



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 13.12.2021

CORAM

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

S.A. (MD) No.566 of 2011

Chinna Guruvammal

... Appellant / 1st Respondent /
Plaintiff

vs.

1.Subammal

... 1st Respondent / Appellant /
1st Defendant

2.The Tahsildhar

Tahsildhar Office

Near All Women Police Station

Kovilpatti Town

Tuticorin District

... 2nd Respondent/ 2nd Respondent /
2nd Defendant

Second Appeal filed under Section 100 CPC against the judgment and decree dated 15.03.2011 passed in A.S. No.35 of 2010 on the file of the Sub Court, Kovilpatti reversing the judgment and decree, dated 27.01.2010 passed in O.S.No.86 of 2008, on the file of the District Munsif Court, Kovilpatti.

For Appellant : Mr.V.Meenakshi Sundaram
for Mr.D. Nallathambi

For Respondents :

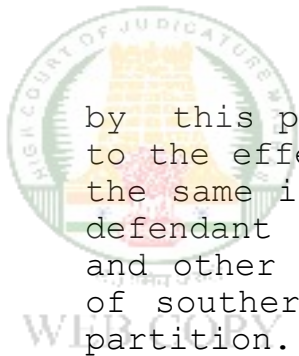
No.1 : Mr.S.Pon Senthil Kumaran

No.2 : Mr. G. Suriyananth
Additional Government Pleader

JUDGMENT

This second appeal has been filed to set aside the judgement and decree, dated 15.03.2011 in A.S. No.35 of 2010 on the file of the Sub Court, Kovilpatti reversing the judgment and decree dated 27.01.2010 passed in O.S. No.86 of 2008 on the file of the District Munsif Court, Kovilpatti by raising various grounds.

2. The learned counsel for the appellant would submit that it is an admitted case of the defendant that there is no right over the property or he is no way connected with the property in S. No.596/1C and the approach of the first appellate Court in not giving any relief to the appellant is not correct since the first respondent had categorically admitted that there is no right over the property is incorrect. Further, the plaintiff has not proved the oral partition by herself and the first defendant is not correct in stating that the first defendant had specifically admitted the oral partition in her written statement in para no. 7. The trial Court had misinterpreted the patta No. 216(ExA.2) dated 28.12.1995 produced



by this plaintiff ought not to have relied on the evidence of DW.1 to the effect that there is no evidence regarding oral petition and the same is against her own pleadings in the written statement. The defendant accepted the oral partition between herself, plaintiff and other sisters. The burden of proof to prove that the allotment of southern side 48 cents of suit properties to her in the above partition. In the absence of any evidence, the court ought not have considered the same. The first defendant, who admitted that the patta No.216 under the UDR scheme stand in the name of the plaintiff alone and relating to the first and second items of the suit property and if the defendant has got any grievance she has to approach the RDO by filing appropriate revenue appeal and she cannot file a petition before the second respondent and further order passed by the second respondent including the name of the first respondent is without jurisdiction. The findings of the lower appellate Court is incorrect and further submitted that independent of PW2 regarding the possession and enjoyment of first and second item of the suit property ought to have been considered by the Court below and when the plaintiff has proved the title and possession by appropriate documents, the Court ought not to have considered the case of the defendants and reversed the judgement. The plaintiff further submitted that the suit scheduled property in S. No.592/1A is to an extent of 0.09.0 Hectare, S. No.592/1B to an extent of 0.30.0 Hectare and S. No.596/1C is to an extent of 0.95.0 Hectare.

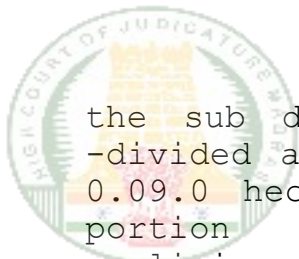
3. The plaintiff filed a suit for declaration of title, consequential permanent injunction directing the second respondent to restore the Patta No.216 in the name of the plaintiff. The trial Court decreed the suit in its entirety on 27.01.2010. Aggrieved by the same, an appeal was filed by the defendant and the appellate court has found that plaintiff has alienated the suit 3rd item to one Essakki Pandian and he is not entitled to get any relief in respect of the third suit item but when the plaintiff has sold his part to one third party he has to safeguard the interest of the said purchaser as he is entitled for declaration. The trial court was of the view that as per the registered partition deed dated 13.11.1970 (Ex.A.1) suit property was shown as 5th schedule and the same was allotted to the branch of the plaintiff and the first defendant. Further, the trial Court found that the 1st defendant had attempted to make mutations in the revenue records before the second defendant who is having no jurisdiction to entertain the application under the UDR scheme. Oral partition was accepted by the parties in the pleadings and the subsequent mutation is in the name of the plaintiff. The plaintiff alienated the 3rd schedule (596/1C) in favour of one Esakki Pandian and in the written statement (para 11) the first defendant admitted that she is in no way related with S.No.596/1C was not all considered by the appellate Court and had dismissed the suit for



declaration, permanent injunction and mandatory injunction. Aggrieved by the same, the plaintiff has filed second appeal before this Court.

