

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

S.A.No.167 of 2018
and CMP No.4375 of 2018

Murugan

.... Appellant

1.Chandra
2.Chinnasamy

Vs

... Respondents

Second Appeal filed under Section 100 read with Order XLII Rule 1 of Civil Procedure Code against the judgment and decree dated 03.04.2017 in A.S.No.55 of 2016 on the file of Principal District Court, Krishnagiri, confirming the judgment and decree dated 26.10.2016 in O.S.No.9 of 2014 before the Subordinate Court, Uthangarai.

For Appellant : Mr.J.Hariharan for
Mr.V.Nicholas

For Respondents : Mr.S.Anil Sandeep

JUDGMENT

Challenging the judgment and decree passed by the Principal District Court, Krishnagiri in A.S.No.55 of 2016 dated 03.04.2017 confirming the judgment and decree passed by Subordinate Judge, Uthangarai dated 26.10.2016 in O.S.No.9 of 2014, the first defendant has filed the present Second Appeal.

2. Originally suit in O.S.No.9 of 2014 was filed by the plaintiff/first respondent herein for partition. The suit was decreed by the trial Court in favour of the plaintiff except Item Nos.1, 6 and 8 of suit schedule properties. Aggrieved over the same, the first defendant in the suit has preferred an appeal before Subordinate Court, Uthangarai. The first appellate Court, after considering the oral and documentary evidence, by judgment dated 03.04.2017 in A.S.No.55 of 2016, dismissed the appeal, confirming the judgment and decree passed by the trial court. Challenging the judgment and decree passed by the first appellate Court in A.S.No.55 of 2016, the first defendant has preferred the present second appeal.

3. Learned counsel for the appellant submitted that the plaintiff and the defendants are brothers and sister and originally the suit properties belonged to their father late Chinna Molugu Naidu, who passed way on 26.01.2008.

4. It is the contention of the appellant/first defendant that there was an oral partition in the year 1981 with the consent of their father late Chinna Molugu Naidu and from the year 1981 to till date, the defendants were in possession and enjoyment of the suit schedule properties and also contended that as per oral partition, no share was allotted to the plaintiff/1st respondent herein due to the reason that considerable amount of money and jewels were given at the time of the marriage of the plaintiff. Under such circumstances, the plaintiff filed a suit in O.S.No.9/2014 for partition in the year 2014.

5. On 14.11.1994, the defendants sold item Nos.1, 6 and 8 of the suit schedule properties to one Mr. Padi Selvan and thereafter, the said items of the suit schedule properties were re-purchased by the first defendant. Enraged over the same, the second defendant started giving troubles to the first defendant. Hence, the first defendant filed a suit in

O.S.No.49 of 2009 against the second defendant before the District Munsif, Pochampalli and the suit was decreed in favour of the first defendant on 16.12.2011 after full trial. The second defendant preferred an appeal before the Sub Court Krishnagiri in A.S.No.13/2012 and subsequently, the appeal was transferred to Principal District Judge, Krishnagiri and the same was numbered as A.S.No.64/2012 and was dismissed on 17.12.2012 and the trial Court dismissed E.P.No.4/2013, filed by the first defendant against the second defendant as not pressed.

6. Now coming to O.S.No.9/2014, when the suit was decreed in respect of item nos.2 to 5 and 7 and 9 of suit schedule properties, the trial Court has come to the conclusion that the plaintiff is not entitled to item Nos.1, 6 and 8 of suit schedule properties. The properties were sold in the year 1994 and the plaintiff has filed the present suit in the year 2014 i.e., after expiry of twenty years.

7. Further, learned counsel for the appellant/first defendant contended that since the plaintiff was residing in the same village, she would have been well aware of the execution of the sale deeds by the defendants 1 and 2 in favour of Padi Selvam and hence the trial Court has

forbidden her right over the property. Learned counsel by referring to the above observation, further contended that the same yardstick will apply to item Nos. 2 to 5 and 7 and 9 also.

