



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1032 of 2012

and

M.P.No.1 of 2012

1.Krishnamurthy

2.Santhanakumar

... Appellants/Defendants

Vs.

Alamelu

... Respondent/Plaintiff

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree of the learned Subordinate Judge, Chidambaram, made in A.S.No.23 of 2011, dated 31.10.2011, confirming the judgment passed in O.S.No.51 of 2007, by the learned Principal District Munsif, Chidambaram, dated 30.03.2011.

For Appellants : M/s.G.Sumitra

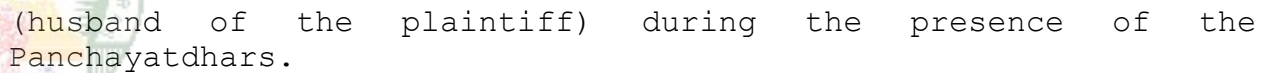
For Respondent : Mr.J.Ram

JUDGMENT

The defeated defendants are the appellants herein.

2(a).The respondent/plaintiff has filed a suit in O.S.No.51 of 2007, before the District Munsif Court, Chidambaram, for bare injunction on the ground that her husband viz., PW2 had purchased the property under Ex.A1/Sale Deed, dated 05.07.1990. In the year 2006 her husband PW2 had settled the property by way of gift deed to the first plaintiff PW1 under Ex.A2 on 02.11.2006 and he has constructed a thatched house with brick walls in the suit property and he was paying tax (house tax receipts Exs.A3 to A6) for the suit property in the Panchayath and claims to be in possession of the property.

2(b).The first defendant had filed a written statement alleging that at the time of the purchase of Ex.A1/Sale Deed in the name of his elder brother, he has also contributed to the family and there was an oral partition in the year 2002, wherein, the suit property and the Veerammal's properties were divided between the first defendant and the said Paneerselvam



2(c).After perusing the records, the Trial Court has held that the property is a joint family property was not proved, alleged oral partition is not proved by the first defendant and accordingly decreed the suit.

2(d).Aggrieved over the same, the defendants have filed an appeal in A.S.No.23 of 2011 before the learned Subordinate Judge, Chidambaram and the learned Judge by an order dated 31.10.2011, based upon Exs.A1 & A2 and Exs.A3 to A5 had dismissed the appeal and confirmed the order of the Trial Court. Hence, the second appeal.

3.The above Second Appeal was admitted on 19.11.2012, on the following substantial questions of law:

"a). Whether the Lower Appellate Court was right in examining the question of title in a suit for a bare injunction?

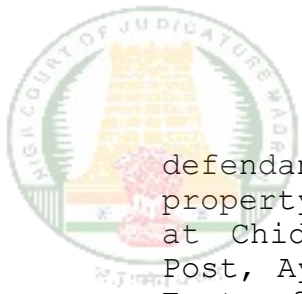
b).Whether the judgment of the Lower Appellate Court is vitiated by the fact that the learned Subordinate Judge as not considered the evidence on record more particularly the admissions of D.W.2 before concluding that the plaintiff has established her possession over the suit property."

4. Heard Ms. Sumitra, learned counsel for the appellants and Mr. Ram learned representing counsel for Mr. P. Gopalan, appearing for the respondents. Perused the materials placed on record.

5. The learned counsel for the appellants would contend that DW2/Rajaraman has admitted that there was a partition between the first defendant and the husband of the plaintiff and hence, both the Courts below have committed an error in a suit for bare injunction and have erroneously decided the title and hence, he prays for setting aside the judgement of the both the Courts below.

6. The learned counsel for the respondent made submissions in support of the judgment of the Courts below.

7. After hearing the submissions made by the respective learned counsel and after perusing the substantial questions of law and the evidence available on record, it is seen that the plaintiff/respondent herein is the sister in law of the first



defendant, the suit was filed for bare injunction for the property measuring about 0.04 ½ cents out of 0.13 cents situated at Chidambaram Taluk, Keezhakundalapadi Village, Vallampadugai Post, Ayan Punja in R.S.No.1/8 with the following boundaries: East of Singaram land, West of Veerammal's property North of Road, South of Sambandam land.

8(a).Further, it is seen that PW1, who is the wife of PW2 (brother of the first defendant) has deposed as per the documents. Based upon Exs.A1 to A5 coupled with the evidence of PW2 (brother of the first defendant), both the Courts below have concurrently held that it is the separate property of the husband of the plaintiff/respondent herein viz., PW2. DW1 has come forward with specific case that the entire suit property 4 ½ cents in the said survey number belongs to the first defendant and his brother Panneerselvam (husband of the plaintiff). After the death of the Veerammal, in the year 1996, the property of Veerammal comprised in R.S.No.111/10, which is situated adjacent to the suit property and the suit property were divided under the oral partition between the husband of the plaintiff and the first defendant.

8(b).Under the oral partition Veerammal's 1 ½ cents adjoining to one cent in the suit property in toto 2 ½ cents was allotted to the first defendant. An extent of 3 ½ cents in the suit property were alone given to the Panneerselvam (husband of the plaintiff). Since the first defendant has taken a specific plea that he is also contributed to the purchase of the property under Ex.A1, the burden of proof is squarely falls upon the first defendant. However, both the Courts below have concurrently held that he has not properly explained his contribution for the sale consideration under Ex.A1. At the time of the purchase of Ex.A1/sale deed, he has completed 10th standard, who was said to have been worked for three years in the rice mill. Both the Courts below have come to the conclusion that alleged contribution by the defendants is not proved.

9.Therefore, I find that burden of proof which falls upon the first defendant to say that he is also made contribution is not proved in the manner known to law. Accordingly, Ex.A1/sale deed in the name of the Panneerselvam, is self acquired property and therefore, both the Courts below have rightly followed the principle of burden of proof. Besides, he has come forward with specific plea of oral partition before the Panchayatdhars. It is to be stated that in the written statement he has not pleaded when there was oral partition and in the presence of whom the oral partition was taken place, assumes significance.



10. At the time of the trial DW2 (Town Panchayat President) was examined and he is not in a position to explain the boundaries of the property or location of the property, hence, both the Courts below have assigned reason to disbelieve the evidence of DW2 and subsequently held that the plea of oral partition taken by the first defendant is not proved. I do not find any error in the application of law.

11. Ms. G. Sumitra, learned counsel for the appellants has strongly opposed the ground that the admission of PW1 and PW2 is in support of the defendants. Admittedly, in the written statement, the defendants have not pleaded about the oral partition and in the presence of whom the oral partition was taken place. In the absence of any pleadings in the written statement, the suggestion said to have been made is only misleading. A snap answer in the cross examination cannot be treated as an admission and hence, I do not find any merit in the submissions made by the learned counsel for the appellant in support of the second substantial questions of law.

12. Though, it is the suit for bare injunction, since the injunction prayer is based upon the title incidental to the prayer, both the Courts below have gone into title and hence the same cannot be found fault, both the substantial questions of law does not arise for consideration on the above factual position. Hence, both the substantial questions of law are answered in negation against the appellant.

13. Accordingly, I do not find merits in this case and this Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Chidambaram.
2. The Principal District Munsif,
Chidambaram.



Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to M/s.G.Sumitra, Advocate, S.R.No.5540

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and
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