

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2022

Pronounced on : 20.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
S.A.No. 976 of 2001
And
C.M.P.No. 16490 of 2003

K.Sethuraman ...Appellant/Appellant/ Defendant

Vs.

1. Tmt.Maragathammal (deceased)
...Respondent/Respondent/ Plaintiff
2. Thiru Peranandam (died)

[2nd respondent brought on record as LRS of the deceased Sole respondent vide as per order of Court dated 08.02.2002 made in CMP.No. 967/02]

3. Mrs. Uma

4. Mrs.Revathy

5. Lokesh .. Respondents/LR's of the Deceased R2

(R2 died, RR 3 to 5 brought on record as Lrs of the deceased R2, vide Court order dated 04.04.2022 made in CMP No.14990, 14991 & 14992 of 2018 in S.A.No.976 of 2001 RHJ)

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 21.03.2001 made in A.S.No. 32 of 1999 on the file of the Principal District Judge, Vellore, confirming the Judgment and Decree dated 16.10.98 in O.S.No. 474 of 1991 on the file of the Subordinate Judge, Ranipet.

For Appellant : Ms.K.Janani
for Mr. N.S.Sivakumar

For RR 1 & 2 : died

For RR 3 to 5 : Notice Served - No appearance

JUDGMENT

The defendant in O.S.No. 474 of 1991 on the file of the Sub Court at Ranipet, is the appellant herein. The first respondent had filed O.S.No. 474 of 1991 seeking partition and separate possession of one half share in the suit property. By Judgment dated 16.10.1998, the suit was decreed and a preliminary decree accordingly was granted.

2. The defendant therein / present appellant then filed A.S.No. 32 of 1999 before the Principal District Court at Vellore by Judgment dated 21.03.2001, the Appeal was dismissed confirming the Judgment and Decree of the trial Court.

3. Questioning such Judgment, the defendant has filed the present Appeal.

4. At the time of admission, the following substantial question of law had been framed:-

"Whether the suit for partition is maintainable in spite of the earlier oral partition dated 11.12.1990?".

5. Pending the Second Appeal, the respondent had died and her legal representative was brought on record as second respondent and thereafter, consequent to the death of the second respondent, the third to fifth respondents were brought on record.

6. Heard arguments advanced by Ms.K.Janani for Mr.N.S.Sivakumar, learned counsel for the respondent. Even though notice had been served on the contesting respondents 3 to 5, there is no appearance.

7. The respondent Maragathammal had filed O.S.No. 474 of 1991 seeking partition and separate possession of one half share in the suit property. The suit schedule property was a terraced house bearing Door No. 17, Kosa Street, Panapakkam Village, Arakonam Taluk, in S.No. 55/1 Panapakkam Village, Arakonam Taluk in Vellore District.

8. It was the case of the respondent/plaintiff that Chinnakuzhanthai Mudaliar had two sons, namely, Thangavelu and Kandasamy. The respondent/plaintiff and Kalyani Ammal were the daughters of Thangavelu. The appellant/defendant was the son of Kandhaswamy. It had been stated that there had been a partition

between Thangavelu and Kandhaswamy with respect to the property at Door No. 17, Kosa Street, Panapakkam Village, Arakonam Taluk in the year 1951. The suit property had been allotted to Thangavelu. There was also a common pathway of 6 feet. It was stated that respective parties had taken possession on the respective shares. It was stated that Thangavelu died leaving behind the respondent/plaintiff and Kalyani Ammal were his legal representatives. Kandhaswamy also died. His legal representative was the appellant/defendant Sethuraman. Thereafter, by sale deed dated 04.03.1988, the appellant/defendant had purchased the one half share of Kalyani Ammal in the suit property. It was therefore claimed that the plaintiff was entitled to the other one half share and the defendant was entitled to the remaining one half share in the suit property. It was under those circumstances that the suit was filed seeking partition and separate possession.

9. In the written statement filed by the appellant, it had been stated that the old house Door No. 17, Kosa Street, Panapakkam Village was demolished and a new house was constructed in the year 1952. It was stated that Kandhaswamy and Thangavelu had divided the property by dividing both the ground floor and the first floor. It was also stated that the rooms were also equally divided. It was therefore stated that there was an earlier oral partition. Thereafter, the sister of the respondent, Kalyani Ammal had sold her share to the appellant by sale deed dated 04.03.1988. It was stated that there was a partition between the appellant and the respondent on 11.12.1990 and they had divided the property and are in enjoyment according to the said division of the property. It had therefore been contended that since the property had been divided, the issue of partition would not arise and it was therefore urged that the suit should be dismissed.

