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S.A.No.2086 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.2086 of 2004

C.Natarajan

...Appellant

Vs.

1.Elumalai

2.Sulli @ Geetha

3.Vellai Mudaliar

4.Kuppabai

...Respondents

PRAYER : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 06.02.2004 made in A.S.No.5 of 2000 on the file of the Subordinate Judge, Arni confirming the Judgment and Decree dated 24.12.1999 made in O.S.No.537 of 1996 on the file of the Principal District Munsif Court, Arni.

For Appellant : Ms.N.Gayathri
for Mr.S.Thiruvengadam

For R1, R2 & R4 : Mr.A.Gowthaman

For R3 : No Appearance



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JUDGEMENT

WEB COPY This Second Appeal is preferred as against the Judgment and Decree dated 06.02.2004 made in A.S.No.5 of 2000 on the file of the Subordinate Judge, Arni confirming the Judgment and Decree dated 24.12.1999 made in O.S.No.537 of 1996 on the file of the Principal District Munsif Court, Arni.

2.The appellant herein is the plaintiff and the respondents herein are the defendants in the suit.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The brief case of the plaintiff is that, originally the suit property belongs to Chinnappa Mudaliar, who died intestate leaving being his wife Sundrammal and his two children viz.,Kasi Mudaliar and C.Natarajan/the appellant herein. During the life time of Chinnappa Mudaliar, partition was made among his children. Chinnappa Mudaliar passed away on 1970. Therefore, the Sundrammal, W/o.Chinnappa Mudaliar entitled for one share



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and his two children entitled for each one share. Subsequently, Kasi Mudaliar died in the year 1986 and Sundrammal died in the year 1994.

Therefore, legal heirs of Kasi Mudaliar and the plaintiff is entitled for each 50% share in the suit schedule property.

5. According to the plaintiff, there is no partition and in this regard, he also issued notice to the defendants and the same has been received by all the parties. Since there was no response from the defendants, the plaintiff filed the suit for partition.

6. The 1st defendant is the son of Kasi Mudaliar and the defendants 2 and 4 are the daughters of Kasi Mudaliar, who given up their shares to the 1st defendant.

7. The case of the 1st defendant is that, during the life time of Chinnappa Mudaliar, there was oral partition and both the plaintiff and Kasi Madaliar have been enjoying the property jointly. After the death of Kasi Mudaliar, the revenue records have been changed in the name of Kasi



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Mudaliar's wife viz., Kanthammal. Therefore, he would submit that there is no truth in the averment made by the plaintiff. In order to prove his case, the 1st defendant has marked number of documents and contended that the claim put forth by the plaintiff is un-sustainable and the same is liable to be dismissed.

8.After hearing both the parties, the Court below has framed the following issues:

1. Whether the plaintiff is estopped by virtue of agreement dated 22.05.1986?
2. Whether the plaintiff is entitled for partition as claimed in the plaint?
3. To what relief?

9.On behalf of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A4 were marked. On behalf of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B29 were marked.

10.The Trial Court after hearing both the parties has decided the first issue against the defendants stating that there was no agreement dated



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22.05.1986, since the same was not proved. With regard to the 2nd issue, the

Court has decided against the plaintiff stating that the plaintiff is not entitled for partition since already oral partition was made during the life time of the plaintiff's father. Therefore, the Trial Court dismissed the suit.

11. Aggrieved over the said judgment and decree, the plaintiff preferred appeal in A.S.No.5 of 2000. The First Appellate Court also dismissed the appeal vide judgment and decree dated 06.02.2004 confirming the judgment and decree passed by the Trial Court.

12. Against the said judgment and decree, the plaintiff has preferred the present Second Appeal. This Court admitted the Second Appeal on 14.12.2004 by framing the following substantial questions of law:

“a) Whether the findings given by the Courts below based on oral partition merely because the patta and UDR records stands in the name of the respective parties amounts to partition between co-parceners?

b) Whether the judgments of the Courts below are justified in the absence of proper



consideration of Ex.B2 namely patta which stands jointly in the name of the appellant and the defendants?”

13.The learned counsel appearing for the plaintiff would submit that there was no oral partition. Though a plea was taken by the defendants that there was an oral partition, the same was not proved by them. However, both the Courts below have negatived the plea of the plaintiff and held that there was an oral partition between the plaintiff and Kasi Mudaliar during the life time of their father. She would further submit that the Courts below have failed to consider that Ex.B2, U.D.R patta stands jointly in the name of the plaintiff and Kantha Ammal, wife of Kasi Mudaliar and the properties were enjoyed separately by the plaintiff and the defendants for a period of 40 years without being partitioned. Hence, she prayed to set aside the judgment and decree passed by the both the Courts below since the oral partition was not proved.

