



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.10.2021
Pronounced On : 01.11.2021

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CORAM
THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.463 of 2014

C. Murugan
S/o.S.Chinnaraman

...Appellant/Defendant

Vs.

C. Chellakani
S/o.S.Chinnaraman

...Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rule (1) of the Code of Civil Procedure against the Judgment and Decree dated 04.12.2013 in O.S.No.8475 of 2011 on the file of the learned III Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M. Velmurugan

For Respondent : Mr.P. Rajendra Kumar

JUDGMENT

The defendant is the appellant before this Court. He has filed the above appeal challenging the Judgment and Decree granted by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.8475 of 2011 dated 04.12.2013. The said suit was filed by the plaintiff/respondent claiming partition and separate possession of his 1/2 share in the suit schedule property. The parties are referred to in the same litigative status as before the trial Court.

2.The facts in brief which are essential for deciding the above Appeal are hereinbelow narrated:
PLAINTIFF'S CASE:

The plaintiff would submit that he and the defendant who are the siblings had been carrying on business in the name and style of "Om Murugan Agency" with each of them contributing equally to the Partnership. It is the case of the plaintiff



that in the year 1995, the defendant insisted on purchasing house property from out of the joint funds of the Firm and accordingly, on 06.02.1995, he had purchased the suit 1st item of the property in his name.

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3.As soon as the plaintiff had come to know about the same he had questioned the defendant who replied that it would be divided between the parties once the loan amount of Rs.3,30,000/- was cleared. The plaintiff would further submit that the above terms and the factum of the Partnership has been reduced into writing in an Agreement dated 10.03.1995. It is also the case of the plaintiff that when he had sought for division of the said property as per the terms of the Agreement dated 10.03.1995 the defendant had refused to partition the same.

4.It is the further case of the plaintiff that the suit 2nd item of the property was jointly allotted to himself and the defendant by the Tamil Nadu Slum Clearance Board though the plaintiff has sought for a partition with reference to this property as well the defendant did not come forward to do so. On the contrary, he had demolished the same and put up a new superstructure. The plaintiff would contend that the defendant was not rendering accounts and therefore, the above suit.

WRITTEN STATEMENT OF THE DEFENDANT:

5.The defendant had filed a Written Statement inter alia denying the plaintiff's claim with regard to the partnership business. It is his categoric case that there is no partnership business and that "Om Murugan Agency" was a sole proprietary concern started by him. He would further submit that he had come to Chennai 43 years back and had toiled hard to help his siblings financially. Apart from the plaintiff and the defendant, there were two other children. He would contend that the plaintiff had come to Chennai for further studies in the year 1991-1992 and he was residing with the defendant. When the Tamil Nadu Slum Clearance Board allotment was procured the plaintiff was clandestinely got his name included in the Allotment Letter. He would further submit that the area under the Allotment Deed covered was only an extent of 36 sq.mt. The respondent had purchased a further extent on 30.06.1995. Thereafter, he had put up a pucca building. It is in the said building that the plaintiff was doing business and the license stood in the name of his wife. He further contended that he is in possession and enjoyment of the said property for over 15 years as his own. Hence, he sought for dismissal of the suit.



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6. The III Additional Judge, City Civil Court, Chennai, had framed the following issues on perusing the pleadings of either party:

- (1) Whether the Tamil Nadu Slum Clearance Board allotted the 2nd item of the suit property to the plaintiff and the defendant?
- (2) Whether the plaintiff and the defendant are in joint possession of the suit property?
- (3) Whether the suit property is divisible into 2 equal shares and whether the plaintiff is entitled to 1/2 share in the suit property?
- (4) To what relief the parties are entitled to?

7. The plaintiff had examined himself as PW1 and had marked Ex.A.1 to Ex.A.19 in support of his contentions. On the side of the defendant, the defendant had examined himself as DW1 and one Susila as DW2 and Ex.B.1 to Ex.B.8 were marked. The III Additional Judge, City Civil Court, Chennai, on a perusal of the evidence came to the conclusion that the said suit has to be decreed and accordingly, decreed the same. Challenging the said Judgment and Decree, the aggrieved defendant is now before this Court.

