



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.03.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

SA(MD)No. 72 of 2021
and C.M.P(MD)N.942 of 2021

Baby amala Bai ...Appellant/Appellant/Defendant

Vs.

Arulappan ...Respondent/Respondent/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 09.07.2020 passed in A.S.No.30 of 2017 on the file of the Subordinate Court, Padmaabhapuram confirming the Judgment and Decree dated 19.04.2017 made in O.S.No.140 of 2010 on the file of the Additional District Munsif Court, Padmanabhapuram.

For Appellant : Mr.S.C.Herold Singh

JUDGMENT

The defendant in O.S.No.140 of 2010 is the appellant. Challenge is to the judgment and decree of the learned Subordinate Judge, Padmanabhapuram made in A.S.No.30 of 2017 confirming the judgment and decree made in O.S.No.140 of 2010 by the learned District Munsif, Padmanabhapuram,

2. The plaintiff/respondent herein filed the suit for declaration of his title and permanent injunction contending that the suit property along with the larger extent originally belonged to one Reginal. The said Reginal executed a Will in favour of the 5 sisters namely, Thilaga Rajam, Sobana Mary, Sahaya Mabel Stella, Gomas Rani and Mary Amala Bai on 13.06.1981. The said Reginal died on 06.02.1986. On her death, the suit property along with other properties devolved on the five sisters, who had effected an oral partition among themselves. In the said partition, the suit property, which consisted the ancestral house, was allotted to four sisters except the defendant. The reason assigned for such a partition is that the defendant had married and she left the village. Relying upon the said partition, the sisters had alienated various items of properties by way of settlement etc. The four sisters had on 13.11.1997 executed a settlement deed in favour of the plaintiff. Claiming that the defendant, who had no interest over the property, is attempting to interfere in his possession, the plaintiff has filed the present suit.



3. The suit was resisted by the defendant contending that the theory of oral partition is false. According to the defendant, there was no partition at any point of time. Therefore, the other four sisters had no right to settle specific property in favour of the plaintiff.

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4. At trial, the plaintiff himself was examined as PW.1. Exs. A1 to A8 were marked. The defendant was examined as DW.1 and Exs. B1 to B13 were marked. The commissioner's report and plan were marked as Exs. C1 and C2.

5. Upon consideration of the evidence on record, the learned Trial Judge came to the conclusion that the plaintiff has established the oral partition and the fact that he was put in possession of the property pursuant to the settlement deed. The trial court also took note of the fact that the defendant, who had denied the oral partition in her written statement, had admitted the same in her evidence, but had claimed that the suit property alone was kept in common. The claim of the defendant was disbelieved on the basis of the revenue records that were produced by the plaintiff which showed his possession for the considerable length of time as well as mutation of revenue records in his name upon execution of the settlement dated 13.11.1997 which was marked as Ex. A1. On the above conclusion, the learned trial judge decreed the suit.

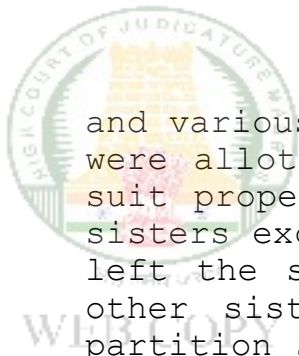
6. Aggrieved, the defendant preferred an appeal in A.S.No.30 of 2017. The learned Subordinate Judge, Padmanabhapuram, who heard the appeal, upon re-consideration of the evidence on record, concurred with the findings of the trial court and as a consequence, dismissed the appeal. Hence this second appeal.

7. I have heard Mr.S.C.Herold Singh, learned counsel appearing for the appellant.

8. Mr.S.C.Herold Singh, learned counsel appearing for the appellant/ defendant would vehemently contend that the courts below were not right in granting a declaratory decree based on a unsubstantiated oral partition. According to him, the courts below erred in presuming there had been a partition on the basis of the recitals made in other registered instrument. He would further contend that the courts below overlooked the fact that the suit property, which housed the ancestral house, remained undivided.

9. I have considered the submissions made by the learned counsel for the appellant.

10. I am unable to concur with the contentions of the learned counsel. The plaintiff came to court with a specific case that the suit property and a larger extent belonged to Reginal, who bequeathed to five sisters. The legatees entered into oral partition



and various items of properties that have been bequeathed by Reginal were allotted to each one of them. According to the plaintiff, the suit property, which is the ancestral house, was allotted to other sisters except the defendant since the defendant had married and had left the suit village. The plaintiff would further claim that the other sisters to whom the property was allotted under the oral partition settled the property on him even in the year 1997. He had effected the mutation of the revenue records and was enjoying the property ever since the settlement was made.

11. In response to the specific case of the plaintiff, the defendant came up with a plea that none of the properties bequeathed by Reginal under the registered Will dated 13.16.1981, were divided. Further, during the oral evidence, she had admitted that there was a partition of other properties except the suit property. Pointing out this discrepancy in the evidence, the courts below concluded that the defendant's version is not reliable. The courts below have also analyzed the documentary evidence that was made available by the plaintiff to show his possession and enjoyment as well as mutation of the revenue records immediately after the settlement deed Ex.A1 and come to the conclusion that the plaintiff has established his title. One another important aspect pointed out is that the defendant had not ascribed any motive for her sisters for having excluded her from the suit property at the partition.

12. The settlement deed is of the year 1997. The suit is of the year 2010. Therefore even though there is no dispute between the sisters, who have claimed under the oral partition had settled the property on the plaintiff, it is the defendant who claimed that there was no partition and the property is undivided.

13. I do not see any omission on the part of the courts below in considering the evidence on record. The courts below have come to the conclusion that the plaintiffs had established the title and possession.

14. Despite his best efforts Mr.S.C.Herold Singh is unable to point out any evidence that has been omitted to be considered by the courts below. I do not find any question of law much less substantial question of law to enable me to entertain this appeal and the appeal fails and the same is dismissed without being admitted. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

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/ /2021

Sub Assistant Registrar(CS)



1.The Subordinate Court, Padmaabhapuram

2.The Additional District Munsif Court,
Padmanabhapuram.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-12890[F] dated
23/03/2021)

Judgment in
SA(MD)No. 72 of 2021
and C.M.P(MD)N.942 of 2021
22.03.2021

TP (CO)
TR(19.05.2021) 4P 4C