



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) .No.732 of 2013

WEB COPY

Ramasamy Karayalar

... Appellant/Respondent/
Plaintiff

Vs

Sudalai @ Chellakutti Karayalar

... Respondent/Appellant
Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the reversing Judgement and Decree passed in A.S.No.67 of 2011 on the file of the Additional District Judge Cum Fast Track Court No.II, Thoothukudi dated 19.10.2011 filed against the Judgement and Decree in O.S.No.206 of 2008 on the file of the District Munsif Srivaikuntam dated 29.06.2010.

For Appellant : Mr.Gangai Amaran

For Respondents : No appearance

J U D G M E N T

The plaintiff in O.S.No.206 of 2008 on the file of the learned District Munsif, Srivaikuntam, is the appellant in this Second Appeal. The plaintiff filed a suit against his brother Sudalai.

2. According to the plaintiff, the suit 'A' Schedule properties are the ancestral properties of the parties. The second schedule property was purchased by the plaintiff out of his own earnings vide Ex.A3 dated 16.07.1979. Muthaiya Karayalar, the father of the parties passed away in the year 1969, without writing any Will. The specific stand of the plaintiff is that the mother and sister have relinquished their share in the properties. The plaintiff filed the said suit seeking allotment of his half share in the 'A' Schedule property and for permanent injunction in respect of 'B' Schedule property.

3. The defendant filed written statement controverting the plaintiff's averments. The plaintiff examined himself as P.W.1 and one Arumugam was examined as P.W.2 and Exs. A1 to A10 were marked. The defendant examined himself as DW1 and two other witnesses were also examined and Exs.B1 to B7 were marked.

4. After a consideration of the evidence on record, the trial Court vide judgment and decree dated 29.06.2010 granted preliminary decree allotting half share in schedule 'A' property. As regards schedule 'B' property, the defendant was restrained from interfering with the plaintiff's possession and enjoyment. Aggrieved by the



same, the defendant filed A.S.No.67 of 2011 before the learned Additional District Judge, Devakottai. By the impugned judgment and decree dated 19.10.2011, the appeal was allowed and the suit was dismissed. Questioning the same, the Second Appeal came to be filed.

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

(i) Whether the First Appellate Court is right in dismissing the suit for partition on the ground of non-joinder parties and for partial partition?

(ii) Whether the oral relinquishment of mother and sister pleaded by the appellant/plaintiff is true and valid?

(iii) Whether the oral partition pleaded by the respondent/defendant in the written statement, is true and valid?

(iv) Whether the First Appellate Court is right in dismissing the suit in property described in the second schedule as joint family property?

6. Heard the learned counsel appearing for the appellant. Though the respondent was served through Court notice on 20.12.2013, he has not chosen to enter appearance through counsel. His name is printed in the cause list.

7. The learned counsel appearing for the appellant reiterated all the contentions set out in the affidavit and wanted to answer the substantial questions of law in favour of the appellant and allow this appeal by restoring the judgment and decree passed by the trial Court.

8. Since, there is no representation on the side of the respondent, I independently scrutinized the evidence on record.

9. The specific case of the appellant is that the suit items set out in schedule 'A' are the joint family properties. It is seen that there was a partition between the father of the parties herein namely Muthaiya Karailayar and his brother Perumal Karaiyur and items 1 and 2 of 'A' Schedule were allotted to the father of the parties vide Ex.A1 on 01.11.1950. By marking Ex.A4 dated 09.06.1980 and Ex.A5 dated 19.08.1983, the plaintiff has shown that the 'A' Schedule properties are the joint family properties and amenable to partition. As regards schedule 'B' property, it was sold by one Subbaiya Kariyalar vide sale deed dated 06.11.1963 (Ex.A2) in favour of Sundara Konar and Sundara Konar sold the same in favour of the plaintiff vide sale deed dated 16.07.1977 (Ex.A3). It is true that Ex.A5 shows that the properties stood in the joint names of the plaintiff and the defendant. But this entry in Ex.A5 cannot take away the character of the property as the absolute property of the



plaintiff. Ex.A3 sale deed was executed by Sundara Konar only in favour of the plaintiff. The defendant does not figure in the said sale deed. Ex.A5 will not confer any right in favour of the defendant. Therefore, the trial Court rightly granted the relief of permanent injunction in favour of the plaintiff in respect of 'B' Schedule property and partition in respect of 'A' Schedule properties.

10. The First Appellate Court allowed the appeal only on two grounds. The first ground is that the suit suffers from partial partition. From a mere reading of evidence on record that has been referred to in paragraph No.15 of the trial Court judgment, one can notice that even though such a stand was taken by the defendants, the details have not been placed. If there are other properties that belong to the joint family, then the relevant documents should have been marked. But, no such document has been marked. No details have been furnished. Therefore, the finding of the first appellate court that the suit suffers from partial partition has to be necessarily interfered with.

11. The first appellate court had also non-suited the plaintiff for not impleading the mother and sister. Again this finding has to be set aside on the ground that the appellant had pleaded that the mother as well as the sister have relinquished their share in the suit property and that the contest is only between the plaintiff and the defendant. If this statement was false, the defendant would have filed a petition for impleading the mother and the sister. It is stated that the mother and sister are also residing in the very same village. When a partition case is going on between the sons, the mother would be in the know of things. The sister had also not chosen to file an application for impleading herself in the suit proceedings. The plaintiff contends that they have given up their rights in the suit properties. Therefore, the finding of the first appellate court that the suit suffers from non joinder of necessary parties is also incorrect. I answer all the substantial questions of law in favour of the appellant and judgment and decree of the first appellate Court are set aside and the decision of the trial Court is restored.

12. Accordingly, this Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To:

1.The District Munsif Srivaikuntam.

2.The Additional District Judge Cum Fast Track Court No.II,
Thoothukudi

Copy to:

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

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MGJ/PM(17.11.2021) 4P 5C