SUBMISSIONS:

8. Mr. M. Velmurugan, learned counsel appearing for the defendant would submit that there is no legal basis for the plaintiff to claim a partition of the properties which are the exclusive properties of the defendant. He would submit that the Partnership Deed dated 10.03.1995 marked as Ex.A.1 which is styled as a business Agreement was never entered into between the plaintiff and the defendant and the same could not be admitted into evidence. It has neither been stamped properly nor was it registered. He would further submit that Ex.B.1 - Sale Deed dated 06.02.1995 would clearly show that the suit property had been purchased only in the name of the defendant and therefore, it is his exclusive property. Admittedly, he would submit that the plaintiff had come to Chennai only in the year 1990 and the defendant on the other hand had come over to Chennai much before that and had already established his business. Therefore, the contentions that the plaintiff was a Partner in the said firm is totally wrong.

9. The learned counsel would further submit that Ex.A.1 is inadmissible in evidence as it requires to be stamped. A reading of the same would by no stretch of imagination constitute a Partnership Agreement. He would submit that the plaintiff in his cross examination had contended that he had



been turned out from the business even in the year 1996 and therefore, has not been conducting the joint business if any from the year 1995 whereas the suit has been filed only in the year 2011. He would submit that the plaintiff has not even proved the execution of Ex.A.1, particularly, when the same has been denied by the defendant. The plaintiff who claims that one of the witnesses is another of his sibling has not chosen to examine even the said witness to prove the execution of Ex.A.1. Therefore, he would contend that Ex.A.1 cannot be looked into, as regards Ex.A.2 - Sale Deed in respect of the 2nd item of the property he would submit that though the allotment letter stood in the name of both the parties it was only the defendant who had been paying the installments and the plaintiff has not been able to produce even a shred of evidence to show that he had contributed any money towards purchase of the 2nd item of the suit property. He would also draw the attention of this Court to the evidence of DW2 - Susila who was the original owner of the 2nd item of the suit property. He would therefore submit that even the 2nd item of the suit property is not available for partition since it is the separate property of the defendant. He would therefore submit that the suit which was barred by limitation has to be dismissed and the trial Court has erred in decreeing the same. He would further submit that the suit as framed was not maintainable as the plaintiff who contends that there is a Partnership ought to have sought for a dissolution of the partnership and rendition of account.

10. Per contra, Mr.P. Rajendra Kumar, the learned counsel for the plaintiff would contend that the evidence of the defendant cannot be relied upon since he was a person who had got into the box and denied his own signature in the Vakalath filed in the suit. This clearly shows that the defendant has come to Court with a totally false case. He would submit that the defendant had not chosen to reply to any of the letter sent by the plaintiff nor the Legal Notice Ex.A.3. He would submit that in Para 2 of the Plaint, the plaintiff had specifically stated that the loan amount of Rs.3,30,000/- which finds mention in Ex.A.1 has been discharged from out of the joint income earned and this has not been denied by the defendant in his Written Statement. He would also rely upon Ex.A.10- Photographs to show how the defendants pending the suit demolished the superstructure and constructed a new building. He would also draw the attention of this Court to Ex.A.19 which is a Rental Agreement given by the plaintiff to the tenants in respect of the 2nd item of the suit property which would go to show that the property belongs to the plaintiff and the defendant jointly. He would therefore submit that the Decree passed by the trial



Court is a well considered one and does not require to be set aside.

POINT FOR CONSIDERATION:

11. On hearing the submissions of both the counsels the following point arises for consideration in the above First Appeal:

- (1) Whether the plaintiff and the defendant were carrying on business as a Partnership and Ex.A.1 - Business Agreement is a document evidencing the same?
- (2) Whether the plaintiff is entitled to a partition of the suit 1st item of the property which has been purchased in the exclusive name of the defendant in the light of the recitals contained in Ex.A.1.?
- (3) Whether the plaintiff is entitled to a partition of the suit 2nd item of the property?

