the defendant has pathway right and right to lay PVC line to take water to his lands. So the defendant asked the plaintiff to permit him to lay the pipe line for irrigation purposes. But the plaintiff refused to permit the defendant. And he has filed the suit with false and frivolous allegations. The paternal grandfather of the defendant by name Balu Mudaliyar purchased the suit property and other property as per the sale deed dated 24.07.1948 and from then onwards he was in possession and enjoyment of the same After the demise of the said Balu Mudaliyar his 2 sons namely Periyamuthu and Chinnamuthu inherited the same and they were in possession and enjoyment of the same. After their demise, their respective heirs including the defendant inherited and possession and enjoyment of the suit property. The patta in the name of the plaintiff is not valid. Hence the suit has to be dismissed.

5. During the trial, on the side of the plaintiff 4 witnesses were examined as P.W.1 to P.W.4 and Exs.A1 to A5 and Ex.C1 and Ex.C2 were marked. On the side of the defendant one witness was examined as DW.1 and Ex.B1 was marked.

6. After the trial, the trial Court has decreed the suit. Aggrieved over the same the defendant filed a First Appeal before the Principal Subordinate Judge of Krishnagiri. The learned First Appellate Judge dismissed the appeal by confirming the judgment of the Trial Court. Hence the defendant has filed this Second Appeal and it has been admitted on the following substantial questions of law:



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"1. Whether the Courts below have failed to draw adverse inference on non-production of partition deed pleaded by the plaintiff?

2. Whether the Courts below are right in rejecting defence of the appellant while he produced the sale deed dated 24.07.1948, contrary to the evidence on record? "

7. Both the plaintiff and the defendant have got a common ancestor by name Chinnathambi Mudaliyar. The said Chinnathambi Mudaliyar had two sons namely Perriyanna Mudaliyar and Balu Mudaliyar. The plaintiff is the one of the two son's of Perriyanna Mudaliyar. The defendant is the grandson of Balu Mudaliyar. The plaintiff has stated that suit properties and other properties were in the joint enjoyment of his ancestors jointly and that they have partitioned the properties by way of an oral partition before 70 years. Though the Appellant/defendant has denied the partition in his written statement, he had admitted in his evidence that the family members have partitioned the properties and they were in enjoyments of their respective shares.

8. In fact the Appellant/ defendant has stated in his evidence that partition has taken place even before his birth. He has further admitted that individual pattas have been given in the name of individual persons subsequent to partition and he is also in enjoyment of his share of lands by erecting a separate oil engine of his own. And he was not willing to accept that the site on which he had built his house was common to both the parties. And he claimed that he has built a house only on the site allotted to him. If that is correct, it could also be correct that the plaintiff also got his share and is in separate enjoyment of the same. The respondent / plaintiff never pleaded that there was a partition deed. All that the respondent plaintiff submitted was that his ancestors have partitioned the ancestral properties through oral partition. When the respondent/plaintiff has not stated about any partition deed but only stated that there was an oral partition, the production of partition deed will not arise.

9. The respondent/plaintiff has produced ample evidence to show that the parties to the joint family have been in enjoyment of their share of properties and living separately. In fact pattas have been issued in their respective names of the members for the respective properties in their enjoyment.



10. The appellant /defendant has produced Ex.D1 sale deed and claimed that the suit property has been purchased by his grandfather on 24.07.1948 and hence he has a right of enjoyment in the same. The survey number as shown in Ex.B1 sale deed is 15-A. The field map for the survey No.15-A has been produced by the respondent /plaintiff in Ex.A4. It is seen from the Ex.A4 that survey No.15-A has been sub divided into Survey Nos.15-A/1, 15-A/2, 15-A/3, 15-A/4 and 15-A/5. The plaintiff's property in Survey No.15-A/1. If Survey No.15-A was not partitioned, there is no necessity for effecting various sub divisions.

11. These materials available on record are sufficient to establish that there was an oral family partition and thorough which the plaintiff was allowed to enjoy the suit properties. He has also got Ex.A1 patta in his name. Ex.B1 sale deed produced by the defendant is prior to the partition. If a partition has taken place subsequently, no joint family member can claim individual right on the basis of any sale deed which was prior to partition.

12. The Courts below have rightly appreciated the evidence on record and recorded the findings that the plaintiff has proved that he has got the suit property towards his share in the oral family partition and he is in exclusive enjoyment of the same. The defendant did not produce any contrary evidence to disprove the same. On the other hand the defendant himself has admitted that there was partition and separation of family members. So I do not find any factual or legal infirmity in the judgments of the Court below and it does not warrant any interference. Hence the substantial questions law Nos. 1 and 2 are answered against the defendant/Appellant.

In the result the Second Appeal is dismissed and the Judgment and the decree of the First Appellate Court is confirmed. No costs. The connected Miscellaneous Petitions if any are also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jrs
To

1. The Principal Subordinate Judge of Krishnagiri
2. The District Munsif Cum Judicial Magistrate of Krishnagiri
3. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to Mr.V.Nicholas, Advocate Sr.NO. 31238

S.A.No.365 of 2010

RGN CO A.SK(12.10.2021)