



THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
05-04-2022	06-06-2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

A.S.NO.908 OF 2012

AND

M.P.NO.1 OF 2012

1. Nagarajamma
2. Manjula
3. W.Sathyanarayana Reddy
4. Rama Devi
5. H.Sreenivasa Reddy

... Appellants/Defendants

Versus

1. Raja Reddy
2. Puttamma
3. Ramesh Reddy
4. Amurthamma
5. Bhagyamma

... Respondents/Plaintiffs

Appeal Suit is filed under Section 96 of the Civil Procedure Code against the Judgment and Decree passed in O.S.No.35 of 2009 dated 28.06.2012 on the file of the Additional District Judge, Krishnagiri.

For Appellants	:	Mr.K.Mohanamurali
For R1	:	Mr.G.Masilamani, Senior Advocate for Mr.Mukund R.Pandiyan
For R2 to R5	:	NA

JUDGMENT

The defendants 5 to 9 in O.S.No.35 of 2009 on the file of Additional District Judge, Krishnagiri, have come up with this appeal.



defendant on 19.07.2009 during which the 9th defendant, along with his men, attempted to trespass into the suit property. Therefore, the plaintiff has given a complaint on 19.07.2009 against the 9th defendant and his men. However, the police did not act upon the complaint given by the plaintiff, instead directed him to work out his grievance through the competent Civil Court. Therefore, the plaintiff has filed the present suit for partition and consequential permanent injunction restraining the 9th defendant from in any manner interfering with the possession and enjoyment of the suit property, enjoyed by the plaintiff.

5. On notice, the defendants 1 to 4 in the suit have filed a written statement supporting the claim of the plaintiff.

6. The contesting 7th defendant has filed a separate written statement denying the plaint averments. It is the case of the 7th defendant that Pilla Reddy, the father of the plaintiff, defendants 2, 3 and 4 has already partitioned the suit property and allotted one half share in favour of his only son Muni Reddy (deceased) born through his 1st wife. Therefore, if at all the plaintiff and the other defendants have any right, put together, they can claim only the remaining half share in the suit property. It is stated in the written statement of the 7th defendant that even during the life time of Pilla Reddy, he has orally divided the suit property and allotted one such share in favour of his son Muni Reddy (since deceased) born through his 1st wife. Pursuant to such oral partition, his son Muni Reddy (deceased) had taken possession of the half share allotted to him. While so, the said Muni Reddy died on 01.04.2004 leaving behind the 5th defendant (his wife) the 6th defendant (daughter) and 7th defendant (son) as his legal heirs. Therefore, the 7th defendant, being the son of late Muni Reddy is entitled to half a share in the suit property which was enjoyed by his father Muni Reddy during his life time. It is also stated that the 7th defendant is in possession and enjoyment of half a share in the suit property. On the strength of such possessory right, 7th defendant had executed two registered sale deeds registered as Document Nos.6126/2005 and 6127/2005 in favour of the 9th defendant and those sale deeds will bind the plaintiff and the other defendants 1 to 4 in all respects. Thus, it is the case of the 7th defendant that there was a partition of the suit properties by metes and bounds during the life time of Pilla Reddy. Therefore, the question of partitioning the suit property at the behest of the plaintiffs will not arise. Therefore, the 7th defendant prayed for dismissal of the suit filed for partition of the suit properties.



7. On the basis of the above averments, the trial Court framed the following issues:

1. Whether the suit properties were orally parted during the life time of late Pilla Reddy?
2. Whether the separate are the possession of the properties as per oral partition?
3. Whether the plaintiffs are entitled to 1/6th share as prayed for?
4. Whether the plaintiffs is entitled to a declared of partition and permanent injunction as per decree and judgment in the plaint?
5. To what relief if any the plaintiff is entitled?

8. With the above averments, the parties went for trial. During the course of trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A13 were marked. On behalf of the defendants, the 7th defendant examined himself as D.W.1. The 9th defendant was examined as D.W.4. One Nagaraj Reddy and Muniappa were examined as D.W.2. They have marked Exs.B1 to B3 in support of their defence.

9. The learned trial Judge on appreciation of the oral and documentary evidence has disbelieved the defence projected by the 7th defendant to the effect that already there was an oral partition even during the life time of Pilla Reddy by concluding that the 7th defendant has not filed any document to prove such a partition. Therefore, the trial Court has concluded that the suit properties have not been divided by metes and bounds. While disbelieving the oral and documentary evidence produced by the 7th defendant, the trial Court held that the plaintiff and the defendants 1-8 are entitled for a share in the suit property. As regards the sale deeds executed by the 7th defendant in favour of the 9th defendant, the trial Court has concluded that such a sale deeds will not bind the plaintiff in any manner. The trial Court also concluded that the documents filed on behalf of the defendants will not lend support to their defence in any manner. Accordingly, the trial Court concluded that the plaintiff is entitled to 1/6th share in the suit property and the defendants 1, 2, 3 and 4 are entitled to another 1/6th share each in the suit property. Accordingly, the trial Court passed a preliminary decree for partition and also a consequential decree for permanent injunction against the 9th defendant not to interfere with the peaceful possession and enjoyment of the suit property by the plaintiff till the properties are divided by metes and bounds.

