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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

S.A.No.335 of 2012

and

M.P.No.1 of 2012

Viswanathan

...Appellant / Plaintiff

Vs.

1.Nallamuthu

2.Somasundaram

... Respondents / Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 13.12.2011 made in A.S.No.10 of 2011 on the file of the Sub-Court, Perundurai reversal of the Judgment and Decree dated 05.07.2011 made in O.S.No.272 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

For Appellant : Mr.N.Umapathi

For Respondents: M/s.S.Kaithamalaikumaran

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The plaintiff filed the suit seeking for the relief of permanent injunction restraining the defendants from in any way interfering or trespassing in the suit property.

3.The case of the plaintiff is that the suit properties were purchased by the plaintiff through registered Sale Deed dated 17.05.1994, marked as Ex.A8. Since there was some mistake in the Sale Deed, a Rectification Deed was executed on 22.09.1996 and the same was marked as Ex.A9. Some portions of the properties were sold by the plaintiff to an extent of 1.73 acres and he retained 0.52 cents. Thereafter, the plaintiff purchased properties in R.S.No.128/13 through a registered Sale Deed dated 08.12.2004, marked as Ex.A1.

4.The grievance of the plaintiff was that the defendants attempted to trespass into the suit properties and disturb the peaceful possession and enjoyment of the plaintiff. This led to



the filing of the suit against the defendants seeking for the relief of permanent injunction.

5.The defendants filed a written statement and denied the fact that the plaintiff is the owner of suit properties to the extent mentioned in the suit schedule. According to the defendants, the plaintiff was enjoying in common along with other co-sharers including the defendants and therefore, the plaintiff is not entitled for the relief of permanent injunction against the co-owners of the property. Accordingly, the defendants sought for the dismissal of the suit.

6.The trial Court on appreciation of the oral and documentary evidence through a Judgment and Decree dated 05.07.2011, decreed the suit as prayed for. Aggrieved by the same, the defendants filed an appeal before the Sub-Court, Perundurai in A.S.No.10 of 2011. The lower Appellate Court on re-appreciation of the oral and documentary evidence and on considering the findings of the trial Court, was pleased to allow the appeal through a Judgment and Decree dated 13.12.2011 and thereby, the Judgment and Decree passed by the trial Court was set aside. Consequently, the suit was also dismissed. Aggrieved by the same, the plaintiff has filed this appeal.

7.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

8.This Court also carefully perused the materials available on record and the findings of both the Courts below.

9.The plaintiff and the defendants are brothers. The father of the plaintiff and the defendants purchased properties through Ex.B1 and B2 Sale Deeds and what was purchased was the undivided common share in R.S.No.128/13 and other survey numbers. Similarly, Exs.A8 and A9 shows that the plaintiff had purchased undivided common share in R.S.No.128/13 and other sub-divisions in R.S.Nos.127 and 128. These documents clearly establishes the fact that the properties remained in common and they have not been partitioned.

10.In the plaint that was filed in the suit, there is absolutely no pleading regarding any oral partition. Only after the written statement was filed by the defendants, the plaintiff came up with a new plea by filing a reply statement where he talks about an oral partition. No details regarding the alleged oral partition were given in the reply statement. Even in his evidence, the plaintiff who was examined as PW1 was not able to explain as to when the oral partition took place and the extent of properties that were allotted to the sharers.



11.The lower appellate Court took into consideration all the above documents and also the evidence of PW1 and gave a finding that the properties remained in common and the plaintiff did not establish his plea of oral partition.

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12.In view of the above findings, the lower appellate Court came to a conclusion that the plaintiff cannot claim for an exclusive possession over the suit properties, since it remained undivided and the plaintiff cannot seek for the relief of injunction against the co-owners.

13.In the considered view of this Court, the Appellate Court has given sufficient reasons while arriving at the conclusion that the plaintiff failed to prove that he is in exclusive possession and enjoyment over the suit properties. The lower Appellate Court has also assigned proper reasons while differing with the findings of the trial Court. This Court does not find any perversity in the findings rendered by the lower appellate Court and there are no grounds to interfere with the same. In any case, no substantial question of law is involved in this Second Appeal.

14.The plaintiff was not right in seeking for the relief of permanent injunction in this case, since the properties remained undivided and they are enjoyed in common by the plaintiff' and the defendants. Hence, the plaintiff ought to have sought for the relief of partition and separate possession with regard to the portions of the property purchased by him under Ex.A1, A8 and A9. It is not too late for the plaintiff to file a suit for partition and such a liberty is also granted to the plaintiff by this Court.

15.In this result, this Court does not find any ground to interfere with the Judgment and Decree of the lower Appellate Court. However, liberty is granted to the plaintiff/appellant to file a suit for partition and for dividing the properties by metes and bounds and seek for the allocation of the properties purchased by him. Except giving this liberty, no further orders can be passed in this Second Appeal. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



1. The Subordinate Judge,
Sub-Court, Perundurai.

2. The District Munsif-cum-Judicial Magistrate,
The District Munsif-cum-Judicial Magistrate Court,
Perundurai.

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

+1cc to Mr.N.Umapathi, Advocate, S.R.No.27279

+1cc to M/s.S.Kaithamalaikumaran, Advocate, S.R.No.27502

S.A.No.335 of 2012
and M.P.No.1 of 2012

SRA[co]
NSK/17/05/2022