



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)Nos.221 & 222 of 2012 and

M.P.(MD)No.1 of 2012

WEB COPY

Karuppana Gounder

... Appellant / Appellant /
Plaintiff in both appeals

Vs.

Chellamuthu

... Respondent / Respondent /
Defendant in both appeals

Prayer in S.A.(MD)No.221 of 2012 : Second appeal filed under Section 100 of C.P.C., to set aside the common judgment and decree dated 29.04.2010 made in A.S.No.22 of 2008 on the file of the Subordinate Judge, Palani, by confirming the judgment and decree dated 12.02.2008 made in O.S.No.395 of 2007 on the file of the District Munsif Court, Otthanchathiram and allow this second appeal with throughout costs of the appellant.

Prayer in S.A.(MD)No.222 of 2012 : Second appeal filed under Section 100 of C.P.C., to set aside the common judgment and decree dated 29.04.2010 made in A.S.No.59 of 2008 on the file of the Subordinate Judge, Palani, by confirming the judgment and decree dated 12.02.2008 made in O.S.No.395 of 2007 on the file of the District Munsif Court, Ottanchathiram and allow this second appeal with throughout costs.

(in both S.As.)

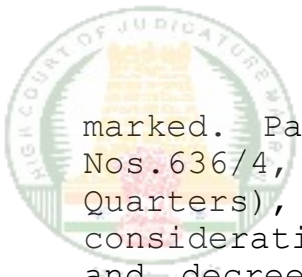
For Appellant : Mr.S.Satheeshkumar

For Respondent : Mr.K.Govindarajan,
for Mr.S.Siva Thilakar.

C O M M O N J U D G M E N T

These second appeals arise out of a suit for partition.

2. The appellant herein filed O.S.No.395 of 2007 on the file of the District Munsif, Ottanchathiram, seeking partition of the suit property into three equal shares and for allotting separate 1/3rd share in favour of the plaintiff after dividing the same by metes and bounds. The defendant filed written statement controverting the plaint averments. The defendant also filed counter claim seeking the relief of declaration and injunction. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and one Paramasivam and one Sivasubramani were examined as P.W.2 and P.W.3. Ex.A.1 to Ex.A.11 were marked. The defendant examined himself as D.W.1 and one Palanisamy @ Palaniappa Gounder as D.W.2. Ex.B.1 to Ex.B.6 were

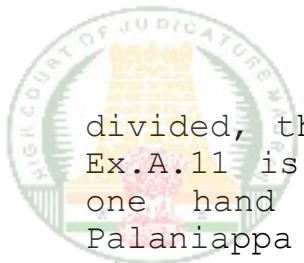


marked. Patta issued in favour of Palaniappa Gounder for Survey Nos.636/4, 640/3, 641/11 and 641/6 by the Deputy Tahsildar(Head Quarters), Ottanchathiram was marked as Witness Exhibit 1. After a consideration of the evidence on record, the trial Court by judgment and decree dated 12.02.2008 dismissed the suit but granted the relief of declaration and permanent injunction as sought for by the defendant. Questioning the same, the plaintiff filed A.S.No.22 of 2008 and A.S.No.59 of 2008 before the Sub Court, Palani. By the impugned judgment and decree dated 29.04.2010, the first appellate Court dismissed both the appeals. Challenging the same, these second appeals have been filed.

3. These second appeals were admitted after framing the following substantial question of law:-

"When it is the settled position of law that a purchaser of joint property is entitled to claim partition whether it is correct that a decree for declaration and injunction can be passed without passing a decree for partition on the strength of counter claim made by the adversary?"