8. The appellant further contended that the plaintiff/first respondent has made an averment that she has been receiving the share from the earnings of the suit property. However, she has not produced any records to that effect and no finding was also given. Therefore, the appellant contends that all these aspects have not been considered cumulatively and due to the reason of failure to consider both oral and documentary evidence in a proper perspective, the judgment of both the Courts below are vitiated and they are liable to be rejected *per se* and therefore, the appellant prays that there is a fair chance for allowing the appeal and has suggested the following substantial questions of law in the Memorandum of Grounds of Appeal:

“ i) When the evidence on record clearly established that even during the life time of the father Chinna Molugu Naidu there was a partition in the family and the defendants were and are dealing with the properties allotted to them in the said partition whether the judgments

and decrees of the courts below granting the relief of partition to the plaintiff are not perverse and contrary to evidence?

ii) When the father Chinna Molugu Naidu died on 26.01.2008 and that even during his life the defendants 1 and 2 sold item numbers 1,6 and 8 of the suit properties to one Selvam under a registered sale deed dated 14.11.1994 and because of the partition in the family the father did not join in the execution of the said sale deed and thus the 1st defendant has discharged his burden of proof regarding the partition whether the Courts below are correct in decreeing the suit in favour of the plaintiff which is against the materials on record?”.

9. In order to prove the case of the plaintiff, plaintiff was examined as P.W.1 and one Kannan was examined as P.W.2 and marked Exs.A.1 To A.15. On the side of the defendants, the appellant was examined as D.W.1 and D.W.1 and Exs.B.1 to B.9 were marked.

10. Heard both sides and perused the materials available on record.

11. Originally, the suit property belonged to one Chinna Molugu Naidu, who is the father of the parties to the proceedings. He passed away on 26.01.2008. Regarding the contention of the appellant/first defendant about the oral partition in the year 1981, both the Courts below have come to the conclusion that there was no oral partition and have given concurrent finding that the plaintiff is not entitled to items Nos.1, 6 and 8 of the suit schedule properties. The property was sold in the year 1994 and the plaintiff has filed the present suit in the year 2014 i.e., after expiry of twenty years. Though she had the knowledge of all the facts, she has not raised any objection for twenty years and therefore, both the Courts below found that the plaintiff has lost her right with reference to the said properties and it is barred by limitation and thus forbidden her rights in the suit property.

12. Now, the issue to be decided is whether the findings rendered by both the Courts below that the plaintiff is not entitled to items Nos.1, 6 and 8 of the suit schedule property is correct or not?.

13. This Court also perused the records. Upon perusal of the records, it appears that the plaintiff was well aware of the sale of the item Nos.1, 6 and 8 of the suit schedule property as early as in the year 1994 and she filed the suit in the year 2014, after 20 years. Since the plaintiff had the knowledge about the sale of the above said items of the suit schedule properties, she has not raised any objection for twenty years and remained silent. Both the Courts below found that she lost her right as the same was relinquished by the plaintiff with respect to item nos.1, 6 and 8 and it is barred by limitation and forbidden her rights over the suit property.

14. Under these circumstances, both the Court below have rightly come to the conclusion that the plaintiff has not raised any claim or right over the item nos.1,6 and 8 of the suit schedule properties for two decades. Therefore, this Court do not find any perversity in the judgment and decree passed by the Courts below.

