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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

S.A.No.476 of 2021
and
C.M.P.No.9081 of 2021

P.Ramachandran
S/o.Pavadi

...Appellant/Appellant/Plaintiff

Vs.

Ayil Naidu (Deceased)

1. A.Chinnarasu
S/o.Annamalai @ Arunagiri

2. The Sub Registrar Joint-I
Rep by its Tamil Nadu Government
Sub Registrar Office
Kallakurichi Taluk
Villupuram District
(Now Kallakuruchi District)

3. Mrs.Vijayalakshmi
W/o.Ayil Naidu

4. Mrs.Kalaivani
W/o.Sasikumar

5. Mrs.Amudha
W/o.Gunabalan

6. Mr.Venkatraman
S/o.Ayil Naidu

...Respondents/Respondents/Defendants

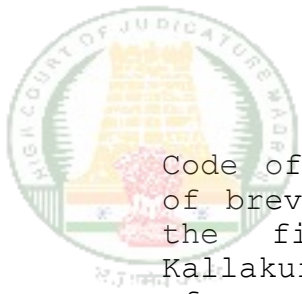
Second Appeal under Section 100 of CPC to set aside the judgement and decree passed by the Principal Subordinate Judge, Kallakurichi in A.S.No.83/2017 dated 22.12.2020 by confirming the judgment and decree on the file of I Additional District Munsif Court, Kallakurichi in O.S.No.357 of 2013 dated 31.08.2017.

For Appellant : Mr.G.Ranganathan



A plaintiff, who launched a suit on 06.12.2013 against his sibling (blood brother) claiming preferential right to buy out immovable properties i.e., right of pre-emption qua suit properties, after being non-suited by two successive concurrent decrees by the trial Court and the First Appellate Court, is before this Second Appeal Court as lone appellant in the captioned Second Appeal.

3. Facts are fairly simple, essential facts imperative for appreciating this judgment are that one P.Ramachandran, plaintiff launched a suit arraying his blood brother Ayil Naidu, a proposed alienee one Chinnarasu and jurisdictional Sub-Registrar as defendants 1 to 3 respectively; that the prayer in the suit is for declaration that the plaintiff has vested interest in the suit properties besides a prayer for restraining defendants from alienating suit properties; that the prayer (in the opinion of this Court) is not happily worded, but submission of learned counsel for appellant is that it is essentially a prayer to assert purported right of plaintiff under Section 22 of the 'Hindu Succession Act, 1956' [hereinafter 'said Act' for the sake of convenience and clarity]; that as already mentioned supra, the plaint was presented on 06.12.2013; that there are as many as 12 items of properties which have been adumbrated as plaint schedule properties; that plaintiff's pleadings is to the effect that suit properties are ancestral properties of plaintiff and first defendant, therefore, he is entitled to right of pre-emption under section 22 of said Act; that first defendant resisted the suit primarily on the ground that post demise of mother of plaintiff and first defendant there was a partition as early as on 03.10.1988 between plaintiff, first defendant and two other brothers vide a registered partition deed dated 03.10.1988 (Ex.A1 ? Ex.B1); that post partition, first defendant had purchased properties which fell to the shares of two other brothers vide two registered sale deeds dated 16.09.2000 and 10.07.2006 (Ex.B2 and Ex.B3 respectively); that after full contest, the trial Court non-suited the plaintiff i.e., dismissed the suit inter-alia holding that post partition and acquiring of shares which fell to the shares of two other brothers by a registered sale deed by the first defendant, suit properties ceased to have the character of 'any immovable property of an intestate' and therefore, the right of pre-emption cannot be exercised; that the matter was carried in appeal by way of a regular first appeal under Section 96 of 'The



Code of Civil Procedure, 1908' [hereinafter 'CPC' for the sake of brevity, convenience and clarity] vide A.S.No.83 of 2017 on the file of the 'Principal Subordinate Judge's Court, Kallakurichi' [hereinafter 'First Appellate Court' for the sake of convenience and clarity], which after full contest dismissed the first appeal in and by judgment and decree dated 22.12.2020 confirming the dismissal of O.S.No.357 of 2013 on the file of 'I Additional District Munsif Judge's Court, Kallakurichi' [hereinafter 'trial Court' for the sake of convenience and clarity]; that non-suited plaintiff, who suffered two successive concurrent decrees is before this Court vide captioned Second Appeal which is obviously under Section 100 of CPC.

