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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.180 OF 2022

AND

C.M.P.NO.3593 OF 2017

1. Veerasamy
2. Rajamani @ Marisamy
3. Rajendran @ Marimuthu ... Appellants/Defendants

.Vs.

Thangaraj @ Rangasamy ... Respondent/Plaintiff

PRAYER:-

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 07.01.2021 made in A.S.No.15 of 2019 on the file of the Court of III Additional District and Sessions Judge, Erode at Gobichettipalayam, confirming the judgment and decree dated 18.07.2018 made in O.S. No.58 of 2015 on the file of the Court of the Subordinate Judge, Sathyamangalam.

For Appellants : Mr.T.Dhanasekaran

J U D G M E N T

The defendants in the suit in O.S.No.58 of 2015 are the appellants in the above second appeal. The respondent in this appeal filed the suit in O.S.No.58 of 2015 for partition of his 1/4th share in all the suit properties with reference to good and bad soil and for consequential reliefs.

2. The suit property consists of eight items and they are described in the plaint with specific boundaries and all the properties are located in Sengapudur Village, Sathyamangalam Taluk, Gobichettipalayam, Erode.

3. The case of the respondent in the plaint is that the plaintiff and the defendants are brothers and that the first,



second and third items of suit properties were purchased by their father Veerasamy as per the sale deed dated 19.10.1981, 27.03.1985, 31.05.1988 respectively. It is also stated that fourth item of the properties belonged to plaintiff and defendants as per sale deed dated 12.06.1996. As regards 5th item of suit schedule, it is pleaded that the plaintiff and defendants have acquired the property under sale deed dated 12.03.1997. As regards 6th, 7th and 8th item of the suit schedule properties, it is stated in the plaint that they were also purchased by the plaintiff and defendants as per subsequent sale deeds dated 26.10.1998, 14.06.2000 and 21.12.2000. Stating that their father died intestate on 17.12.1987 and the plaintiff and defendants are the legal heirs to inherit the properties of father Verasamy under Hindu Succession Act, the suit for partition was filed by the respondent in respect of all the properties.

4. The suit was resisted by the appellants only on the ground that there was a oral partition pursuant to intervention of village elders. The appellants produced before the lower Court a rough plan indicating the manner in which the suit properties were divided among all the parties namely the plaintiff and defendants. It was only on the basis of such oral partition, the appellants requested the trial Court to dismiss the suit for partition.

5. The trial Court, after framing the issue whether the suit properties had already been partitioned on 14.05.2014 as pleaded by the plaintiff, found that the oral partition dated 14.05.2014 is not proved to be the one on the basis of which parties are in possession. Though the evidence let in by the appellants suggest negotiation for partition, it was held by trial Court that there was no actual partition by metes and bounds. Hence, the suit was decreed as prayed for. Aggrieved by the findings of the trial Court granting a preliminary decree for 1/4th share in favour of first respondent, the appellants preferred an appeal in A.S.No.15 of 2019 before the District Court, Erode.

6. The lower appellate Court also after framing the same issue, found that the oral partition as pleaded by the appellants is not proved. The lower appellate Court considered the oral and documentary evidence independently and held that the oral partition pleaded by appellants is not established. The plan produced by the appellants was also held to be not decisive to accept the case of oral partition as pleaded by the appellant.

7. Aggrieved by the concurrent findings of the Courts below, the appellants preferred the above appeal by raising the following substantial questions of law in the memorandum of grounds of second appeal:



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" a. Whether the Courts below are correct and justified in decreeing the suit when the appellants/defendants established that already the suit schedule properties were partitioned orally between the parties before the Panchayatdars in the year 2014 itself ?

b. Whether the Courts below are correct and justified in granting decree overlooking the evidence of P.W.2 and D.W.2, who had clearly deposed about the earlier partition of the suit schedule properties between the parties and taken separate possession of their respective shares and were in enjoyment of the same ?

c. Whether judgment and decree passed by the Courts below is correct and justified in law when the plaintiff/respondent has admitted about rough/model plan/graph based on oral partition filed by the appellants/defendants along with their written statement ?

d. Whether the judgment and decree of the lower Courts is sustainable when the P.W.2 and D.W.3 had clearly established the oral partition which is clearly corroborated the case of the appellants/defendants ?

e. Whether the Courts below are correct in decreeing the suit when the respondent/plaintiff is admitting the oral partition and separate possession of the drafted model plan, which was filed along with the written statement ?"

8. In the memorandum of grounds, repeatedly the appellants have raised the issue that oral partition as pleaded by the appellants have been categorically proved particularly by the admission of P.W.2 and D.W.3. This Court considered the evidence of P.W.2 and D.W.3 and found that there is no admission by P.W.2 regarding oral partition as it was suggested by the appellants. The evidence of P.W.2 and D.W.3 would not corroborate the case of appellants. None of the witnesses admit any oral partition even though it is established that the parties are in possession of certain properties without there being actual division by metes and bounds. The findings of the lower appellate Court that the oral partition is not proved, is supported by not only oral evidence of parties but also the attending circumstances. D.W.2 admits in the course of evidence that the plaintiff and defendants are not in talking terms and the properties are kept



in common. Though an attempt was made for amicable partition, there was no evidence of actual partition.

9. The appellants have pleaded a oral partition in the year 2014 and it is not seriously disputed that the parties are not in talking terms with each other. Considering the entire evidence in the light of pleadings, the lower appellate Court has rightly come to the conclusion that the oral partition is not proved. The lower appellate Court which is a final Court of facts, has rendered a finding against the appellant and therefore this Court is not in a position to interfere with the findings on facts. The jurisdiction of High Court under Section 100 C.P.C. is limited. Merely because a different view is possible that is not a sufficient to interfere with the findings of the lower Courts. This Court cannot re-appreciate the evidence. This Court is unable to find any material evidence which is ignored. Merely because the parties are in possession of some properties without a division by metes and bounds, the suit for partition cannot be dismissed especially when the oral partition in 2014 is not proved by any acceptable evidence.

10. Having regard to the concurrent findings on facts, this Court is unable to find any substance in any of the substantial questions of law raised by the appellant. Hence, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
2. The Subordinate Judge,
Sathyamangalam.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.28195

S.A.NO.180 OF 2022

PA(CO)
PBS/17/05/2022