10. Aggrieved by the decree and judgment passed by the trial Court, the defendants 5 to 9 are on appeal.



11. The learned counsel for the appellants would vehemently contend that the trial Court miserably failed to take note of the fact that even during the life time of late Pilla Reddy the land measuring 7.180 cents was handed over by him to his son Muni Reddy (deceased) born through his 1st wife. Pursuant to such oral partition Muni Reddy (deceased) has been in possession and enjoyment of half share of the suit property. Pilla Reddy died intestate on 06.03.1992 and from that date Muni Reddy (deceased) son born through his 1st wife, who is the father of the 7th defendant herein, has been in possession and enjoyment of the suit property absolutely. During those time the plaintiff as well as the defendants 1 to 4 remained silent without asserting any right over the suit property. Thus for more than a decade, Muni Reddy was in possession and enjoyment of the suit property and upon his death on 01.04.2004 7th defendant has been in enjoyment of the suit property by inheritance. On the strength of such right of inheritance the 7th defendant has executed two sale deeds in favour of the 9th defendant which were registered as Document Nos.6126/2005 and 6127/2005 both on the file of the Sub-Registrar, Hosur. Therefore, the plaintiffs having remained silent and allowing the 7th defendant to execute the sale deeds in favour of the 9th defendant are estopped from seeking the relief of partition and separate possession. The learned counsel has also submitted that pursuant to such sale deeds dated 12.07.2005 patta was also issued in favour of the 9th defendant. While so, the claim of the plaintiff for partition of 1/6th share cannot be sustained. The plaintiffs were fully aware of the sale transaction between the 7th defendant and the 9th defendant. However to harass the 7th defendant, the present suit has been filed. The learned trial Judge miserably failed to take note of the deposition of D.W.1 to D.W.4 as also Exs.B1 to B3 marked on behalf of the 7th defendant in the suit, rather, the documentary evidence on the side of the 7th defendant were grossly ignored. While so, the learned counsel for the appellants prayed for allowing the appeal.

12. Per Contra, the learned Senior Counsel for the plaintiff/1st respondent would vehemently contend that the defence of the 7th defendant is that Pilla Reddy, even during his life time has orally partitioned the suit property has not been proved in a manner known to law. When such a defence has been raised, it is for the 7th defendant to prove that there was an oral partition, pursuant to which, his son Muni Reddy (deceased) has been in possession and enjoyment of the suit property. Before the trial Court on behalf of the appellants/defendants 5 to 9 not even a scrap of document has been produced to show that there was an oral partition, pursuant to which Muni Reddy (deceased) and after his death the 7th defendant, were in possession of half share of the suit property. When such a



defense has been raised by the 7th defendant the burden is on the part of the 7th defendant to prove the factum of oral partition even during the life time of Pilla Reddy. In the present case, the 7th defendant has not produced any document to prove the same. Exs.B1 and B2 are the sale deeds executed by the 7th defendant in favour of the 9th defendant and Ex.B3-patta issued in favour of the 9th defendant. These documents produced by the defendants will not in any manner be a bar for the plaintiff to seek for partition. In fact, the 9th defendant was fully aware of the right title and interest of the plaintiff and his branch to seek for a partition. However taking advantage of the silence on the part of the plaintiff, the 7th defendant had executed the sale deeds under Exs.B1 to B3 in favour of Ex.B9. The trial Court on appreciation of the above facts has rightly held that the oral partition pleaded by the 7th defendant has not been proved in the manner known to law. The trial Court has also dealt with various other claims made by the defendants/appellants herein and rejected the same. The trial Court also taken note of Ex.A6-sale deed in favour of Pilla Reddy dated 28.08.1946. The trial Court also placed reliance on Ex.A7-gift deed executed by mother/2nd wife of Pilla Reddy in favour of the plaintiff in respect of a portion of the suit property. In effect, it is the assertive submission of the learned Senior counsel for the 1st respondent/plaintiff that there was no oral partition as has been pleaded by the 7th defendant and it was rightly disbelieved by the trial Court while passing a preliminary decree of partition. Accordingly, the learned Senior Counsel for the 1st defendant prayed for dismissal of the appeal.

13. Heard the learned counsel for the appellants as well as the learned Senior Counsel for the 1st respondent/plaintiff and perused the materials available on record.

Point for consideration:-

1. Whether the plaintiff is entitled for 1/6th share in the suit property?
2. Whether the defense raised by the 7th defendant that there was an oral partition even during the life time of Pilla Reddy has been proved?
3. To what other relief the parties are entitled to?

14. The plaintiff has filed the suit for partition and consequential permanent injunction restraining the 9th defendant in the suit from interfering with his possession and enjoyment of the suit property.