4. When the matter is taken up it was pointed out by the parties concerned that after registration of the partition properties were allotted to each branch by partition deed dated 13.11.1970. There was also oral partition in the branch of the plaintiff and the suit schedule property had been allotted to the share of the plaintiff and she obtained separate patts in patta No.216. The first defendant has objected for the same that there was an oral partition but in S.No.592/1 measuring 96 cents was orally partitioned between the plaintiff and the first defendant at 48 cents each and northern side was allotted to the plaintiff and the southern side of 48 cents was allotted to the defendants in S.No.592/1. As the defendant said to have a portion of southern side 48 cents in favour of his son Navaneetha Krishnan by a settlement deed dated 13.09.2007 and the survey No. 592/1A and 592/1B given under the UDR scheme and the S.No.592/1A measuring 0.09.0 hectare (22.2 cents) is denoting the western side pathway and remaining eastern side portion 0.30.0 hectare (74.1 cents) is S.No.592/1B. Further the suit third item S.No.596/1C measuring 0.95.5 hectares, which belongs to the plaintiff and she has got no connection or relation with the said properties and the appellate Court has dismissed the suit in respect of the third item. This Court is of the view that the appellate court ought to have considered the said submission and orders to have been rendered and in view of the plaintiff selling the property to one third party the Court has to settle the issue between the vendor and the purchaser and also justice to the purchaser ought to have considered and pass orders. The appellant is duty bound to safeguard the interest of the purchaser and the same has also been reiterated in the written statement and the Court ought to have considered the same while decreeing the suit. As no such act has been done by the appellate Court in respect of suit third item in S.No.596/1C measuring 0.95.0 hectare had allowed in favour of the plaintiff. Regarding the first and second item, wherein the plaintiff has sought for declaration in S.No.592/1A to an extent of 0.09.0 hectare which has already been sub divided into 1A and 1 B. The oral partition was admitted by both the parties which has taken place in the year 1980. The plaintiff and the defendant have pleaded the same in the written statement. When there is an oral partition between the parties the courts ought to have moulded the relief under Order 7 Rule 7 of the Code of Civil Procedure by granting lesser relief of partition of northern side 48 cents to the plaintiff and southern side 48 cents to the first defendant that would have solved the entire issues.

5. This Court is inclined to pass a preliminary decree of partition in S.No.592/1 between the plaintiff and the first defendant by allotting 48 cents in the northern side and southern side 48 cents to the first defendant /first respondent. Regarding



the sub divisions made S. No.592/1 measuring 96 cents was sub-divided as S. No.592/1A denoted a western side pathway measuring 0.09.0 hectare approximately equal to 22.2 cents and remaining portion as survey No.592/1B. The Court is inclined to pass a preliminary decree for partition on the northern side 48 cents in survey No.592/1 in favour of this appellant and the southern side 48 cents in S.No.592/1 in favour of the first respondent/first respondent and the parties to file appropriate division by a competent Advocate Commissioner at the time of passing final decree proceedings.

6. As far this issue is concerned, this Court is inclined to pass preliminary decree of partition allotting 48 cents in northern portion in S.No.592/1 in favour of the appellant /plaintiff and southern side 48 cents in S.No.592/1 in favour of the first defendant /first defendant . Both the parties are at liberty to proceed for final decree application to effect actual partition and sub division and thereafter they are at liberty to mutate their names in the revenue records in their favour. Regarding the pathway that will be decided in the final decree application

7. The second appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

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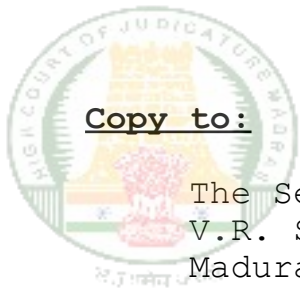
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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, Kovilpatti.
2. The District Munsif, Kovilpatti.
3. THE TAHSILDAR
TAHSILDHAR OFFICE,
NEAR TO ALL WOMEN POLICE STATION,
KOVILPATTI TOWN, TUTICORIN DISTRICT.



Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies

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+1 CC to M/s.S.PONSENTHILKUMARAN, Advocate (SR-38703[F]
dated 14/12/2021)

+1 CC to M/s.SPL GP (SR-38606[F] dated 14/12/2021)

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TP (CO)

GC (20.01.2022) 5P 8C