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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.713 OF 2017

AND

C.M.P.NO.18163 OF 2017

K.G.Ramakrishna

... Appellant

.Vs.

1. P.N.Loganathan

2. K.G.Santharam

3. Prasad

4. Srinivasalu

... Respondents

PRAYER:-

The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 21.12.2015 passed in A.S.No.209 of 2014 by the III Additional City Civil Judge, Chennai reversing the decree and judgment dated 08.11.2013 passed in O.S.No.9935 of 2009 by the XIV Assistant City Civil Court, Chennai.

For Appellant : Mr.K.P.Gopalakrishnan

For Respondents : Mr.N.Srinivasalu
For R1

J U D G M E N T

Aggrieved over the reversal of decree granted by the Trial Court, the plaintiff has preferred the above Second Appeal against the judgment and decree passed in A.S.No.209 of 2014 dated 21.12.2014.

2. The plaintiff's grandfather Sudarsana Venkataswamy and grandmother Ragammal were the original owners of the super structure morefully described in the suit schedule. The said Venkataswamy died leaving behind his grandmother Ragammal. They had four daughters namely Beddbella, Mangammal, Nagammal and



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Achammal. The plaintiff and the defendants are the legal heirs of the four daughters. The plaintiff and the first defendant are the sons of the 3rd daughter viz., Nagammal. The 2nd defendant is the son of first daughter Beddbella and 4th defendant is the son of the last daughter Achammal. Thus, all the grand sons are entitled to equal share in the superstructure mentioned in the suit schedule. The plaintiff demanded partition of the property with the defendants 2 to 4. Since they were postponing the same under one pretext or the other was compelled to file the above suit for partition. Defendants 1 and 4 sailed with the plaintiff. The 2nd defendant filed a written statement denying the claim of the plaintiff. The defendants 1 and 2 contended that the land belong to the Chennakesava Perumal Temple and the superstructure was built by his father Sudarsana Venkatasamy who adopted him as his son after the death of his mother at the age of 3. Since his father deserted his mother their grandfather Sudarsana Venkatasamy and Ragammal adopted the 2nd defendant as their son and he was living in the suit schedule property since his birth. Late Sudarsana Venkataswamy and Ragammal solemnised his marriage on 17.04.1967 with his wife Vajravathyammal and they are living in the suit schedule mentioned property since 1967. The daughters of Sudarasana Venkataswamy were given sreedana at the time of their marriage and all of them were settled with their husband and they do not have right over the suit property. The 2nd defendant has been in possession of the property for 40 years without any interruption and without any claim from the 3rd parties. He was paying the statutory taxes during his life time continuously till date. Therefore, the claim of the plaintiff and defendants 1,3 and 4 are illegal and they are not entitled to the same. On 29.11.2007, the 2nd defendant executed a settlement deed in favour of his wife Vajravathyammal and ever since she is in possession and enjoyment of the property. She demanded the dilapidated superstructure which was causing danger to the life and put up a new superstructure during September 2009 and she is the owner of the superstructure and therefore also the plaintiff and other defendants have no right to claim partition over the property. He as a dutiful son took care of his mother Ragammal and conducted cremation as adopted son. Therefore, he prays that the suit should be dismissed.

3. The Trial Court held that all the four daughters are entitled to equal share of the property. Since the 2nd defendant failed to prove the adoption by Sudarsana Venkataswamy and Ragammal, his claim for the exclusive ownership of the property is not tenable and also held that the legal heir certificate produced by him as Ex.B1 mentions only his name leaving out the other daughters cannot be relied on and not legally enforceable in the eye of law and hence decreed the suit as prayed for and passed the preliminary decree.

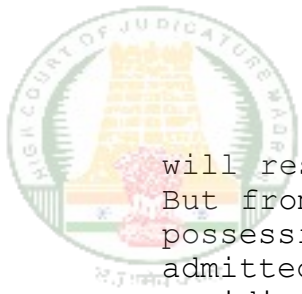


4. Aggrieved over the same, the 2nd defendant preferred an appeal. The First Appellate Court after analysing the evidence found that the plaintiff himself would admit long and uninterrupted possession of the 2nd defendant and the factum that the wife of the 2nd defendant demolished the superstructure and constructed the building would show that the plaintiff is not entitled to claim partition over the property constructed by 2nd defendant wife. Further, the plaintiff after having admitted that he confronted the 2nd defendant wife while she was constructing the house and that he got knowledge about the settlement deed then, did not aver all these facts in the plaint, comprehensively. Therefore, it was held that the plaintiff is not entitled to claim partition on the superstructure which was built by the 2nd defendant's wife. Admittedly, all the lands belong to the temple. Therefore, set aside the judgment and decree of the Trial Court and dismissed the suit.