15. It is an admitted fact that one Pilla Reddy has purchased the suit property out of his own funds. This is not disputed either by the plaintiff or by the defendants. It is also an admitted fact that Pilla Reddy had two wives. The contesting 7th defendant is the son born through Muni Reddy (deceased) and 5th defendant Nagarajamma. In other words, the contesting 7th defendant is the grand-son of Pilla Reddy. On the other hand, the plaintiff, defendants 2, 3 and 4 are the children born through the 1st defendant Puttamma, who is the 2nd wife of Pilla Reddy. The relationship between the parties, thus are not in dispute.

16. According to the plaintiff, the suit property has not been divided by metes and bounds and it is in joint enjoyment among plaintiff, defendants 1 to 4 as well as the defendants 5 to 8. It is also the case of the plaintiff that he was demanding partition of the suit property by metes and bounds. In the plaint reference was made to a Panchayat having been convened by the plaintiff during which the defendants 5 to 8/appellants in this appeal have refused to come for an amicable settlement of the issues. Subsequently, also a panchayat said to have taken place but the parties could not amicably settled their dispute. While so, the 9th defendant claimed to have purchased a portion of the suit property from the 7th defendant and given a complaint to the Bagalur Police Station during which it unfolded that 7th defendant had executed two sale deeds under Exs.B1 and B2 in favour of the 9th defendant, based on which, the 9th defendant asserted a right over a portion of the suit property. According to the plaintiff he came to know about Exs.B1 and B2 only during enquiry in the police station and it will not be a bar for him to rise a claim for partition of the suit property.

17. The main ground of defence projected by the 7th defendant in the written statement is that even during the life time of Pilla Reddy, he partitioned the suit property into two halves and allotted one such half in favour of his father Muni Reddy (deceased). It is also stated that from the date of such oral partition his father Muni Reddy (deceased) has been cultivating the suit properties without any disturbance by the plaintiff and therefore, the claim for partition made by the plaintiff is not only belated but also not maintainable. The trial Court by specifically referring this defence raised by the 7th defendant has concluded that the 7th defendant failed to prove the factum of such oral partition during the life time of Pilla Reddy. It was pointed out by the trial Court that there was no documentary evidence forth coming from the contesting defendants regarding the manner in which such a oral partition was made by Pilla Reddy. According to the plaintiff the suit properties remain undivided. On the other hand, the 7th defendant raised a



defence that even during the life time of Pilla Reddy, the suit properties were divided into two halves. If it is so the burden is heavy on the part of the 7th defendant to show that there was an oral partition at the behest of his grand-father Pilla Reddy. Unfortunately, the contesting 7th defendant did not produce any documentary evidence to show the oral partition said to have been effected during the life time of Pilla Reddy. The three documents produced on the side of the 7th defendant are Exs.B1 and B2, sale deeds executed by the 7th defendant in favour of the 9th defendant and Ex.B3 is patta said to have been obtained by the 9th defendant in his favour. These documents are not sufficient to hold that there was an oral partition pursuant to which the father of the 7th defendant namely Muni Reddy (deceased) was in possession and enjoyment of half share in the suit property and upon his death the 7th defendant has inherited right over such half share. When the 7th defendant has made such a defence, it is his bounden duty to prove the same. In the absence of any proof forthcoming the trial Court is legally justified in accepting the claim of the plaintiff that the suit properties remains undivided. This is more so that the defendants 1 to 4 have also filed written statement supporting the claim of the plaintiff to the effect that the suit properties remain indivisible as on the date of filing the suit. Thus, the claim of oral partition made by the 7th defendant is too big a pill to be swallowed by him. In such view of the matter, this Court has no other option but to accept the claim of the plaintiff and to consequently confirm the judgment and decree passed by the trial Court. Accordingly, all the points framed for determination in this appeal are answered in favour of the plaintiff/1st respondent and against the 7th defendant/appellant.

18. At the same time, this Court holds that the sale deeds under Exs.B1 and B2 executed by the 7th defendant in favour of the 9th defendant will not bind the plaintiffs in any manner. If at all the 9th defendant could step into the shoes of the 7th defendant and his right and title over the property purchased by him under Exs. B1 and B2 depends upon the share of the suit property to be allotted in favour of the 9th defendant in the final decree proceedings.

19. Taking note of the fact that the suit for partition was filed during the year 2009 in which a preliminary decree was passed on 28.06.2012 and a decade had gone-by, this Court directs the trial court to pass a final decree, based on the preliminary decree dated 28.06.2012, within a period of one year from the date of receipt of a copy of this judgment.



20. With the above observation, the judgment and decree dated 28.06.2012 passed in O.S.No.35 of 2009 on the file of the Additional District Judge, Krishnagiri stands confirmed and the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

gbi

To

The Additional District Judge,
Krishnagiri.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 600 104.

+1cc to M/s.K.Mohanamurali, Advocate, S.R.No.32405

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.32147

A.S.No.908 of 2012

EV(CO)
RLP(24/06/2022)