DISCUSSION:

12. The plaintiff has come to Court seeking partition of two items of the suit properties. The 1st item consists of land measuring an extent of 5 1/2 cents over which a building consisting of a first and second floor has been put up bearing Door No.3, Kamarajar Salai, Ramavaram, Chennai - 89. It is the case of the plaintiff that this property had been purchased from out of the joint income of the partnership firm being run by the plaintiff and the defendant in the name and style of "Om Murugan Agency". The defendant has denied the execution of Ex.A.1 and the fact that he and the plaintiff has been carrying on business as Partners.

13. It is the case of the plaintiff that he and the defendant had been carrying on a Partnership business from 1990 onwards. The defendant in his Written Statement has stated that the plaintiff had come to Chennai only in the year 1991-1992 for further studies. This fact has not been rebutted by the plaintiff. The plaintiff has not let in any independent evidence/witness to prove the fact that both he and the defendant had been carrying on a Partnership business in the name and style of "Om Muruga Agency". The plaintiff has put forward Ex.A.1 to prove the fact that both he and the defendant have been carrying on a Partnership business. Therefore, it is necessary to examine the recitals containing in Ex.A.1. It has to be borne in mind that the defendant has denied the execution of the said Deed. It is necessary to extract the recitals containing in this document styled as a Business Agreement. A



reading of the above recitals would indicate that the 1st item of the property had been purchased in the name of the defendant on 06.02.1995 and that Om Murugan Agency owed a sum of Rs.3,30,000/- from various persons. The Agreement would stipulate that this amount has to be settled from out of the income generated from the Firm. Once the creditors are settled the defendant would allot a 1/2 share in the property in favour of the plaintiff. The Agreement would further state that all the properties that have been purchased prior to 1995 by the defendant would remain his properties and all properties thereafter purchased would belong to both.

14.A reading of the Deed would further indicate that the partners have agreed to run the business from the date of the Deed namely 10.03.1995. The last sentence in the above Agreement would bear testimony to the above. The execution of the document appears to be in the presence of one Mr.Antony Selvam and Mr.Muthukani. Admittedly, the 2nd witness is the brother of the plaintiff and the defendant.

15.Though the defendant has denied the execution of this Deed the plaintiff has not sought to examine the witnesses to prove the execution of the Deed. Further, from the evidence the plaintiff in his cross examination as PW1, it appears that he has been removed from the business in the year 1996 itself. The plaintiff would submit in his evidence as follows:

"1996க்கு பிறகு தாவா இடத்தில் தொழில் செய்ய பிரதிவாதி அனுமதிக்கவில்லை. 1996க்கு பிறகு சட்ட நடவடிக்கைகள் எதுவும் எடுக்கவில்லை என்று சொன்னால் சரியல்ல. தாவா சொத்தில் பிரதிவாதி கடந்த 17 வருடமாக தனியாக தொழில் செய்து வருகிறார்."

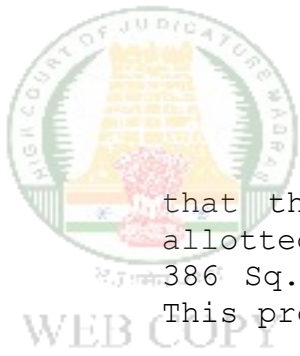
16.The plaintiff in his cross examination has also stated that he has been running an independent business from the year 1996 at Door No.7, Venkatraman Salai, MGR Nagar, Chennai in the name and style of Sri Raman Agency. Therefore, the plaintiff has failed to prove the existence of the Partnership Agreement between him and the defendant by examining any independent witness and has therefore not proved execution of Ex.A.1. Ex.A.1 cannot be termed as a Partnership Agreement. On the contrary, it appears to be an Agreement for Partition the suit 1st item of the property on condition that a sum of Rs.3,30,000/0 which is due to the creditors are settled. Another piece of evidence which prompts this Court to come to the conclusion that such a partnership was not in existence is reading of Ex.A.8 - Letter. Ex.A.8 is the Letter dated 04.08.1997. A reading of the same would show that nowhere does the plaintiff speak about



