



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.334 OF 2017

AND

CMP NO.7878 OF 2017

Thulasiammal ...Appellant/Respondent/Plaintiff

VS.

Muniammal ...Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 09.12.2016 made in A.S.No.57 of 2013 on the file of Subordinate Judge, Vellore, in reversing the well considered judgment and decree dated 30.09.2013 made in O.S.No.110 of 2003 on the file of Additional District Munsif Court, Vellore, Vellore District.

For Appellant : Mr.A.Gouthaman

For Respondent : Mr.M.Mariappan

J U D G M E N T

The plaintiff is the appellant in the Second Appeal. The plaintiff filed a Suit for partition in respect of 62 1/2 cents of land in S.No.310/2C at Anpoondi Village, Vellore Taluk, Vellore District. Aggrieved over the reversal of decree granted by Trial Court, the present Second Appeal has been preferred.

2.According to the plaintiff, one Chinnayya Gounder was the owner of the landed property measuring an extent of 5.00 Acres in S.No.310/2 at Anpoondi Village. He had five sons namely Angamuthu Gounder, Perianna Gounder, Poongavana Gounder, Thandavaraya Gounder and Sadaya Gounder. After the death of Chinnayya Gounder, Angamuthu Gounder being the eldest son managed the family and he kept 2.5 Acres of land as his own and divided the remaining 2.50 Acres and given it to his four brothers in equal moiety and executed nominal sale deed in



WEB COPY
favour of Thandavaraya Gounder in the year 1942. Thereafter, the four brothers divided the said lands orally in 1945 and have taken 0.62 1/2 cents each. But, Sadaya Gounder created a nominal sale deed in favour of him in the year 1988 as having purchased 0.70 cents from Thandavaraya Gounder without any consideration. The other brothers were in possession of the lands till their death. After their death, their legal representatives were in possession and enjoyment of the same. Thus, the plaintiff's father-in-law Poongavana Gounder inherited 0.62 cents of land. The said Poongavana Gounder had two wives and through them, two sons born to him, namely Murugesan and Subramani. The said Murugesan and Subramani were jointly enjoying the suit property as joint family property till their death. After their death, the wives of Murugesan and Subramani, namely, the plaintiff and the defendant are in possession and enjoyment of the Suit property till the date of filing of the Suit. Due to the misunderstanding between themselves, the plaintiff issued a legal notice on 24.12.2002 demanding partition which was refused by the defendant. On the basis of the same, the plaintiff filed the Suit for partition.

3. In the written statement, the defendant denied all the averments made in the plaint. According to the defendant, one Chinnayya Gounder was the owner of the property measuring an extent of 5.00 Acres in S.No.310/2. But the property was purchased by Angamuthu Gounder. The said Angamuthu Gounder, on 16.11.1942 sold 2.5 Acrse of land out of the total extent of 5.00 Acres in S.No.310/2 to Thandavaraya Gounder @ Mottai Thalayan S/o. Chinnayya Gounder. The said Thandavaraya Gounder became the owner of the property and he was in possession and enjoyment of the same. Poongavana Gounder had two wives. Through his first wife, he had one son namely Murugesan. When the said Murugesan was a small child, his mother died. After the death of the first wife, Poongavana Gounder married one Bagyammal as second wife. Immediately after the second marriage, within a short time, Poongavana Gounder died and no child was born to Bagyammal. Therefore, it is false to state that Subramani was born to Poongavana Gounder and Bagyammal and the plaintiff is the wife of Subramani is also denied. After the death of Murugasan's mother, the first wife of Poongavana Gounder, he was adopted by Thandavaraya Gounder. After the death of Thandavaraya Gounder, his sons namely, Mani and Govindasamy and the adopted son Murugesan have divided the properties into three shares. Thus, all the three were entitled to 0.60 cents of land in S.No.310/2. The defendant as a wife of Murugesan derived title to 0.60 cents of land in S.No.310/2 which was subsequently sub-divided as S.No.310/2C and joint patta was also issued in the name of the defendant vide Patta No.313. Thus, she is the absolute owner of the property measuring 0.60 Cents in S.No.310/2C and the plaintiff is not entitled to any share in



the property at all.

4. Based on the pleadings, the Trial Court framed appropriate issues and decreed the Suit in favour of the plaintiff. Aggrieved over the same, the defendant preferred an appeal, which was allowed by the First Appellate Court and the decree passed by the Trial Court was set aside. Against the judgment and decree of the First Appellate Court, the plaintiff preferred the above Second Appeal.

5. The Second Appeal was admitted by this Court on 06.06.2017 on the following substantial questions of law:

"1. Whether the Lower appellate court right in dismissing the suit, ignoring the law that when the defendant failed to prove the adoption of her husband by Thandavaraya Gounder and not examining the sons of Thandavaraya Gounder, Is the lower appellate court right in not drawing adverse inference as against the defendants?

2. Whether the lower appellate court was right in dismissing the suit ignoring the well settled preposition of law that even a member of coparceners resides in somewhere from the suit property and even though the patta granted in favour of one of the coparceners is it not mean that all of the coparceners are in joint possession of the property?

3. Whether the lower appellate court right in ignoring the well settled preposition of law that the oral partition is valid in law and in view of the oral partition not only the father in law of the plaintiff and defendant namely Poongavana gounder and also the brothers of Poongavana gounder had been allotted equal share and they got patta in view of oral partition in their respective names?"

