



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.121 of 2021 and
CMP(MD) No.1941 of 2021

1.Savarimuthu
2.Jeevankumar

..Appellants/Appellants/
Defendants 1 to 5

Vs.

1.Adaikalamarry

..1st Respondent/1st Respondent/
Plaintiff

2.Anthonymmal

3.Natchathiram

4.Arockiyasamy

5.Justin Thiraviyam

..Respondents 2 to 5/
Respondents 2 to 5/
Defendants 2 to 4,6

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the decree and judgment in A.S.No.34 of 2018, on the file of the Subordinate Court, Devakottai, dated 23.11.2020, confirming the judgment and decree passed in O.S.No.93 of 2013, on the file of the District Munsif Court, Devakottai, dated 24.04.2018.

For Appellant : Mr.C.Jeyaprakash

J U D G M E N T

The defendants 1 & 5 in O.S.No.93 of 2013, on the file of the District Munsif Court, Devakottai are the appellants. They are aggrieved by the judgment and decree of the Appellate Court, which confirms the decree for partition and separate possession of the plaintiff's 1/4th share in certain items of suit properties, granted by the trial Court in O.S.No.93 of 2013.

2.The plaintiff sued for partition and separate possession of her 1/4th share, contending that the suit properties consisting 8 items belonged to the father of the plaintiff and defendants 1 to 3, namely Sebasthi Udayar, who died intestate, the plaintiff sought for partition. It was also pleaded that the wife of Sebasthi Udayar, namely, Sengol Ammal, mother of the plaintiff predeceased her husband.



3.The suit was resisted by the defendants contending that the Sebasthi Udayar had executed a Settlement Deed dated 28.04.1989, settling some of the suit properties in favour of the first defendant and some of the properties, belong to the first defendant. It was also pleaded that there was a mistake in the settlement deed dated 28.04.1989, in respect of two items of properties, situated in Survey No.300/2 and 308/2. According to the first defendant, what was intended to be settled was 300/2 & 308/2, but the survey number was wrongly mentioned 200/2.

4.At trial, the plaintiff examined herself as PW 1 and one Santhanam was examined as PW 2. Exs.A1 to A5 were marked. The second defendant, who supported the case of the plaintiff was examined as DW 1. The first defendant was examined as DW 2. Jeevankumar alias Stephen Selvakumar was examined as DW 3. Exs.B1 to B3 were marked.

5.The learned trial judge, upon consideration of the evidence of record, rejected the plea of mistake raised by the first defendant. It also concluded that the first defendant would be entitled to the properties covered by the Settlement Deed, dated 28.04.1989, executed by Sebasthi Udayar, in his favour. On the above conclusions, the learned trial Judge, while granting a decree in respect of Items 1,3,4 in 'A' schedule properties and Item 1 in 'B' Schedule properties dismissed the suit, in respect of the other items. The plaintiff did not challenge the said decree.

6.The first and fifth defendants filed an appeal in A.S.No.34 of 2018. The Appellate Court, on re-appreciation of the evidence, concurred with the finding of the trial Court and dismissed the Appeal. Hence, this Second Appeal.

7.I have heard Mr.C.Jeyaprakash, the learned counsel appearing for the appellant. Mr.Jeyaprakash, the learned counsel appearing for appellant would vehemently contend that the Courts below were not right in rejecting the plea of mistake in the Survey number of the suit item 3 in 'A' schedule properties and 1st item in 'B' Schedule properties. He would claim that the boundaries and extent being the same, the Courts below must have accepted the plea of mistake raised by him.

8.I am unable to countenance the submissions of the learned counsel for the appellant. The title of Sebasthi Udayar to the suit properties is admitted by the parties. The first defendant would claim that Sebasthi Udayar had executed a Settlement Deed, which was marked as Ex.B.1, in respect of some of the suit properties in his favour. Therefore, he is the absolute



owner of the properties. He would also raise a plea of mistake. The plea of mistake that is projected by the first defendant has to be established by him. There is a total lack of evidence for the said plea of mistake. The Courts below have found that the plaintiff has not established the plea of mistake and the boundary description as well as the extent of the properties in Item 3 of 'A' schedule property and Item 1 of 'B' schedule property is different from what has been described in the Settlement Deed and therefore, it cannot be concluded that the predecessor in interest, namely Sebasthi Udayar had settled item 3 in 'A' schedule property and Item 1 in 'B' schedule property in favour of the first defendant along with other properties.

9.Once, such conclusion is reached on facts, I do not think that sitting in Second Appeal, I can disturb the factual findings of the Courts below, in the absence of perversity. Despite his best efforts, the learned counsel appearing for the appellant is unable to demonstrate that the findings suffered from perversity or it could be termed as bad for want of consideration of any available material.

10.Despite his best efforts, the learned counsel for the appellant is unable to make out any question of law, much less a substantial question of law in this appeal. Accordingly, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar (CS)

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To

1.The Judge,
Subordinate Court, Devakottai.

2.The District Munsif, Devakottai



3.The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

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Judgment made in
S.A. (MD)No.121 of 2021 and
CMP (MD) No.1941 of 2021
Dated 09.03.2021

KM(20.05.2021) 4P 5C