the partnership entered into between himself and the defendant. In the said letter, the plaintiff would lament that he is facing a lot of obstacles in carrying on his business and that he had turned into a debtor and further, he did not have any business. He would therefore request the defendant to help him. In the said letter, he would inform the defendant, that the defendant should consult him before alienating or transferring the properties there is no reference or details about such properties and there is no reference to Ex.A.1 - Agreement. However, in the Letter dated 03.12.1997 (Ex.A.7) the plaintiff has for the first time referred to the Partnership and he would inform his brother the defendant that the partnership does not come to end on his being forcibly removed on his signing the termination letter. Despite sending Ex.A.7 in the year 1997 no further steps have been taken by the plaintiff to assert his right as a partner.

17. In the Complaint to the police marked as Ex.A.4, the plaintiff has stated that he has been thrown out of his business in the year 1996. Therefore, from a joint reading of the above exhibits, it is clear that the plaintiff and the defendant had stopped conducting any business from the year 1996. If there was a Partnership Deed between the parties the plaintiff ought to have been moved for dissolution of the partnership and rendition of account. Such a step has not been taken by the plaintiff within a period of three years from the date of his being forcibly removed from the partition. On the contrary, the suit has been filed as late as in the year 2011. Admittedly, the 1st item of the suit property has been purchased in the name of the defendant and in the absence of the plaintiff proving the partnership and that the funds have come from the partnership firm the plaintiff is not entitled to a partition in respect of the 1st item of the property. That apart even as per the recitals of Ex.A.1 projected by the plaintiff, the plaintiff would be entitled to a half share upon the settlement of Rs.3,30,000/- to the creditors. There is no evidence to show who these creditors were and whether they had been settled. Therefore, the Points for Consideration 1 and 2 are answered against the plaintiff and in favour of the defendant.

18. The suit 2nd item of the property is the property in Door No.28, Anna Main Road, M.G.R. Nagar, Chennai - 78. The plaintiff would contend that this property has been jointly allotted to him and the defendant under Ex.A.2 - Allotment Letter issued by the Tamil Nadu Slum Clearance Board to both the plaintiff as well as the defendant.



19.A perusal of the schedule to Ex.A.8 would indicate that the property which is the subject matter which has been allotted measures an extent of 36 Sq.mt. which is equivalent to 386 Sq.ft. and that Plot Number has been shown as Plot No.970. This property is situate within the following boundaries:

North by - Street
East by - Street
South by - Plot Number 69
West by - Plot Number 968

It is the case of the defendant that he has purchased the adjacent land and put up construction. He would submit that he has purchased the adjacent property on 30.06.1995, however, the defendant has not produced any document to substantiate the same. Considering the fact that the 2nd item of the suit property has been jointly allotted in the name of the plaintiff as well as the defendant, the plaintiff is entitled to a partition in respect of the suit 2nd item of the property. The 3rd Point for Consideration is therefore answered in favour of the plaintiff.

As a result, this Appeal Suit is partly allowed. The Judgment and Decree of the learned III Additional Judge, City Civil Court, Chennai in O.S.No.475 of 2011 insofar as it relates to the 1st item of the property is set aside and the Judgment and Decree with regard to the suit 2nd item of the property stands confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

The III Additional Judge,
City Civil Court,
Chennai.



Copy To

The Section Officer,
VR Section,
High Court, Madras.

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+1cc to Mr.M.Velmurugan, Advocate SR.No.56395
+1cc to Mr.P.Rajendran, Advocate SR.No.57052

A.S.No.463 of 2014

EV (CO)
GN(08/12/2021)