6. I have heard the submissions made on either side and perused the materials available on record.

7. The relationship between the parties are admitted. The plaintiff is the wife of Subramani, who is the second son of Poongavana Gounder and the defendant is the wife of first son of Poongavana Gounder namely Murugesan. According to the plaintiff, the property originally belonged to Chinnayya Gounder. After his death, the eldest son Angamuthu Gounder retained 2.50 Acres of land as his share and divided the remaining 2.50 Acres of land



WEB COPY

equally in favour of his four brothers. Thus, the father-in-law of the parties, derived 62 1/2 cents of land from his father. But the plaintiff has not produced any documents to prove that her father-in-law derived title to the said 62 1/2 cents of land.

8.It is admitted that the Suit property over which the partition is sought for situates in S.No.310/2 measuring an extent of 60 cents. But, Ex.A1, the certified copy of the sale deed dated 16.11.1942 shows that one Angamuthu Gounder, sold 2.50 Acres of land in favour of his brother Thandavaraya Gounder. The recitals of the said document does not disclose that the property was purchased from the joint family funds by his father in his name. On the other hand, it recites that he derived title by way of sale deed which gives an impression that it is an absolute property of Angamuthu Gounder. Eventhough the plaintiff has examined himself as P.W.1, she would categorically state that she does not have any title deed pertaining to the property. She would speak about the relationship of the parties and about the oral partition alleged to have taken place between them. But to substantiate her statement, she could not produce any credible evidence or marked any documents to prove that her father-in-law derived title to the Suit property.

9.It is admitted that the defendant's husband derived title to 60 cents of land through his adopted father Thandavaraya Gounder and the said property is enjoyed by the defendant in S.No.310/2C and patta was also issued in her favour. The witness, who examined as P.W.2 also, could not substantiate the case of the plaintiff. He would state that he was not aware of the purchase made by Angamuthu Gounder and that he had not seen the patta issued to the brothers namely Perianna Gounder, Thandavaraya Gounder and Poongavana Gounder and even his father. Thus, the case of the plaintiff that through oral partition, the brothers have derived 62 1/2 cents of land was not proved, particularly that her father-in-law had derived title to the Suit property over which this partition was sought for.

10.In the cross examination, D.W.1 would state that the Suit property lies in two places and it was derived from the partition of the sons of Chinnayya Gounder and that each one of the sons got 60 cents of land and that they were in possession and enjoyment of the property separately. But, there is no specific question put to D.W.1 as to the property in S.No.310/2. A general statement is sought to be taken to prove the case of the plaintiff. It is well settled that the plaintiff shall prove her case on her own strength and she shall not find pitfalls on the case of the defendant.



11. In so far as the defendant is concerned, the title to 60 cents of land enjoyed by her is borne out by records. The registered sale deed marked as Ex.B1 (Ex.A1 also) clearly shows that her husband's adopted father had purchased 2.50 Acres of land from his brother Angamuthu Gounder. It is not in dispute that he sold 70 Cents to his younger brother Sadaya Gounder and retained 1.80 Acres of land with him. It is also not disputed that the three sons including the adopted son, namely, the husband of the defendant, partitioned it and had taken 60 cents each. After his death, the defendant inherited the property and a patta was also issued in her favour. To prove the same, the pattas issued in favour of her husband were marked as Ex.B4 and Ex.B5 and after his death, the patta issued in favour of the defendant as Ex.B6. The Kist receipts issued in the name of Murugesan husband of the defendant as well as the defendant herself were marked as Exs.B7 and B8.

12. When the derivation of title in favour of the defendant is categorically proved, onus is cast on the plaintiff to prove as to how 60 more Cents of land was derived and enjoyed by her through her father-in-law Poongavana Gounder. No such case was projected. The First Appellate Court analysing the evidence, has given a finding that P.W.1 has admitted that patta in respect of the Suit property in S.No.310/2C stands in the name of the defendant and that the derivation of title through Thandavaraya Gounder was also admitted. Further, it is categorically admitted by P.W.1 that the property in S.No.310/2 does not belong to Poongavana Gounder. Therefore, the First Appellate Court has given a categorical finding that the plaintiff has failed to prove her entitlement to claim partition in the Suit property and declined the relief sought for.

13. I do not find any discrepancy in the finding of the First Appellate Court. The appellant has failed to establish the right to claim partition. The question of law that the defendant has failed to prove partition and derived title to the property is irrelevant as long as it is admitted by all the parties that he has derived the share through Thandavaraya Gounder. It is true to state that the oral partition is valid in law. But the oral partition should be proved in the manner known to law and that it was acted upon by the conduct of parties. There is no evidence adduced by the plaintiff to prove that there was oral partition and it was acted upon by the brothers. In the absence of any substantiating evidence, the questions of law are answered against the appellant.

14. In fine, the Second Appeal stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.



15. The written arguments filed by the parties shall form part of the record.

WEB COPY

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Subordinate Judge
Subordinate Court
Vellore.
2. The Additional District Munsif
Additional District Munsif Court
Vellore, Vellore District.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.M.Mariappan, Advocate, S.R.No.49385

+1cc to Mr.A.Gowthaman, Advocate, S.R.No.49375

SA NO.334 OF 2017

SSD(CO)
RGA(02/06/2022)