4. Learned counsel for appellant projected and predicated his arguments on a lone point and that lone point is that the trial Court and the First Appellate Court have proceeded on the basis that plaint schedule properties are agricultural properties and Section 22 of the said Act is not applicable to agricultural lands. Learned counsel went on to draw the attention of this Court to ground No.6 in the memorandum of grounds of appeal wherein there is a reference to Baburam case being Babu Ram Vs. Santokh Singh (Deceased) through his LR's and others reported in 2019 (2) CTC 562. Placing reliance on this judgment, learned counsel submitted that both the Courts below fell in error in holding that Section 22 of said Act is not applicable to agricultural properties and therefore, both the Courts below fell in error in non-suiting the plaintiff on the ground that suit properties are agricultural lands.

5. This Court now, embarks upon the exercise of setting out its discussions and giving its dispositive reasoning on the basis of perusal of case file and submissions of learned counsel for appellant.

6. A careful perusal of the case file reveals that the trial Court and the First Appellate Court have not non-suited the plaintiff on the sole ground that the suit properties are agricultural lands and Section 22 of the said Act is not applicable to agricultural lands though both the Courts below have mentioned this as one of the findings/reasons. If that was a lone finding/reason due to which the plaintiff has been non-suited, the dynamics and dimensions of this second appeal may well have been different but it is not so. Both the Courts below have noticed that even according to plaintiff's pleadings post demise of mother of plaintiff and first defendant (Pappathiammal) who died intestate four sons of Pappathiammal i.e., plaintiff, first defendant and two brothers namely, Pandurangan and Muthu partitioned the suit properties amongst themselves in and by a registered partition deed dated 03.10.1988 (Ex.A1 ? Ex.B1). This partition deed was not



subjected to any disputation in the Courts below. On the contrary, this partition deed was filed and marked as an exhibit by both plaintiff and first defendant i.e., as Ex.A1 and Ex.B1. It is also a categorical pleading of plaintiff that post partition, the first defendant purchased the properties that fell to the shares of two brothers Pandurangan and Muthu. It is to be noted that sale deeds, under which, first defendant purchased the properties which fell to the shares of two brothers Pandurangan and Muthu in 2000 and 2006 vide registered sale deeds dated 16.09.2000 and 10.07.2006 have also been marked as Ex.B2 & Ex.B3. After all this and more particularly, more than 23 years after partition on 03.10.1988 the suit claiming right of pre-emption was presented in the trial Court by plaintiff on 06.12.2013. First Appellate Court has extensively dealt with this position and this Court is clear in its mind that the First Appellate Court is also a Court of fact albeit the last Court of fact as the First Appellate Court has exercised its powers under Section 96 of CPC which is amply wide to take under its wings this legal drill when exhibits have been marked and oral evidence has been recorded in this regard in the trial Court.

7. Right of pre-emption under Section 22 of said Act is available to 'immovable property of an intestate'. Post demise of mother of plaintiff and first defendant, on admitted execution of a registered partition deed dated 03.10.1988 amongst four sons and further sale of shares of two brothers Pandurangan and Muthu to first defendant by way of registered sale deeds in 2000 and 2006 vide Ex.B2 & Ex.B3 (16.09.2000 and 10.07.2006 respectively), the suit properties ceased to have the character of 'immovable property of an intestate'. To be noted, the plaintiff is a party to the partition deed and he does not dispute the partition deed. Pleadings of plaintiff in this regard, particularly, paragraph No.4 of plaint is a clincher. Paragraph No.4 reads as follows:

'The suit properties are the ancestral properties of the plaintiff and the 1st defendant. The plaintiff and the 1st defendant have other two brothers named Muthu Naidu and Panduranga Naidu. The suit properties were purchase by the Papathi ammal i.e., the mother of plaintiff and 1st defendant. As the said papathi ammal died intestate the plaintiff along with his brothers divided the suit properties along with some other items through a registered settlement deed dated 3.10.1988. Through the partition deed the A schedule of properties was allotted to the plaintiff, B to the Pandurangan, C to one Muthu Naidu and the D Schedule to the 1st defendant. But the said properties were in the possession and enjoyment of the plaintiff till now



as the family and the suit properties was in joint holdings and the shares of the brothers were not demarcated properly.'

8. Besides aforementioned pleadings in paragraph No.4 of plaint, as already alluded to supra, the plaintiff himself has marked the registered partition deed dated 03.10.1988 as Ex.A1 which has also been set out supra. First defendant has also marked this partition deed as Ex.B1 and there is nothing to show any objection to this partition deed qua marking or any other disputation. This by itself draws the curtains on the plaintiff's campaign qua purported right of pre-emption under Section 22 of said Act.

9. As a last submission, learned counsel for appellant submitted that the properties have been alienated pending suit and his rights to assail the sale deed should be preserved. This Court deems it appropriate to not to express any view on this plea as according to this Court that would be outside the realm of captioned second appeal under Section 100 of CPC.

10. Reverting to Section 100 of CPC, a second appeal should necessarily turn on a substantial questions of law. The expression 'substantial questions of law' occurring in Section 100 of CPC has been elucidatively explained in a long line of case laws starting from Rimmalapudi Subba Rao case [Rimmalapudi Subba Rao Vs. Noony Veeraju and others reported in AIR 1951 Mad 969 (FB)] to Santosh Hazari's case [Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179]. This Rimmalapudi principle has been subsequently approved by a Constitution Bench of Hon'ble Supreme Court in Sir Chunilal V.Mehta Vs. Century Spinning and Manufacturing Co. Ltd. reported in AIR 1962 SC 1314. Thereafter, in Santosh Hazari case being Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179, the view taken in Sir Chunilal Mehta's case, affirming the view taken by Full Bench of this Court was reiterated. This Court deems it appropriate to not to burden this judgment with extracts from these case laws as that may lead to making this judgment verbose. Suffice to say that this principle is the obtaining position of law and it continues to govern the field as these principles have been followed by Hon'ble Supreme Court as recently as on 27.08.2020 in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala, reported in (2020) SCC OnLine SC 676].

11. Hon'ble Supreme Court in Kirpa Ram principle being reiteration of position of law in Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935 has made it clear that a second appeal can be dismissed at the admission stage without formulation of substantial question of law if none arises in a given case. In the instant case, in the light of



the discussion and dispositive reasoning set out supra, this Court is of the view that no substantial question of law much less the three questions proposed as substantial questions of law by the protagonist of captioned second appeal in the memorandum of grounds of appeal arise in the case on hand. Three questions proposed as substantial questions of law by protagonist of captioned second appeal read as follows:

'a) Whether the Courts below are right in hold the burden of proof is right on the Appellant?

b) Whether the Courts below had considered the Exhibits relied by the appellant in a prescribed manner?

c) Whether the Court below finding the agricultural land come to the preview of the Section 22 of Hindu Succession Act, 1956?'

12. The above certainly does not arise owing to the narrative, discussion and dispositive reasoning set out supra.

13. The sequitur is, this Court following Kirpa Ram principle, dismisses the captioned second appeal at the admission stage. Considering the relationship between parties, trajectory the matter has taken in the two Courts below and nature of submission made before this Court, there shall be no order as to costs. Consequently, C.M.P.No.9081 of 2021 is also dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Kallakuruchi.

2. I Additional District Munsif,
Additional District Munsif Court,
Kallakuruchi.

+1cc to Mr.G.Ranganathan, Advocate, S.R.No.29611

S.A.No.476 of 2021

SRA[co]

NSK 26/10/2021