14.The learned counsel appearing for the defendants 1, 2 & 4 would submit that on behalf of the defendants number of documents have been



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marked. Ex.B1 is U.D.R patta issued independently in the name of Kanthammal, who is none other than the wife of Kasi Mudaliar and she has been enjoying all the properties even prior to the death of her husband. The learned counsel would fairly submit that the patta issued in favour of the Kantha Ammal to an extent of 18 ½ cents and it appears that the Well and Kalam is used jointly in the villages and therefore, the patta issued jointly for the usage of Well and Kalam. Ex.B1/U.D.R patta issued separately in favour of Kantha Ammal and she was enjoying the western portion of the property independently. This aspect was also confirmed by D.W.1 and D.W.3 in their deposition. Therefore, he would contend that oral partition had happened. Since the oral partition had already made, the parties have been enjoying the properties independently over a period of 40 years and the revenue records have been changed in the name of Kantha Ammal.

15.Heard the learned counsel appearing for the plaintiff as well as the defendants and perused the materials available on record.



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16. According to the respective parties, the plaintiff is enjoying eastern side of the suit property and the 1st defendant is enjoying western side of the suit property. This aspect was confirmed by P.W.1 and also by D.W.1 and D.W.3 as well. A perusal of deposition of D.W.3, confirms that the properties have been enjoyed independently by the parties for over a 40 years. After the death of the Chinnapa Mudaliar, the eastern portion of the properties have been enjoyed by the plaintiff and western portion of the property have been by the 1st defendant. The defendants 2 and 4 were given by their shares to and in favour of the 1st defendant and the 3rd defendant is the lessee of the properties.

17. As far as the agreement dated 22.05.1986, is concerned, there was no document marked to prove the same and both the Courts below have rightly negatived this issue against the defendants since no evidence was let in by the defendants to prove the agreement dated 22.05.1986.

18. Now the issue to be decided is whether the oral partition took place during the life time of Chinnapa Mudaliar? Both the Courts below



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have held that there was an oral partition during the life time of Chinnappa Mudaliar. Further, Ex.B1, is the U.D.R patta issued in favour of 1st defendant's mother, Kantha Ammal after the death of the father of the 1st defendant's father. Ex.B2 is the joint patta issued to an extent of 18 ½ cent where Well and Kalam is situated for the common use. This aspect was agreed by both the learned counsel appearing for the plaintiff and the defendants 1, 2 & 4. Ex.B3 to B8 are the adangal issued in favour of Kantha Ammal. Ex.B9 is the small farmers card standing in the name of Kantha Ammal, Ex.B10 is the house tax receipt standing in the name of Kantha Ammal, Exs.B11 to B26 is the Kist receipt standing in the name of Kantha Ammal. By virtue of oral partition, the plaintiff and the 1st defendant Kasi Mudaliar were each enjoying about 1 acre separately and the defendants produced Exs.B3 to B8 adangals and kists receipts. Ex.B26 which would clearly prove that the defendants were enjoying the suit properties. Further it is to be noted that Ex.B1-U.D.R patta was granted in the name of 1st defendant's mother Kantha Ammal as early as in the year 1984, whereas the plaintiff filed the suit in the year 1995 and if at all the suit properties were in joint possession, the plaintiff could have very well taken steps to cancel



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the patta, but, he has not taken any steps. Ex.B2, U.D.R patta stands in the name of Kantha Ammal and plaintiff since there situates Well and Kalam for the common use and for the remaining portions viz., western portion of the suit property, U.D.R patta stands in the name of Kantha Ammal. Therefore, the plaintiff cannot claim that there was no partition by merely stating that Ex.B2, U.D.R patta jointly stands in the name of plaintiff and Kantha Ammal,

19.A perusal of the above documents and the deposition of the witnesses would show that unless and otherwise there is an oral partition, the plaintiff would not have allowed the widow wife of his brother to change the patta in her name and all these aspects were well considered by both the Courts below. Furthermore, since the U.D.R patta stands in the name of Kantha Ammal, the mother of the 1st defendant, there is no need for any interference in the judgment and decree passed by both the Courts below. Accordingly, the substantial questions of law are answered against the plaintiff and in favour of the defendants.



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20.In the result, the Second Appeal is dismissed confirming the

judgment and decree passed by both the Courts below. No costs.

26.09.2022

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

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To

1. The Subordinate Judge, Arni.
2. The Principal District Munsif Court,
Arni.



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KRISHNAN RAMASAMY, J.

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