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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A.No.179 of 2017
and
C.M.P.No.3777 of 2017

Kasinathan
S/o.Veerasley Padayachi ... Appellant/Respondent/Plaintiff

Versus

Panchalai,
W/o.Kannusamy ... Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of Sub Court, Chidambaram dated 01.04.2016 made in A.S.No.15 of 2015 reversing judgment and decree of Principal District Munsif Court, Chidambaram dated 06.02.2015 made in O.S.No.71 of 2009.

For Appellant : Mr.S.Sounthar

For respondent : Mr.A.MuthuKumar

J U D G M E N T

The Plaintiff in O.S.No.71 of 2009 on the file of the District Munsif Court, Chindambaram, is the appellant in the Second Appeal.

2. The Plaintiff/Appellant filed the suit in O.S.No.71 of 2009 for declaration of title to the suit property and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property, measuring to an extent of 0.8 cents out of 33 cents in S.No.310/3 in Killai Village.

3. The case of the appellant is that the suit property was purchased by the plaintiff represented by his guardian, namely mother by a registered sale deed dated 07.09.1963. When the property was purchased, the plaintiff was a minor. In the plaint, it is stated that the property was purchased from one Veerasy and the property was in the enjoyment of his mother when he was minor. In the plaint, the plaintiff has not indicated the nature and the character of the property except stating that plaintiff is doing cultivation.



4. In the written statement, it is stated that the suit property was the property of one Veerasamy and that the said Veerasamy had two wives. First wife is one Alamelu ammal and she had two sons namely Thangavelu and Kannusamy and the second wife is Aavayambal and she had two sons namely Pakkiri and Thangarasu. It is stated that the land measuring to an extent of 33 cents on the Western side in R.S.No.310/3 in Killai Villge is the 'C' Schedule property mentioned in the partition deed dated 28.04.1943 which was among the father and four sons. It is also stated that after the life time of Veerasamy, his 4 sons are entitled to the property equally among themselves. It is also contented that after the death of Veerasamy Padayachi, in an oral partition, the 0.08 cents in the suit survey number was allotted to one Kannusamy. The defendant is the wife of Kannusamy and is residing in the suit property after the life time of Kannusamy.

5. It is also stated in the written statement that the defendant is in possession and enjoyment of the suit property, and that, Veerasamy Padayachi has no right to sell 0.08 cents to the plaintiff. It is further contented by the respondent that the sale deed 07.09.1963 itself is a fabricated and forged document.

6. A reply statement was also filed by the plaintiff and it is seen from the reply statement that the relationship is admitted. However, it was contented by the plaintiff that the property was conveyed by Veerasamy in the year 1963 to the knowledge of his sons and that father had every right to convey the property during his life time.

7. The trial Court after framing necessary issues found that the suit property is the ancestral property of Veerasamy. The trial Court accepted the partition deed under Ex.P1 as genuine and valid. The trial Court then proceeded to decide whether the property was allotted to Veerasamy absolutely or only a life interest was given. The trial Court found that absolute right was given to Veerasamy. The Plaintiff produced the patta and adangal in respect of the suit property. The Trial Court found that the appellant is entitled to the suit property as per the sale deed under Ex.A1. Hence, the trial Court decreed the suit in favour of appellant/plaintiff.

8. Aggrieved, by the same the defendant has preferred an appeal before the learned Sub Court, Chidambaram in A.S.No.15 of 2015. The appellate Court after reversing the findings of the trial Court, allowed the appeal. The appellate Court, while accepting the case of partition and Ex.P1 held that the father of the appellant namely Veerasamy was given only a life estate and therefore he had no right to execute the sale deed in favour



of the plaintiff. The appellate Court based on the appreciation of evidence found that the suit property was allotted to the respondent's husband. Aggrieved by the judgment of the appellate Court in A.S.No.15 of 2015, the above second appeal is filed.

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9. At the time of admitting the second appeal, this Court framed the following question of law:-

"whether the judgment and decree of the first appellate Court in dismissing the suit laid by the plaintiff are based upon the perverse findings and conclusions and misdirected against the evidence on record."

10. The learned counsel for the appellant submitted that the appellant's father is prevented from alienating the property for immoral purpose and there is no prohibition if alienation is required for family necessities. He further submitted that Ex.A1 only shows that the property was sold for medical and family expenses and therefore the sale deed and Ex.A1 is valid and that the plaintiff is entitled to claim the ownership over the property as absolute owner.

11. This Court is unable to accept the contention of the appellant. The recital in Ex.B1 is unambiguous that the property was to be enjoyed by Veerasamy till his life and it should go to his sons after his life time.

12. The learned counsel for the respondent pointed out that the appellant himself has admitted in his evidence that the property was allotted to the defendant's husband and that she was in possession and enjoyment of the suit property. The appellate Court also held that the suit property was allotted to defendant's husband and that the plaintiff is not entitled to claim the title over the suit property. It is seen that during the course of evidence it is admitted that plaintiff is also one of the sons of Veerasamy. After reserving a life interest to himself in the partition, Veeraamy has no power to execute the sale deed under Ex.A1. The Plaintiff has not even pleaded adverse possession.

13. In Such circumstances, having regard to the findings of the lower appellate Court and the admitted facts, this Court does not find any error or irregularity in appreciation of evidence and this Court also does not find any merit in the question of law framed in the second appeal. Therefore, this Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14. The learned counsel for the appellant submitted that the plaintiff is entitled to claim his share after life time of his father and also contented that as per the partition deed,



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the property should go to the four sons of the said Veerasamy. The appellant claims relief against the defendant, who is now found to be in possession of the suit property, which was allotted to the defendant's husband. The plaintiff has not impleaded other legal heirs of Veerasamy in the present suit and therefore, this Court is unable to give any relief to the plaintiff.

Sd/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Sub Court,
Chidambaram.

2.The Principal District Munsif Court,
Chidambaram.

+1cc to Mr.S.Sounthar, Advocate Sr.25293
+1cc to Mr.A.Muthukumar, Advocate Sr.25165

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