



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A (MD) No.709 of 2020 and

C.M.P (MD) No.7286 of 2020

1.Rajaboopathy
2.Kannan
3.Asokan

.. Appellants / Appellants 1 to 3/
Defendants 8, 10 and 11

Vs.

1. Kanaga
2. Shanmugaraj
3. Arirajan
4. Veni
5. Amutha
6. Moorthy
7. Prabhu
8. Radha
9. Muthunachiyar
10. Susila
11. Thillainayagi
12. Selvakumar

.. 1st Respondent / 1st Respondent/ Plaintiff

.. Respondents 2 to 12/ Respondents 2 to 12/
Defendants 1 to 6, 9 and 14 to 17

13. Naganatha Sethupathi
14. Malaiyarasu

.. Respondents 13 and 14 / Appellants
4 and 5/ Defendants 12 and 13

Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree made in O.S.No.75 of 2014 on the file of the District Munsif Court, Paramakudi, dated 06.12.2018 confirmed in Judgment and Decree made in A.S.No.06.2019 on the file of the Sub Court, Paramakudi, dated 19.11.2019.

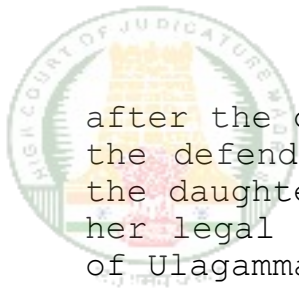
For Appellants : Mr.P.R. Prithiviraj

For 1st respondent : Mr. D.Sasikumar

JUDGMENT

The appellants, who are the defendants 8, 10 and 11 in O.S.No.75 of 2014, on the file of the District Munsif Court, Paramakudi, have come up with this Second Appeal challenging the decree for partition, which was concurrently granted by the Courts below in favour of the first respondent / plaintiff declaring that she got 1/8th share in the suit properties.

2. The suit was filed by the first respondent herein claiming 1/8th share contending that Item Nos.1 and 2 of the suit properties were purchased by her mother viz., Ulagammal in the year 1954 and the Item Nos. 3 and 4 belonged to the mother ancestrally. It is also pleaded that Ulagammal married one Chella Thevar and she had four children out of the said marriage. The said Ulagammal



after the death of Chella Thevar, married one Venguchamy Thevar and the defendants 8 to 11 were born out of the said marriage. One of the daughters of Ulagammal and Chellathevar viz., Ponnuthai died and her legal heirs were impleaded as defendants 2 to 6. On the death of Ulagammal, she claimed 1/8th share in the suit properties.

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3. The defendants 1,2,4 and 7 filed written statement claiming that they are also entitled to the share in the suit properties. The defendants 8, 10 and 11 filed separate written statement contending that Ulagammal was entitled to only ½ share in the Item No. 1 of the suit property. It was further claimed that Ulagammal herself during her life time partitioned the properties in favour of the children of two husbands.

4. In the above said partition, Item Nos.1 and 2 were allotted to the children born through the second husband viz., Venguchamy Thevar and the Item Nos.3 and 4 were allotted to the children born through Chella Thevar. It is their further contention that after the death of Ulagammal, there was an agreement between the parties to continue to enjoy the properties as per the allotments made by Ulagammal. Certain statements made by the defendants, after the death of Ulagammal were also cited as proof of the partition.

5. At trial, the plaintiff was examined as PW.1 and Exs.A1 to A7 were marked. The 8th defendant was examined as DW.1; 12th defendant was examined as DW.2; 1st defendant was examined as DW.3 and 7th defendant was examined as DW.4 and Exs.B1 to B8 were marked.

6. During trial, the 8th defendant introduced a Will dated 29.01.1991, said to have been executed by Ulagammal bequeathing her ½ share in the first item to him absolutely and the said Will was marked as Ex.B5. Apart from the Will, Exs.B1 to B4, B6 to B8 were also marked. Exs. B4 and B6 are revenue records and the Exs.B7 and B8 are sale deeds executed by the 8th defendant.

7. The trial Court upon the consideration of the evidence on record concluded that the 8th defendant has miserably failed to prove the Will by examining any one of the attesting witnesses. The absence of plea regarding the existence of the Will in the written statement filed by the 8th defendant has also been taken as a ground by the Trial Court to disbelieve the Will. The oral partition set up by the 8th defendant was also disbelieved, in view of the finding in earlier suit filed by the 9th defendant, in the present suit. On the above conclusion, the trial Court decreed the suit in respect of ½ share in the item No. 1 and in the item Nos. 2 to 4 granting 1/8th share to the plaintiff. Aggrieved, the defendants 8, 10 and 11 preferred an appeal in A.S.No. 6 of 2019 and the plaintiff preferred a cross objection. The lower appellate Court upon the reconsideration of the evidence on record agreed with the findings of the trial Court and dismissed the appeal. Hence,



the Second Appeal.

8. I have heard Mr. Prithivi Raj learned counsel appearing for the appellants.

9. The learned counsel appearing for the appellants would vehemently contend that the Courts below were not right in disbelieving the claim of the oral partition. He has also pointed out that the revenue records has been mutated in the name of the 8th defendant and therefore, the Courts below should have accepted the oral partition.

10. The Courts below have considered the revenue records as well as finding of the trial Court in the previous suit in O.S.No.60 of 2014 and reached the conclusion that the oral partition pleaded by the appellants has not been established. In the absence of any other supporting evidence, mutation of revenue records in the name of the sharers cannot constitute sufficient evidence to establish the oral partition. The lower Appellate Court also considered the evidence and accepted the findings of the trial Court. Despite his best efforts, the learned counsel appearing for the appellants is unable to demonstrate that the factual findings of the Courts below are perverse. He is unable to point out any questions of law, much less a substantial question of law in this appeal.

11. Accordingly, this Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The District Munsif Court, Paramakudi,

2. The Sub Court, Paramakudi.

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