15. With regard to oral partition, this Court is not accepting the contention of the appellant since upon perusal of the documents, it appears that all the properties are found in the name of the defendants

and the same have not been subdivided. Both the courts below have found that in case the properties were partitioned as claimed by the defendants, it has not been clearly brought out which of the properties have been allotted to the first and second defendant. Moreover while selling the property to one Selvam in the year 1994, the sale deed has been executed by the defendants jointly and it has been mentioned that the property "which is ancestral and in the possession and enjoyment" of the defendants. Subsequently, the said property was re-purchased by the 1st defendant on 05.06.2008. The second defendant filed a suit in O.S.No.49/2009 against item Nos.1, 6 and 8 and subsequently the same came to be decreed and Execution Petition was dismissed as not pressed. In the said suit, the second defendant took a view that item Nos.1, 6 and 8 are still available for partition. The moment the second defendant took a view that there was no partition, and item Nos.1, 6 and 8, properties are available for partition and filed the suit, the theory of oral partition made by both defendants was rightly rejected by both the Courts below. On the contrary had the properties been partitioned as claimed by the defendants, the fact would have found a place in the sale deed. Therefore the courts below have come to the conclusion that except for Nos 1, 6 and 8 of the suit properties other properties remain as joint ancestral

properties and the plaintiff has a right over the said properties for share. I do not find any infirmity or irregularity in the judgment and decree passed by the both the Courts below.

16. Ultimately both the Court below have found that the plaintiff is entitled only to item Nos.2 to 5, 7 and 9 of the suit schedule properties and both the Courts below have rendered a well reasoned judgment, which need not be interfered with.

17. Therefore, I find that no question of law much less substantial question of law arises for consideration in this case and I do not find any case for interference. Accordingly, the Second Appeal does not have any merit and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

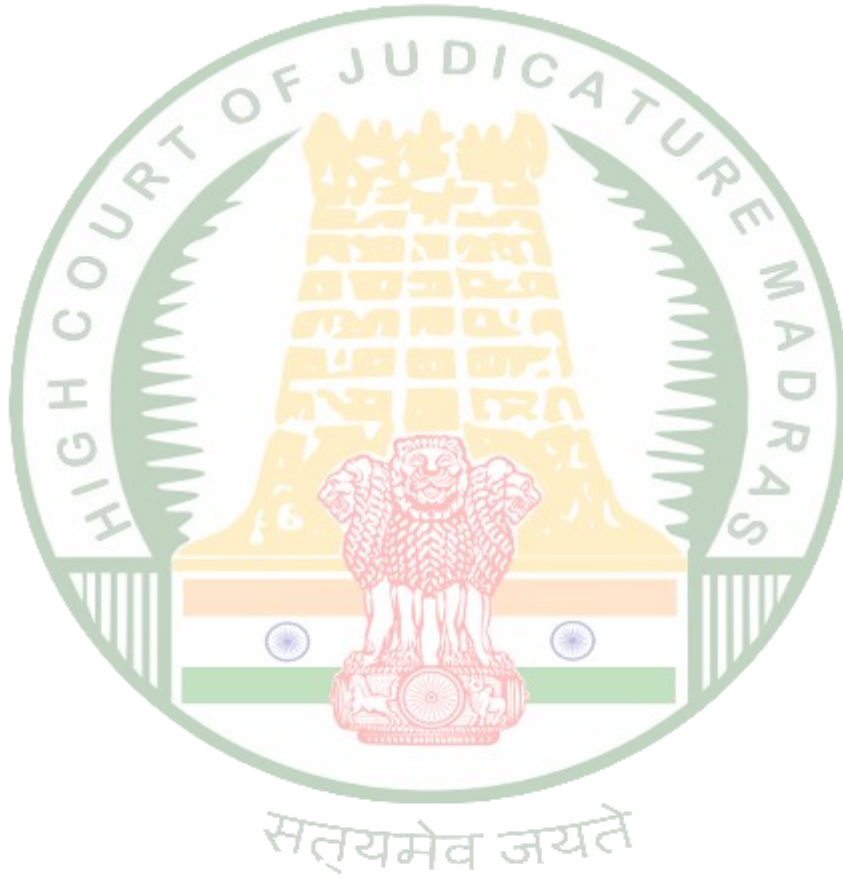
11.02.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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To

1. The Principal District Court, Krishnagiri
2. The Subordinate Judge, Uthangarai



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KRISHNAN RAMASAMY,J.

sr



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