



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022
PRONOUNCED ON : 21.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.26 of 2016

(Through Video Conferencing)

Duraisamy ...Appellant / Defendant

Vs

Natarajan ...Respondent / Plaintiff

Prayer :- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated 17.04.2015, made in OS.No.59 of 2013, by the Principal District Judge, Salem.

For Appellant : Mr.Nalliyappan

For Respondent : No appearance

JUDGEMENT

This Appeal Suit has been filed, against the judgement and decree, dated 17.04.2015, made in O.S.No.59 of 2013, by the Principal District Judge, Salem.

2. For the sake of convenience, the parties are referred to as they are arrayed before the trial court.

3.The case of the Plaintiff, as set out, in the plaint is that the Defendant is the father of the Plaintiff. The suit property and other properties were allotted to the Plaintiff and the Defendant in a registered partition took place on 25.03.1987 between the defendant, his brother and his parents. Subsequently on 09.06.1988, the Plaintiff and the Defendant have entered into a registered partition, dividing the properties among themselves, which were allotted to them in the earlier partition. The suit property was not included in the subsequent partition since the suit property was left in possession of the parents of the Defendant for their sustenance. A Panchayat Muchalika was written and signed by all concerned to the effect that after the life of the grand parents of the Plaintiff, the



suit property shall be divided into two shares and the Plaintiff and Defendant shall take one share each. The grand father of the Plaintiff Subbaraya Gounder died about 9 years back and his grand mother Perumayee Ammal died on 28.02.2012 and therefore, the Defendant is in possession and enjoyment of the suit property. After the demise of the grand parents of the plaintiff, he demanded his father to divide the suit properties into two shares and allot one such divided share. However, the demand of the Plaintiff for partition of the suit properties was denied. The plaintiff is deemed to be in the joint and constructive possession of the suit property along with his father. Finally on 02.02.2013 the Plaintiff demanded the Defendant to effect partition of the suit property and it was flatly refused. Hence, the suit in O.S. No.59 of 2013 was filed on the file of the Principal District Judge, Salem, for partition to divide the suit property into two shares and allot one such divided share to the Plaintiff and put him in possession of the same.

4. The case of the Defendant, as set out in the written statement, is that the suit property was not rightly included in the subsequent partition in as much as it was the property of the mother of the Defendant, the same having been assigned to her by the State. The inclusion of the suit property in the deed of partition dated 25.03.1987 and allotment of it to the share of the Defendant in the said deed cannot, by any stretch imagination, impress it with the character of either ancestral property or the joint family property. The suit property has always been only the separate property of the Defendant's mother. The Panchayat Muchalika referred to in the plaint is a forgery and the defendant never signed any Panchayat Muchalika. As the defendant is in possession of the property, the Plaintiff is not entitled to any share in the suit property and the demand of partition is illegal. The partition between the Plaintiff and the Defendant took place on 09.06.1988. The Plaintiff himself knows well that the suit property was the separate property of Perumayee Ammal who is the mother of the defendant and that is why it was not included in the partition dated 09.06.1988 and after 25 years, the Plaintiff has filed this vexatious suit seeking for partition. The allegation that he is in joint and constructive possession of the suit property is false. The Plaintiff has filed this suit to grab the suit property which is absolutely belongs to this defendant. Hence, the suit is liable to be dismissed.

5. Based on the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the Plaintiff is entitled for partition in respect of the suit property?



2. If so, whether the Plaintiff is entitled to one such share by dividing the suit property in 2 equal shares?

3. What relief if any?

WEB COPY

6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A3 were marked and the plaintiff himself examined as PW.1 and one another was examined as PW.2. On the side of the Defendant, Ex.B1 to Ex.B4 were marked and DW.1 and DW.2 were examined. After due trial and perusing oral and documentary evidence, the Lower Court passed the Judgment dated 17.04.2015 in favour of the Plaintiff and accordingly the suit was decreed as prayed for. Being aggrieved by the Judgment and Decree dated 17.04.2015, the defendant has filed this present appeal suit.

7. The learned counsel for the Appellant has submitted that the appellant is the defendant in the suit and father of the respondent herein. On 25.03.1987. a registered partition deed was executed and this suit property was allotted to the appellant and the respondent. On 09.06.1988 the appellant and the respondent entered into a partition deed dated 09.06.1988 and divided the property which were allotted to them in the earlier partition. Since the suit property was the absolute property of the defendant's mother namely Perumayee Ammal, it was not included in the subsequent partition deed dated 09.06.1988. This suit property is not a ancestral property or Joint Family property. The appellant alone is in possession and enjoyment of the suit property. The respondent claiming the right over the property through unregistered Muchalika is illegal and unsustainable. Further, that Muchalika is a forged one and the Appellant never signed in that Muchalika. The Lower Court without appreciating the oral and documentary evidence came to wrong conclusion and decreed the suit. Hence prays for allow this Appeal.

