



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.424 of 2014

and

M.P.(MD)No.1 of 2015

R.Kondalsamy

... Appellant/Appellant/Plaintiff

-Vs-

Raju Naidu(Died)

1.R.Kannan

2.V.Lakshmi

3.K.Panchavarnam

... 1 to 3 Respondents/1 to3 Respondents /
2 to 4 Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.02.2014 passed in A.S.No.153 of 2008 on the file of the 1st Additional Sub Court, Madurai, confirming the judgment and decree dated 29.07.2008 passed in O.S.No.816 of 2004 on the file of the Additional District Munsif Court, Madurai Town.

For Appellants	: Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi
For R1 & R2	: exparte
For R3	: Mr.T.C.S.Thillainayagam

JUDGMENT

The plaintiff in O.S.No.816 of 2004 on the file of the Additional District Munsif Court, Madurai Town is the appellant in this second appeal.

2. The plaintiff filed the said suit seeking the relief of partition. The defendants in the suit were none other than the father of the plaintiff, brother and sister. During the pendency of the suit, the suit property was alienated by the plaintiff's father / D1 in favour of the fourth defendant. It is not in dispute that the suit land belonged to the paternal grand mother of the plaintiff and she settled the same in favour of the first defendant vide Ex.A1 dated 25.06.1963.

3. The case of the plaintiff is that on the said land, a superstructure was erected, for which, the plaintiff also substantially contributed. The stand of the plaintiff is that the first defendant by his conduct had thrown the suit property into



common hotchpot; therefore, the suit property became amenable for partition. The said claim was contested by the plaintiff's father. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and one Kasinathan as P.W.2. Ex.A1 to Ex.A21 were marked. During the pendency of the suit, the plaintiff's father Raju Naidu passed away. The plaintiff's brother R.Kannan examined himself as D.W.1 and the alinee was examined as D.W.2. Ex.B1 to Ex.B9 were marked. An advocate commissioner was appointed and he submitted his report and sketch. They were marked as Court Ex.1 and Ex.2. After consideration of the evidence on record, the trial Court gave a categorical finding that the suit property cannot be considered as joint family property and dismissed the suit vide judgment and decree dated 29.07.2008. The plaintiff filed A.S.No.153 of 2008 before the first Additional Sub Court, Madurai. The first additional Sub Court also dismissed the appeal vide judgment and decree dated 24.02.2014. Challenging the same, the second appeal came to be filed.

4. Though the second appeal was admitted by framing substantial questions of law, I am of the view that no substantial question of law really arises for consideration. The land on which superstructures have been erected belonged to the plaintiff's grand mother. It was the plaintiff's grand mother who settled the property in favour of the plaintiff's father. Though the plaintiff referred to Ex.A2 and Ex.A3 in support of his contention that the suit property had been treated as joint family property, the Courts below have concurrently rendered findings against the plaintiff. Pure questions of fact are involved. No substantial question of law really arises for consideration. I do not find any merit in the second appeal. The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The 1st Additional Sub Court,
Madurai.

2.The Additional District Munsif Court,
Madurai Town.

<https://hcservices.ecourts.gov.in/hcservices/>



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

+1CC to MR.T.C.S.THILLAINAYAGAM, ADVOCATE, SR.NO.25446
DATED:06.08.2021

S.A.(MD)No.424 of 2014
and
M.P.(MD)No.1 of 2015
04.08.2021

GC (27.08.2021) /3P/6C