



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.1138 of 2010

and

M.P.No.1 of 2010

B.Mohanraj ...Defendant / Respondent / Appellant

Vs

B.KannanPlaintiff / Appellant / Respondent

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.485 of 2007 dated 17.09.2009 on the file of the Additional District Court No.II, Fast Track Court, Chennai modifying the judgment and decree made in O.S.No.5041 of 2003 dated 30.11.2006 on the file of the III Assistant City Civil Court, Chennai.

For Appellant

: Mr.B.Vijay
for M/s.Sampathkumar Associates

For Respondent

: Mr.A.Thiagarajan, Senior Counsel
for Mr.J.Radhakrishnan

**JUDGMENT**

WEB COPY Heard Mr.B.Vijay, learned counsel for the appellant for M/s.Sampathkumar Associates and Mr.A.Thiagarajan, learned Senior Counsel for Mr.J.Radhakrishnan, learned counsel for the respondent.

2.The Second Appeal had been filed questioning the judgment and decree of the First Appellate Court reversing the judgment and decree of the Trial Court. The suit in O.S.No.5041 of 2003 was filed by the respondent herein as plaintiff seeking 7/8th undivided share in the suit properties, which were given as A and B schedule of the properties to the plaintiff.

3.The present appellant / defendant claimed that he is entitled to the entire property, in view of Ex.B1, settlement deed. However, both the Courts below have held that Ex.B1, settlement deed had not been proved in manner known to law.

4.It is to be pointed out that any settlement deed will necessarily have to be attested and in accordance with such execution, it has to be proved as per Section 68 of the Indian Evidence Act, 1872. Ex.B1, settlement deed



though marked was not proved to the satisfaction of both the Courts below.

The Trial Court had granted a preliminary decree for an undivided 3/4th share to the respondent / plaintiff.

5.Both the plaintiff and the appellant / defendant filed First Appeals in A.Nos.453 & 485 of 2007. The learned First Appellate Court Judge had re-examined the entire evidence and had also framed necessary points for consideration under Order 41 Rule 31 of CPC. The learned First Appellate Judge also held that Ex.B1 had not been proved in manner known to law. However, the learned First Appellate Judge held that the plaintiff / respondent herein was entitled to an undivided 7/8th share and had accordingly modified the preliminary decree granted by the Trial Court and had granted partition and separate possession of an undivided 7/8th share in the suit properties.

6.Questioning that particular judgment, the present Second Appeal has been filed. The Second Appeal had been pending on the file of this Court from the year 2010. Successive learned Judges who had heard the learned counsel for the appellant thought that it did not merit framing of any



substantial question of law.

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7.The entire issue revolves around only one issue namely, the proof of Ex.B1. Ex.B1 settlement deed had not been proved in manner known to law. Ex.B1, is settlement deed and the same has to be proved in manner known to law. The attesting witness will have to be examined. The fact that the settler had handed over possession to the settlee will have to be established. All these factors have not been proved. Both the Courts below have therefore gone back to divide the properties in the ratio to which the parties are entitled to. They were entitled to an undivided 1/8th share for the appellant herein and an undivided 7/8th share for the respondent / plaintiff herein.

8.I hold no substantial questions of law arise. The Second Appeal has to be dismissed.

9.A direction is given to the Trial Court namely, the III Assistant City Civil Court, Chennai, wherein in O.S.No.5041 of 2003 a preliminary decree had been passed to list the matter for taking steps under Order XX Rule 18



of CPC, *suo motto*, without requiring initiation of separate proceedings in accordance with the judgment of the Hon'ble Supreme Court in ***Kattukandi Edathil Krishnan & Others Vs. Kattukandi Edathil Valsan & Others, in Civil Appeal Nos.6406 – 6407 of 2010, dated 13.06.2022***, and take upon itself to automatically issue notice to the parties and proceed further with respect to passing final decree in the said suit, by appointment of an Advocate Commissioner and dividing the property in accordance with the ratio as determined by the First Appellate Court and as upheld by this Court.

10. Therefore, the Second Appeal is dismissed. In view of the fact that both the parties are relatives, no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

15.06.2022

Index: Yes/No
Internet: Yes/No
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C.V.KARTHIKEYAN.,J

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- 1.The Additional District Court No.II, Fast Track Court, Chennai.
- 2.The III Assistant City Civil Court, Chennai.
- 3.The Section Officer, VR Section, Madras High Court.

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