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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.02.2022
PRONOUNCING ORDERS ON : 11.02.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

S.A.No.313 of 2012

Thirunavukkarasu
Son of late Vasu

..Appellant / Defendant

..Vs..

S.Damodharan Naicker
Son of Subbu Naicker

..Respondent / Plaintiff

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.35 of 2010 on the file of the II Additional Sub Court, Chengalpattu, dated 10-01-2012 in confirming the judgment and decree in O.S.88 of 2007, on the file of the District Munsif cum Judicial Magistrate, Thirukkalukundram, dated 29.09.2010.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.K.Goviganesan

JUDGMENT

The defendant is the appellant in this Second Appeal.

2.The respondent/plaintiff filed the suit seeking for the relief of partition of the suit properties and for allotment of half share in his favour.

3.The case of the plaintiff is that he and the father of the defendant constituted a joint family. All the properties that were acquired and purchased were joint family properties. They divided the properties under a registered partition deed dated



2.4.1979. While entering into partition, a gramamatham house site and certain lands were left out and in respect of those two properties, it was decided that they will enter into a partition after obtaining a patta.

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4.The further case of the plaintiff is that the gramamatham sites were situated in Survey Nos. 95/3 and 97/2 which measured an extent of 0.24 acres and 0.08 acres respectively. The plaintiff admitted that he is in possession and enjoyment of 0.12 acres on the northern side in Survey No. 95/3 and similarly he is in possession and enjoyment of 0.04 acres on the northern side in Survey No.97/2.

5.The grievance of the plaintiff is that after the death of the father of the defendant, the defendant was attempting to interfere with the possession and enjoyment of the portions of the properties which were enjoyed by the plaintiff. The further grievance is that the defendant also brought about the transfer of patta in his name as if he was the owner of the entire Survey No. 95/3. Left with no other option, the plaintiff has sought for half share in the gramamatham lands in Survey Nos.95/3 and 97/2 respectively.

6.The appellant/defendant filed a written statement and took a stand that the properties were already divided under the registered partition deed dated 2.4.1979 and after the division, the father of the defendant was in occupation of the gramamatham house site in Survey No.95/3 measuring an extent of 0.21 cents. The patta was also granted in his favour and on his death, the patta was given in favour of the defendant. Insofar as Survey No. 97/2 is concerned, the defendant denies the fact that it is a joint family property and claims it to be the property of his father. The defendant therefore had sought for the dismissal of the suit.

7.The Courts below on appreciation of the oral and documentary evidence found that item numbers 1 and 2 of the suit property were not partitioned by the plaintiff and the father of the 1st defendant on 2.4.1979 and it was deferred to a future date to enable them to apply for a patta for these properties. The courts below also found that just because the patta stood in the name of the father of the defendant with respect to item number 1 of the suit property, that will not in anyway alter the nature of the property which was always considered to be joint family property.



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8. The Courts below also found that the parties cannot be allowed to wriggle out of the stand that was taken by them in the partition deed dated 2.4.1979 and which was marked as Exhibit A1. Hence both the courts found that the claim made by the plaintiff is sustainable and proceeded to pass a preliminary decree for partition.

9. The learned counsel for the appellant submitted that certain additional documents were taken as additional evidence before the lower Appellate Court and these documents were relied upon by the lower Appellate Court even without following the procedure under Order XLI Rule 28 of CPC. The learned counsel therefore submitted that the matter has to be remanded for the sake of recording evidence atleast with regard to two unregistered sale deeds marked as Exhibits B-5 and B-6.

10. The lower Appellate Court has specifically dealt with this issue and found that these two documents cannot be acted upon in the absence of any specific pleading in the written statement. Therefore, the lower Appellate Court found that no reliance can be placed upon Exhibit B5 and Exhibit B6. The lower Appellate Court also found that even if these documents were to be relied upon for collateral purpose, it was dealing with a property in Survey No. 95/2 and it had nothing to do with the suit properties situated at Survey Nos. 95/3 and 97/2. The lower Appellate Court found that the appellant was trying to fill up the lacunae by filing additional documents.

11. In the considered view of this Court, both the Courts below have rendered their findings on appreciation of oral and documentary evidence. This Court does not find any perversity in the findings rendered by both the courts below. The judgments of both the Courts below do not warrant any interference and there is no substantial question of law involved in this Second Appeal.

12. In the result this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



To

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1. The II Additional Sub Court,
Chengalpattu
2. The District Munsif cum Judicial Magistrate Court,
Thirukkalukundram,

Copy to

The Section Officer
V.R.Section
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.8879
+1cc to Mr.K.Goviganesan, Advocate, S.R.No.9103

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NSK 21/04/2022