10. On the basis of the aforesaid pleadings, the trial Court had framed the following issues for trial:-

(1) Whether the respondent/plaintiff was entitled to one half share in the suit property?

(2) Whether there was an oral partition on 11.12.1990 and if so whether it is binding?;

(3). Whether the plaintiff is entitled to partition and separate possession?;

(4). To what other reliefs?

11. During the course of trial, on the side of the respondent/plaintiff, Exs. A-1 to A-55 were marked. These documents included the property tax receipts paid by the

respondent/plaintiff as Exs. A-11 to A-54 and the exchange of advocate notices as Exs. A-7 to A-9, the notice issued by the Statutory Authority on 30.05.1988 and its reply as Exs. A-2 and A-3. On the side of the appellant/defendant, Exs. B-1 to B-4 were marked. Ex.B-1 was the sale deed by Kalyani Ammal in favour of the appellant. The respondent/plaintiff examined herself as PW-1 and examined another witness as PW-2. The appellant/defendant examined himself as DW-1 and examined another witness as DW-2.

12. With respect to the issues, the learned Sub Judge, Ranipet had found that the plaintiff was entitled to share in the suit schedule property. The title was traced and it was found that she being a daughter of Thangavelu, was entitled to a share in the suit schedule property. Further, it was also held with respect to the oral partition, that the same had not been proved by the appellant/defendant in the manner known to law. It had also been stated that though it had been contended that the oral partition was agreed before the Panchayat, documents were not produced to show confirmation of such oral partition by the Panchayat. It was also stated that there was no evidence of any wall having been constructed dividing the property in to two equal shares. It was also held that the appellant / defendant had not established that there was an oral partition and that the parties had put the oral partition into effect. Issue No.2 was therefore answered against the appellant/defendant.

13. Thereafter, the trial Court proceeded to examine whether the respondent/plaintiff was entitled to one half share in the suit property. In view of the fact that the relationship between the parties had been admitted, it was held that since the suit property had fallen to the shares of the respondent and her sister Kalyani Ammal and since the sister, Kalyaniammal had sold her one half share to the appellant/defendant, the parties to the suit were each entitled to an undivided one half share in the suit property. The issue in that regard was answered in favour of the respondent. Accordingly, a decree was passed granting partition and separate possession of one half share to the respondent/plaintiff.

14. The appellant then filed A.S.No. 32 of 1999 before the Principal District Court at Vellore. By Judgment dated 21.03.2001, the Principal District Judge also found that the appellant herein had not proved oral partition. As a matter of fact, the First Appellate Court very categorically held that no oral partition had ever taken place between the respondent and the appellant. It was therefore held that the respondent was entitled one half share. The appeal was dismissed and the finding of the trial Court was confirmed.

15. In the Second Appeal, the only point again urged was with respect to the oral partition said to have been taken place on 11.12.1990. Even before this Court, no additional documents have been filed to establish that particular fact. Both the Courts below have found as a fact that the appellant had failed to prove that there was oral partition. Even otherwise, the shares of the parties cannot be denied or disputed. The respondent was entitled to one half share in the suit schedule property and the appellant is entitled to another one half share.

16. It would only be appropriate that such half share is divided in manner known to law. The appellant claims that there was an oral partition before the Panchayat on 11.12.1990. However as correctly pointed out by the trial Court, the appellant had not produced any document relating to such proceedings of the Panchayat. The oral evidence cannot therefore be relied upon in that regard.

17. The respondent is therefore entitled for division by metes and bounds.

18. If the parties are in possession of their respective shares, then in the final decree application, such possession may be recognised, provided it is in equal shares. The appellant may also offer to purchase the share of the respondents and if such offer is made, the trial Court may examine it in proper perspective during the final decree proceedings. The substantial question of law which had been framed, namely, whether the suit for partition is maintainable in spite of earlier oral partition dated 11.12.1990 is answered that the suit for partition is maintainable since the earlier oral partition dated 11.12.1990 had not been proved in the manner known to law.

19. The Second Appeal therefore fails and is dismissed. In view of the relationship between the parties, costs are not ordered. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

vsg

To

1. The Principal District Judge,
Vellore.
2. The Subordinate Judge,
Ranipet.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.S.Sivakumar, Advocate SR.No.37962 (18/07/2022)

S.A.No. 976 of 2001
And
C.M.P.No. 16490 of 2003

AJS (CO)
GMY (12/07/2022)