



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A(MD)No.295 of 2016

and C.M.P (MD)No.3583 of 2016

P.Manickam

... Appellant/Respondent/Plaintiff

-vs-

1.Annamalai

2.Periannan

3.Annamalai

...Respondents/Appellants/Defendants

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the lower appellate court dated 29.08.2013 passed in A.S.No. 9 of 2012 on the file of the Principal District Judge, Pudukkottai, reversing the judgment and decree of the trial court dated 07.08.2012 passed in O.S.No.103 of 2007 on the file of the Subordinate Judge, Pudukkottai.

For Appellant : Mr.P.Vinoth
for Mr.M.Saravanan
For R1 and R3 : Mr.V.R.Shanmuganathan

J U D G M E N T

The plaintiff in O.S.No.103 of 2007, who was able to convince the trial court to grant a decree for injunction subject to certain obligations on his part upon reversal of the same on appeal in A.S.No.9 of 2012, has come up with this Second Appeal.

2. The plaintiff has filed the suit for injunction contending that the suit properties originally belonged to his forefather namely, Nagappa Chettiyar, who died leaving behind his two sons Annamalai and Raman Chettiyar. The said Annamalai had 3 sons by name Annamalai(1), Adaikalavan and Perumal. Annamalai(1) had two sons by name Annamalai (2) and Periyannan. Adaikalavan had a son by name Annamalai(3). Perumal's son Manickam is the plaintiff. While Annamalai(2), Periyannan and Annamalai(3) are the defendants. It is also claimed that Raman Chettiyar had the son by name Nagappan @ Perumal, who married one Sinthamani Aachi. The plaintiff would claim that Nagappan @ Perumal adopted him.

3. It is the further case of the plaintiff that his adoptive father Nagappan @ Perumal died in the year 1974 and thereafter he would inherit the property of Nagappan @ Perumal as his adopted son as well as the share of Perumal, son of Annamalai as the natural son of Perumal. It is the further case of the plaintiff that there was a partition in the year 1987 in which he was allotted the suit



properties. The suit 'B' schedule property was allotted to him as the adoptive son of Nagappan @ Perumal and Sinthamani Aachi. On the above contentions, the plaintiff sought for a permanent injunction.

4. The suit was resisted by the defendants contending that the claim of the plaintiff that he was adopted by Nagappan @ Perumal is false. It was their further contention that there was no partition and the alleged oral partition set up by the plaintiff is false. The physical features of the property was also pointed out to dispute the claim of the plaintiff regarding the oral partition in the year 1987.

5. At trial, the plaintiff was examined himself as P.W.1 and the plaintiff's adoptive mother Sinthamani Aachi was examined as P.W.2. Exts.A1 to A22 were marked. The first defendant Annamalai was examined as D.W.1 and one Chellappan was examined as D.W.2 and Exs. B1 and B.2 were marked.

6. The trial court, upon consideration of the evidence on record, concluded that the partition stood proved since mutation of the revenue records had been effected and the plaintiff has been given patta under Exts.A1 and A2 for 'A' and 'B' schedule properties. The trial court has also concluded that in view of Exts.A5 and A6 and the evidence of P.W.2 adoption pleaded by the plaintiff has been proved in accordance with law. The learned trial Judge, however, found that the plaintiff has not shown the pathway leading to the property allotted to the defendants and based on the oral evidence found that there is a pathway on north of 'B' schedule property. On the said conclusion, the trial court has granted a decree for injunction excluding the portion of the property, which was shown to be a pathway.

7. Aggrieved, the defendants preferred an appeal in A.S.No.9 of 2012. The appellate court on a re-appreciation of evidence on record concluded that the oral partition has not been proved. The appellate court came to the said conclusion on the ground that the plaintiff has not produced any documents to establish that the properties were actually divided and the parties were put to be possession on their respective shares. The failure on the part of the plaintiff to show that the pathway that was reserved for the property that was according to the plaintiff allotted to the defendants was also taken into account by the lower Appellate Court to reject the claim of the plaintiff that there was a partition. Upon finding that the partition is not proved, the appellate court reversed the judgment and decree of the trial court and dismissed the suit. Aggrieved, the plaintiff has come up with this Second Appeal.

8. Notice of motion was ordered by this Court. Pursuant to the same, Mr.V.R.Shanmuganathan, learned counsel appears for the respondents.



9. I have heard Mr.P.Vinoth, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned counsel appearing for the respondents.

10. Mr.P.Vinoth, learned counsel appearing for the appellant would vehemently contend that the appellate court was not right in concluding that the plaintiff has not established the oral partition. Drawing my attention to Exts.A1 and A.2 the learned counsel would submit that the grant of patta for specific extent of property in favour of the plaintiff and his father would establish the partition that is said to have been taken place in the year 1996. Two facts militate the plaintiff's claim. Admittedly, the plaintiff's natural father died in the year 1973. The partition is said to have been taken place in the year 1987. If the claim of the plaintiff that the partition had taken place in the year 1987, patta for 'A' schedule property should have been issued to the plaintiff. But a perusal of Ex.A.1 Natham patta shows that it has been issued to the plaintiff's father, who was admittedly no more at that point of time. Plaintiff's adoptive mother Sinthamani Aachi was alive and she had executed a deed Ex.A.6 during the pendency of the suit affirming the adoption made by her. Section 16 of the Hindu Adoption and Maintenance Act creates a presumption in respect of a registered instrument which records an adoption. Therefore, adoption stands proved, but the prayer of the plaintiff is for injunction. The plaintiff could succeed if he has proved the oral partition. Exs.A1 and A2 are pattas granted to the plaintiff and his father in respect of 'A' and 'B' schedule properties. But the grant of patta alone cannot be considered as the complete proof of a oral partition as claimed by the plaintiff. No doubt, certain demand notices issued to the mother of the plaintiff have been produced. Those demand notices by themselves would not constitute adequate proof of a oral partition. More over, the provision of Section 12 of the Hindu Adoption and Maintenance Act will also have a bearing on the right claimed by the plaintiff to the property of his natural father. No doubt, the appellate court has not gone into the correctness of the claim of the plaintiff regarding adoption. The appellate court has come to the factual conclusion that the claim of oral partition pleaded by the plaintiff has not been established. The only evidence that is available regarding the oral partition is the pattas granted under Exts.A1 and A2. As already pointed out these pattas by themselves cannot be considered as evidence of a complete partition. As rightly pointed out by the appellate court, the failure on the part of the plaintiff to show the access available to the property that was allotted to the defendants under the oral partition in the plaint plan would create doubts on the *bonafides* of the plaintiff's case. In such circumstances, the appellate court was justified in concluding that the plaintiff has not established the oral partition as pleaded by him.

11. I do not find any error or perversity in the finding of the
<https://hcservices.eemts.gov.in/hcservices/> the appellate court. I also do not see any question



of law much less substantial question of law to enable me to entertain the appeal. Therefore, the appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Dismissal of the suit will not affect the right of the plaintiff to seek partition, if he is so advised.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To:

- 1.The Principal District Judge,
Pudukkottai.
- 2.The Subordinate Judge,
Pudukkottai.
- 3.The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-4146[F] dated 10/02/2021)

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MJ (CO)

KB (15.03.2021) 4P 6C