4. The basic facts are beyond dispute. The suit property measuring 3 acres and 49 cents is comprised in Survey No.364/4, Javathupatti Village, Ottanchathiram Taluk, Dindigul District. The said property originally belonged to one Palaniappa Gounder Vagaira and others. Vide sale deed dated 22.06.1965(Ex.A.1), the plaintiff purchased 1/3rd undivided share in the suit property. The remaining 2/3rd share was purchased by Karuppanna Gounder and his brother Palaniappa Gounder vide two separate sale deeds. The 2/3rd share belonging to Karuppanna Gounder and his brother Palaniappa Gounder came to be allotted to the share of Palaniappa Gounder in a partition held between the two brothers. Eventually, the 2/3rd share in the suit property came to be allotted to the share of Karuppusamy, S/o.Palaniappa Gounder in a partition held between them on 15.11.1995 (Ex.B.2). From Karuppusamy, the defendant purchased the said 2/3rd share of the property vide Ex.B.5 dated 22.09.2000. The case of the plaintiff is that right from 1965 onwards, he is entitled to 1/3rd undivided share in the suit property, while the defendant is entitled to the remaining 2/3rd share of the suit property. The plaintiff would claim that till date no partition has taken place. As rightly pointed out by the learned counsel appearing for the appellant, a purchaser of an undivided share will have to file a suit for partition for specific demarcation of his share. Therefore, there cannot be any difficulty in answering the substantial question of law in favour of the appellant. But the moot question is whether the partition between the two have already taken place. The plaintiff as well as the defendant are both purchasers of undivided share in the suit property. The plaintiff fairly concedes that he is entitled to only 1/3rd share, while the defendant is entitled to 2/3rd share. To show that the property was already



divided, the defendant placed reliance on Ex.A.11 dated 03.04.1989. Ex.A.11 is an agreement entered into between the plaintiff on the one hand and the father of the defendant's vendor, namely, Palaniappa Gounder on the other. The plaintiff is figuring as the first party, while Palaniappa Gounder is figuring as the second party in the said Ex.A.11. In Ex.A.11, the suit property was divided into two parts, namely, 'A' schedule and 'B' schedule. 'A' schedule represents 1/3rd share on the western side, while 'B' schedule represents 2/3rd share on the eastern side. 'A' schedule was allotted to the share of the plaintiff, while 'B' schedule was allotted to Palaniappa Gounder. Ex.A.11 was marked by none other than the plaintiff himself. During the course of the cross examination, the plaintiff also accepted the execution of Ex.A.11. Thus the genuineness of Ex.A.11 stands confirmed by the plaintiff himself. But the learned counsel appearing for the plaintiff would claim that Ex.A.11 was not acted upon. But then, this is negated by the issuance of Ex.B.4 notice dated 21.09.2000. Vide Ex.B.4, the plaintiff issued notice to the defendant and his vendor Karuppusamy. The plaintiff had come to know that the defendant was proposing to purchase the 2/3rd share of the suit property lying on the eastern side from Karuppusamy. The apprehension of the plaintiff is that his access rights may be affected. He therefore expected that when Karuppusamy executed the sale deed in favour of the defendant, pathway must be earmarked. That was the demand set out in Ex.B.4. It is obvious that Ex.A.11 was already acted upon. When the suit property had already been partitioned and the parties have been admittedly enjoying separately all these years, the question of maintaining the suit for partition will not arise at all.

5. The Courts below had rightly come to the conclusion that there was no need for partition, when the suit property was already divided. Therefore, the Courts below had dismissed the suit for partition filed by the plaintiff and decreed the declaration and permanent injunction sought by the defendant by way of counter claim. In my view, no substantial question of law arises for consideration. The second appeals lack merit.

6. These second appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

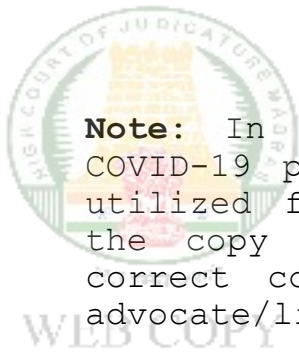
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

PMU



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Palani.
2. The District Munsif,
Otthanchathiram
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-26552[F] dated 17/08/2021)

S.A. (MD) Nos.221 & 222 of 2012
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AC (CO)
KB(09.02.2022) 4P 6C