



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.242 of 2013

Marappa Gounder

... Appellant / Respondent / Plaintiff

-Vs-

1.Muthusamy

2.Munusamy

... Respondents / Appellants / Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to call for records in pursuant to the decree and judgment passed by the learned Principal Sub-Judge, Karur, dated 24.09.2012 made in A.S.No.31 of 2011, reversing the decree and judgment made in O.S.No.458 of 2007, dated 14.12.2010 on the file of the Additional District Munsif, Karur and set aside the same by allowing this Second Appeal.

For Appellant : Mr.Madhavan

for Mr.M.Karthikeya Venkitachalapathy

For R1

: Mr.R.Vijayakumar

for Mr.S.Gokul Raj

For R2

: Mr.Raguvaran Gopalan

JUDGMENT

The plaintiff in O.S.No.458 of 2007 on the file of the Additional District Munsif, Karur, is the appellant in this second appeal.

2. The suit was filed for the relief of partition. The case of the appellant is that the suit property measuring an extent of 10 acres and 82 cents in Survey No.914 in Punnam Village, Aravakurichi Taluk, belonged to one Kaliyanna Gounder / father of the first defendant Muthusamy.

3. According to the plaintiff, his grandfather had purchased 1 acre and 80 cents in the suit property vide Ex.A1 dated 02.10.1916 and Ex.A2 dated 07.05.1918. The revenue records reflect the names of the parties jointly. Seeking partition, he filed the said suit. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A13. The first defendant Muthusamy examined himself as D.W.1. Ex.B1 to Ex.B3 were marked. An advocate commissioner was appointed and he was examined as D.W.2. His reports and plans were marked as witness exhibits 1 to 4. After a consideration of the evidence on record, the trial Court by judgment and decree dated 14.12.2010 granted preliminary decree allotting 1/6th share in favour of the plaintiff in the suit property. Aggrieved by the same, the defendants filed A.S.No.31 of 2011 before the Principal Sub Court, Karur. By



judgment and decree dated 24.09.2012, the decision of the trial Court was reversed and the suit was dismissed and the appeal was allowed. Challenging the same, this second appeal came to be filed.

4. The second appeal was admitted on the following substantial questions of law:-

"(a) Whether the lower appellate Court failed to note that when mutation on ground and in the revenue registry not having been done so far the proper inferences taken by trial Court that there had been no partition so far ought not to have been disturbed unless by definite contra evidence?

(b) Whether the lower appellate Court failed to note that the defendants have not clearly stated that there was at least oral partition on a definite date or period being pleaded and that therefore the cause for demand for partition cannot be escheated ?"

5. Heard the learned counsel on either side.

6. The learned counsel appearing for the appellant submitted that the appellant had earlier filed O.S.No.748 of 2005 seeking the relief of mandatory injunction for removing the obstruction caused by the defendants in the pathway that is running across the suit property. The suit was originally decreed. But it was reversed in A.S.No.34 of 2007. The first appellate Court had taken the view that the plaintiff must pray for the relief of partition and that he erred in seeking eastmentary right alone.

7. According to the appellant's counsel, the present suit was filed in terms of the observations made in A.S.No.34 of 2007 (Ex.A7 & Ex.A8). The first appellate Court erred in invoking Order 2 Rule 2 and the principle of *res judicata* for reversing the judgment of the trial Court and non-suiting him in *toto*. He called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the judgment and decree passed by the appellate Court and restore the decision of the trial Court.

8. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not warrant any interference.

9. I carefully considered the rival contentions and went through the evidence on record. As rightly pointed out by the learned counsel appearing for the respondents, the appellant is tracing his title through Ex.A1 and Ex.A2 which are dated 02.10.1916 and 07.05.1918.

10. The learned counsel appearing for the respondents also took me through the evidence of P.W.1. In the cross examination, the appellant had categorically admitted that he is in separate and



exclusive enjoyment of 1 acre and 80 cents in the suit property. He also conceded that the defendants are the owners of the remaining extent of the suit property. Virtually, the appellant had admitted that the suit property had already been partitioned and that the parties are enjoying separately and not in common. I wanted to know if the respondents will have any objection for issuing separate patta in favour of the appellant in respect of the property which he is now enjoying.

11. The learned counsel appearing for the respondents, on instructions, submitted that the respondents would not have any objection.

12. Recording the said submission made by the learned counsel for the respondents, the judgment and decree passed by the first appellate Court is confirmed. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal Sub-Judge, Karur.

2. The Additional District Munsif, Karur.

Copy to

The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-27459[F] dated 26/08/2021)

+1 CC to M/s.S.MADHAVAN, Advocate (SR-27717[F] dated 31/08/2021)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-27612[F] dated 31/08/2021)

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26.08.2021

DJ(CO)

KB(17.11.2021) 3P 8C

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