5. Aggrieved over the same, the plaintiff has preferred the above Second Appeal.

6. The learned counsel appearing for the appellant would vehemently contend that though the 2nd defendant claims that he was adopted by late Sudarsana Venkataswamy and Ragammal, he has not produced any iota of evidence to prove the same. The adoption when not proved, he cannot claim exclusive right over the property. The admitted facts remain that the superstructure was constructed by the Sudarsana Venkataswamy and after his death it was inherited by Ragammal. The said Ragammal had four daughters is also not denied. As such all the four daughters are entitled to equal share and through them the parties to the suit are entitled to equal share over the property. Infact an injunction was granted by the Trial Court and superstructure was put up in violation of the injunction order granted in I.A.No.19066 of 2009 dated 29.12.2009. Therefore, when adoption was not proved and the superstructure was put up by the 2nd defendant's wife at her own risk violating the interim order, will not entitle him to claim the exclusive ownership and they should be deemed to have continued in the constructive joint possession of the property and therefore the findings of the First Appellate Court is erroneous. The construction made by the 2nd defendant's wife is hit by lispendence and the elaborate judgment passed by the Trial Court holding that the adoption is not proved and all the parties are entitled to equal share ought not to have been interfered by the First Appellate Court without any valid basis for the same.

7. The learned counsel appearing for the respondents would submit that it is an admitted fact that the land belong to Chennakesava Perumal Temple. The entire extent is only 210 sq.ft. It cannot be conveniently divided between parties and it



will result in 50 sq.ft to each party, if the claim is affirmed. But from 1967 onwards the 2nd defendant and his wife alone was in possession of the property. All the other defendants were admittedly residing elsewhere particularly, the 1st defendant is residing in Andhra Pradesh and the plaintiff as well as defendants 1,3 and 4 would categorically admit that they were not in possession of the superstructure for over 40 years. The 2nd defendant was paying the rentals to the temple through out his life time and after the settlement the 2nd defendant's wife is paying the land rent as well as statutory dues to the Government. Further, the factum that the 2nd defendant was adopted son by the late Sudarsana Venkataswamy and Ragammal were not denied by the defendants. Infact, there is categorical admission of his possession and uninterrupted enjoyment over the property for four decades. The evidence of the plaintiff would go to show that the building was demolished because it was dilapidated and that the 2nd defendant's wife constructed the superstructure. It contains only ground floor even as per the admission of the plaintiff construction was completed even before the start of quarrel with the 2nd defendant. Thereafter only, he demanded money from the 2nd defendant since it was refused he filed the suit. Therefore, the contention that construction was put up in violation of interim order granted by the Court is absolutely false. Therefore, the finding of the First Appellate Court is very much legal and based on sound reasons and should not be interfered with.

8. Heard both sides.

9. On perusal of evidence placed before the Court, it is noted that the plaintiff as P.W.1 would categorically depose that the superstructure built by Sudarsana Venkataswamy was in dilapidated condition and therefore it was demolished by the 2nd defendant's wife and a new construction was made. Further evidence goes to show that the plaintiff went and picked up quarrel with the 2nd defendant a year before at the time he laid the roofing to the structure. It is also categorically admitted that the old building was built up by his grandparents and that it was in dilapidated condition. Since he sought for partition of the property at that time he came to know about the settlement executed by the 2nd defendant. Therefore, it is clear that the partition is not sought for the superstructure put up by his grandfather but over the subsequent superstructure which was put by the 2nd defendant's wife. In the plaint, the plaintiff has simply stated that they are the legal heirs and therefore they are entitled to 1/4th share. But the factum that it was enjoyed by the 2nd defendant for long years and that the 2nd defendant's wife demolished the building and put up a superstructure were all suppressed. Literally, the plaintiff has claimed partition as if the superstructure constructed by his



grandfather over the temple land was still existing. On the other hand, it was not so. If at all the plaintiff wants to get a share, he has to claim transfer of leasehold rights in respect of the land and should have contributed to the construction made over the same. As on today license has been transferred in favour of the 2nd defendant wife. She is in lawful possession of the land and the entire superstructure was constructed by the 2nd defendant's wife. None of the above viz., grant of license, construction were questioned by the plaintiff. He has actually acquiesced himself with the action against him and had failed to challenge the same in time. The First Appellate Court has thus rightly found that the plaintiff is not entitled to claim any partition over the superstructure built up by a third party and that the suit is bad for suppression of material facts. I do not find any discrepancy in the finding of the First Appellate Court and also there is no substantial question of law arising out of the facts. There are only question of facts and no question of law much less substantial question of law arises for consideration of the above Second Appeal. Hence the Second Appeal does not deserve admission and accordingly dismissed. Consequently, Connected Civil Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS I)

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Sub Assistant Registrar

kpr

To

1. The III Additional City Civil Judge,
Chennai.
2. The XIV Assistant City Civil Court,
Chennai.

+2ccs to Mr.N.Srinivasalu, Advocate, S.R.No.66917

+1cc to Mr.K.P.Gopalakrishanan, Advocate, S.R.No.67316

S.A.NOS.713 OF 2017 AND
C.M.P.NO.18163 OF 2017

SKM(CO)
PBS/27/05/2022