



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.192 of 2012

V.Palanisamy ...Appellant/Appellant/1st Defendant

Vs.

1.V.Balasubramaniam ...1st Respondent/1st Respondent/Plaintiff

2.V.Vadivel ...2nd Respondent/2nd Respondent/2nd Defendant

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.08.2011 made in A.S.No.55 of 2010 on the file of the Additional District and Sessions Court/Fast Track Court No.II, Coimbatore confirming the judgment and decree dated 09.10.2009 made in O.S.No.102 of 2008 on the file of the Third Additional Sub Court, Coimbatore.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.K.Govi Ganesan for R1
R2 - No appearance

JUDGMENT

This appeal has been filed against the judgment and decree dated 18.08.2011 passed in A.S.No.55 of 2010 on the file of Additional District and Sessions Court/Fast Tract Court, No.II, Coimbatore confirming the judgment and decree dated 09.10.2009 made in O.S.No.102 of 2008 on the file of the Third Additional Sub Court, Coimbatore.

2.This appeal was not admitted. Earlier Notice of admission was ordered. After service of notice on the respondents, they are now represented by their counsel. This is listed for final hearing. Both the counsel for the appellant and the respondents are present today.

3.The appellant was the 1st defendant in O.S.No.102 of 2008. The said suit was filed by the 1st respondent for the following relief:-

a)Directing the division of the suit



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properties into 3 equal shares by metes and bounds and to allot one such share to the plaintiff and to put the plaintiff in separate possession of the share allotted to him.

b) Appoint a Commissioner for division of properties into 3 equal shares as aforesaid.

c) Directing the defendants to pay the costs of the suit.

4. The suit scheduled properties A & B were purchased on 27.05.1959. The title deeds of these properties were marked as Ex.A1 and A2 before the Trial Court.

5. The first property measured 7.5 cents was purchased in the name of the parents of the appellants in Ex.A1. The 2nd property in Ex.A2 measured 5.7 cents. It was purchased in the name of the maternal grand mother named Karupaiya of the appellant and respondents.

6. The case of the 1st respondent/plaintiff before the Trial Court was that these properties were liable to be partitioned after the death of their parents and grandmother and were to be divided equally among the appellant and the respondents, they being siblings having equal rights.

7. On the other hand, the appellant stated that there was an oral partition in the year 1995. It was the case of the appellant that 5.7 cents of property in Ex.A2 was allotted to him and that he had made improvement and therefore the suit for partition was not maintainable.

8. The appellant examined two Panchayatars as DW2 and DW3 who allegedly witnessed the oral partition in the year 1995.

9. The appellant further submitted that he got married in the year 1985 on 07.04.1985. His wife was employed in the Commercial Tax Department and with the help of the additional income of his wife, the appellant took care of the aged parents and therefore considering the same, the appellant and the respondent herein had agreed for allotment of a larger extent of the property in favour of the appellant.

10. That apart it was submitted that the appellant and his wife took loan for the marriage expenses of the respondents herein and therefore the larger extent of the property was allotted to the appellant.

11. The Trial Court however disbelieved the evidence of D.W.2



and D.W.3 Panchayatars as the respondents were able to elicit contradiction in the deposition of these two witnesses.

12. Similarly, D.11 and D.16 for demonstrating expenses incurred for improvement of property were ignored stating that they were filed only during the pendency of the suits. The appellate Court has not found any error in the judgment and decree of the Trial Court.

13. The learned counsel for the appellant has brought to my attention with the following decisions of this Court rendered in context of oral partition:-

- (i) Union of India Vs. Ibrahim Uddin & Anr (2012) 8 SCC 148;
- (i) Ramulu Ammal Vs. Ramachandra Reddy and others 2009-3 L.W 622;
- (ii) Chitra Vs. Saroja and another 2017 (2) MWN 241 and
- (iii) Prema Suryanarayanan Vs S.Venkataraman & others 2018 CTC 750.

14. The learned counsel for the appellant submits that the Hon'ble Supreme Court has also laid down the scope of interference under Section 100 of the CPC. In support of the present appeal, the learned counsel for the appellant submitted that following questions may be considered as substantial questions of law:

a. Whether in the absence of any specific issue as regards the oral partition pleaded by the 1st defendant, are the courts below right in coming to the conclusion that the 1st defendant/appellant has not established the oral partition which took place in the month of January 1995?

b. Whether the courts below erred in law in decreeing the suit for partition especially when the parties have been in separate possession in exercising rights of ownership over separate blocks of land which the courts below might well presume that the parties have already divided their properties through an oral partition?

c. Whether the courts below have committed an error in decreeing the suit for partition by overlooking the admission made in the evidence of P.W.1 coupled with the evidence of D.W.2 and D.W.3?

15. I have considered the arguments advanced by the learned counsel for the appellant and the respondent.

16. No substantial question of law arises for consideration in



this appeal in as much as the Trial Court has framed an omnibus issue as to whether the plaintiff was entitled to 1/3rd share in the suit scheduled property. Though, a more specific issue could have been framed by the Trial Court, nevertheless, on a reading of the judgment and decree of the Trial Court, it is noticed that the issue which the appellant submits ought to have been framed and answered has been answered against the appellant by the Trial Court. The appellant had produced witness and marked exhibits before the Trial Court. Even if more specific issue was framed, the Court would not have come to a different conclusion. Therefore there is no merits in the present appeal filed by the appellant.

17. Accordingly, this appeal filed by the appellant is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To:

1. The Additional District and Sessions Judge,
Fast Track Court No.II, Coimbatore.
2. The Third Additional Subordinate Judge,
Coimbatore.

Copy To

The Section Officer,
V R Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.28971

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.29158

S.A.No.192 of 2012

GPL(CO)
RGA(08/10/2021)