8. The learned counsel would rely on the decisions in the case Arunagiri Vs. Ayyar Muthuraja and others passed by the Madurai Division Bench of this Court reported in 2014 (1) CTC 73 wherein it has been observed as follows:

"Hindu Succession Act, 1956 (30 of 1956), Sections 8 & 15- General Rules of Succession in case of male and female Hindus - Legal Heirs - Suit for partition - Maintainability of suit - Partition Suit filed by grandson seeking partition of properties acquired by his father from his grand father and grand mother - Suit property was allotted to Plaintiff's grand father and grandmother by registered partition Deed - Suit property is in nature of self-acquired property of plaintiff's grandfather - Plaintiff's grandfather



WEB COPY

and grandmother died intestate leaving behind their three sons/defendants 1 to 3 - Plaintiff, who is son of 1st defendant filed suit for partition seeking share in suit property - Locus standi of plaintiff to maintain suit for partition - Plaintiff/Grandson has locus standi to institute suit for partition and defendants 1 to 3 alone are legal heirs as per Hindu Succession Act.

9. The learned counsel would further rely on the decisions in the case 1.R. Deivanai Ammal (Died) 2. M.K. Ramalingam Vs. 1. G. Meenakshi Ammal 2. Sivasubramaniam 3. G. Ramasamy passed by this Court reported in 2005 (1) L.W. 343 wherein it has been observed as follows:

.....

"(ii) If the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

10. This Court heard the submissions of the learned counsel for the appellant and the learned counsel for the respondent has not chosen to appear before this Court.

11. In this case, P.W.1 had deposed that on 25.03.1987, the suit property was allotted to him and the defendant. On 09.06.1988, they entered into partition deed. The suit property was left to the possession of his grand parents for their maintenance. After the life of grand parents that suit property shall be divided into two shares and the plaintiff and the defendant shall take one share each after dividing between themselves. On 04.04.1989, a Muchalika was written and signed by his parents and Grand parents. In this case D.W.1 deposed that this suit property was allotted to her mother by State. In order to enjoy the property by him, the suit property was included in the partition Deed dated 25.03.1987. Hence it is not either ancestral property or Joint Family Property. Since it was included in the partition Deed dated 25.03.1987, which would not be a factor to erase the character of it as the self acquired property of Perumayee Ammal. The Panchayat Muchalika referred to in the plaint is a forged one and he never signed in the Panchayat Muchalika. He is in possession and enjoyment of suit property.

12. In this case, the plaintiff/respondent herein contended that the suit property was allotted to him and to his father on 25.03.1987 under registered partition deed dated 25.03.1987. Thereafter, it was not included in the subsequent Partition Deed



dated 09.06.1988 entered between him and his father. He further stated that the suit property was allotted to his grant parents for their maintenance. The Muchalika was written on 04.04.1989 and in that Muchalika, it was mentioned that after the life of grand parents of the plaintiff, the suit property shall be divided into two shares and the defendant shall take one share each. The defendant has refused to allot his share.

13. The case of the defendant/appellant herein is the property belongs to her mother. It is not a Joint Family Property or ancestral property. After the demise of his mother Perumayee Ammal. It was included in the Partition Deed dated 25.03.1987. Now, the defendant/appellant is in possession and enjoyment of the suit property property. The Muchalika dated 04.04.1989, is a forged one wherein the defendant/appellant never signed in the Muchalika.

14. A perusal of Muchalika dated 04.04.1989, it reveals that it is unregistered one. So, it is not legally valid document. However, it is admitted fact that the suit property was allotted to the plaintiff/respondent herein and the defendant/appellant herein in the partition deed dated 25.03.1987. Once the said property has been put into the common hotchpotch and treated it as Joint Family Property, now the defendant/appellant cannot claim as his separate property and refuse to allot the share to the plaintiff/respondent herein. Hence, the plaintiff/respondent herein is entitled for a share through the Partition Deed dated 25.03.1987. As far as the allotment of share is concerned, the Lower Court's Judgment and Decree is proper and sustainable. Therefore, no interference is warranted in this case. Hence, this appeal is liable to be dismissed. Accordingly, this appeal is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

Lbm

To

The Principal District Judge,
Salem

+1cc M/s.R.Nalliyappan, Advocate Sr.No.37140

A.S.No.26 of 2016

PMK (CO)
RVM(06/07/2022)