



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2022

Pronounced on : 26.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 22 of 2010

And

M.P.No. 1 of 2010

Kuppan @ Selvaraj ... 2nd Defendant/Appellant/Appellant

Vs.

1. Jayarani

2. Anthoniraj ... Plaintiffs/Respondents/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree made in A.S.No. 5 of 2008 dated 15.09.2009 on the file of Subordinate Judge, Arani, confirming the Judgment and Decree made in O.S.No. 363 of 1993 dated 06.10.2007 on the file of District Munsif Court, Polur.

For Appellant	:	Mr. M.Sriram
For RR 1 & 2	:	Mr. T.R.Rajaraman
For 3 rd Respondent	:	No appearance

**JUDGMENT**

The second defendant in O.S.No. 363 of 1993 on the file of the District Munsif, Polur, is the appellant herein.

2. The said suit in O.S.No. 363 of 1993 had been filed by the wife and son of the appellant herein, seeking division of the suit properties into two equal shares and to allot one such share to the plaintiffs and for permanent injunction restraining the defendants from alienating or encumbering the suit properties till the division of the same is effected and for costs of the suit.

3. The suit properties were 13 items of dry and wet lands in Venmani Village, Polur Taluk in Thiruvannamalai District and also a thatched house at the said village.

4. The plaintiffs claimed that they had filed O.S.No. 336 of 1978 before the Sub Court at Vellore, seeking maintenance against the second defendant/appellant herein. A decree was passed allotting $\frac{1}{2}$ share of the suit properties to the first plaintiff for maintenance and after her to the



second plaintiff with a right of title. It was claimed that the said suit, by Judgment dated 03.10.1980, was decreed and $\frac{1}{2}$ share of the suit properties were directed to be allotted to the plaintiffs.

5. The plaintiffs claimed that they also took possession of their shares. However, the Revenue records were not mutated. It was under those circumstances that this suit had been filed against the appellant and his brother, seeking division of the suit schedule property by metes and bounds and to allot $\frac{1}{2}$ share to the plaintiffs.

6. The appellant herein, who was the second defendant filed a written statement claiming that after the Judgment in O.S.No. 336 of 1978, his brother, the first defendant received a sum of Rs.15,000/- and relinquished his right over the properties. It was claimed that he had sold a portion of the properties to one Devagi on 02.05.1991. It was therefore claimed that she must also be joined as a defendant and that she and the said Devagi are the joint owners of the properties. He therefore sought that the suit should be dismissed.



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7. The District Munsif, Polur, by Judgment dated 06.10.2007 considered Exs. A-1 to A-4 which included the Judgment and Decree, plaint and written statement in O.S.No. 336 of 1978 and came to conclusion that a competent Court had granted $\frac{1}{2}$ share to the plaintiffs and holding that the plaintiffs were entitled to seek division by metes and bounds, decreed the suit.

8. The second defendant/appellant herein then filed A.S.No. 5 of 2008 which came up for consideration before the Sub Court at Arani. By Judgment dated 15.09.2009, the learned Sub Judge once again re-examined the evidence available and affirmed the fact that in O.S.No. 336 of 1978, the plaintiffs' right for maintenance had been recognized and in lieu of such maintenance, they had been granted $\frac{1}{2}$ share in the suit property with right of the first plaintiff to use the usufructs and after her for the second plaintiff to own the property as absolute owner. It was therefore found that since the revenue records were not mutated, the plaintiffs have every right to seek partition and separate possession of $\frac{1}{2}$ share in the suit properties. The Judgment and Decree of the trial Court was confirmed and the Appeal suit was dismissed.



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9. The second plaintiff then filed the present Second Appeal. The Second Appeal had not yet been admitted. It had been circled around for the past nearly 12 years.

10. Heard the learned counsel for the appellant.

11. The facts stare in the face of the appellant. The relationship between the appellant and the respondents cannot be denied and fortunately not so denied or disputed. The appellant was the second defendant in the suit and he is the husband of the first respondent. The second respondent was their son. The respondents herein had occasion to file a suit seeking maintenance in O.S.No. 336 of 1978 before the Sub Court at Vellore. A Judgment and Decree was passed on 03.10.1980 holding that in lieu of maintenance, $\frac{1}{2}$ share of the suit properties could be enjoyed by the respondents herein. It was specifically stated that the first respondent/wife of the appellant can use the usufructs in the land and after her, $\frac{1}{2}$ share shall devolve on to the second respondent/son of the appellant. That Judgment has become final since no appeal had been filed against it.



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12. It is the grievance of the respondents that in spite of such Judgment, there has been no actual division of the properties. It was for that purpose that the suit in O.S.No. 363 of 1993 had been filed. Both the Courts below have correctly rendered a finding that the respondents/plaintiffs in the suit were entitled for division by metes and bounds. This being a question of fact, hardly calls for interference in this Second Appeal.

13. No substantial question of law arises for consideration. The fact that the respondents had filed O.S.No. 336 of 1978 is a fact. That a Judgment and decree was passed in their favour on 03.10.1980 by the Sub Judge, Vellore, is again a fact. That the suit properties were not divided into metes and bounds in accordance with the said Judgment is again a fact. In view of these undisputed facts, partition and separate possession of $\frac{1}{2}$ share is granted to the respondents. This is the relief which had been granted by both the Courts below.



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14. There are no merits in the Second Appeal and the same is dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

15. A direction is given to the Trial Court to proceed further with final decree application if any filed in the manner known to law.

26.07.2022

Index :Yes/No
Internet:Yes/No
vsg

To

1. District Munsif Court, Polur.
2. Sub Court, Arani.



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C.V.KARTHIKEYAN, J.

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**Pre-Delivery Judgment made in
S.A.No. 22 of 2010
And
M.P.No. 1 of 2010**

26.07.2022