



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.04.2022

PRONOUNCING ORDERS ON : 29.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Second Appeal No.445 of 2012

MP No.1 of 2012

Pushpa .. Appellant/1st Respondent /Plaintiff

.Vs.

1. Vasantha

2. Minor Ramakrishnan

3. Minor Rajendran

Minor rep. By next friend

1st respondent vasantha

..Respondents 1 to 3 /Appellants 1 to 3/
Defendants 1 to 3

4. Tathi

5. Kumar

Respondents 1 to 5

residing at Chennampatti Village,

Jittandahalli Post

Palacode Taluk,

Dharmapuri District

..Respondents 4 & 5 /Respondents 2 &3
Defendants 4 & 5

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.03.2011 passed in A.S.No.30 of 2010, on the file of the Sub Court, Dharmapuri in reversing the judgement and decree dated 25.03.2010 passed in O.S.No.63 of 2006 on the file of the District Munsif Court, Palacode.

For Appellants : Mr.P.Mani

For Respondents : Mr.V.Raghavachari for
R1 to R3

No appearance for R4 and R5



JUDGMENT

The plaintiff is the appellant in this Second Appeal.

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2. The plaintiff was born to one Kemban through his first wife. The 1st defendant is the second wife of the said Kemban and the 2nd and 3rd defendants are the children of the 1st defendant. The 4th defendant is the aunt and the 5th defendant is the son-in-law of the 4th defendant.

3. The case of the plaintiff is that the suit properties were allotted to the share of the grandmother of the plaintiff in a oral partition held between Kemban and the grandmother of the plaintiff Akkumari. The said Akkumari sold the suit properties in favour of the plaintiff through a registered sale deed dated 17.4.2006, marked as Ex.A1. The further case of the plaintiff is that she was in possession and enjoyment of the suit properties immediately after it was sold in her favour.

4. The grievance of the plaintiff is that the defendants do not have any right over the suit properties and they were trying to interfere with the possession and enjoyment of the suit properties. Hence the suit was filed seeking for the relief of declaration of title and permanent injunction.

5. The defendants 1 to 3 filed a written statement. They took a stand that the suit properties were the ancestral properties of one Siddhan and the above said Akkumari was the wife of Siddhan. The above said Kemban was the son of Siddhan and Akkumari and the 4th defendant is their daughter. It was further pleaded that the said Siddhan and Kemban enjoyed the suit properties and other properties in common and Siddhan died in the year 1995. On his death, Kemban and the 1st defendant were enjoying the suit properties and other properties. The above said Akkumari was maintained by Kemban and after him, by the 1st defendant. Accordingly, the defendants took a stand that Akkumari does not have any right over the suit properties and other properties.

6. It was further stated by the defendants that during the year 2004, there was a family arrangement and the suit properties were allotted to the share of defendants 1 to 3



and the plaintiff was given a property measuring an extent of 52 cents in Survey No. 354/3A. Thereafter, defendants 1 to 3 were also granted patta for the suit property. It is alleged that Akkumari colluded with the plaintiff and created the sale deed which according to the defendants, is a sham and nominal document. On all these grounds, defendants 1 to 3 sought for the dismissal of the suit.

7. The Trial Court on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, was pleased to decree the suit as prayed for through Judgment and Decree dated 25.3.2010. Aggrieved by the same, defendants 1 to 3 filed an appeal in A.S. No. 30 of 2010. The Lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the appeal through Judgment and Decree dated 24.3.2011 and thereby set aside the Judgment and Decree of the Trial Court. Aggrieved by the same, the plaintiff has filed this Second Appeal.

8. Heard Mr.P.Mani, learned counsel for the appellant and Mr.V.Raghavachari, learned counsel for the respondents 1 to 3. This Court carefully went through the materials available on record and the findings of both the Courts below.

9. The Trial Court found that Akkumari was allotted the suit properties in the family arrangement between Kemban and Akkumari and she was in possession and enjoyment of the property and therefore, Akkumari had the right and title to sell the suit properties in favour of the plaintiff through Ex.A1 sale deed.

10. The Trial Court also gave a finding to the effect that the plaintiff was in possession and enjoyment of the suit properties even as per the recitals found in Ex.A1 and the sale deed was also spoken to by PW-2, who was one of the witness in the sale deed.

11. The Trial Court thus found that the plaintiff had established the title and possession in the suit properties and accordingly, the suit was decreed.

12. The Lower Appellate Court closely analysed the evidence of PW-2, who was a witness to the sale deed and he deposed that the partition between Kemban, Akkumari and Bairammal took place in the year 2006. This evidence runs



contrary to the evidence of PW-1 who stated that the oral partition took place in the year 1996. Since the basis of the claim of the plaintiff was on the oral partition through which Akkumari is said to have been allotted the suit properties, the Lower Appellate Court found that there is a huge discrepancy between the evidence of PW-1 and PW-2 as to when the oral partition had actually taken place. The Lower Appellate Court also found that the said Akkumari was not examined as a witness by the plaintiff and she will be the right person who could have spoken about the so called oral partition between Kemban, Akkumari and Bairammal.

13. The Lower Appellate Court thereafter analysed the evidence of DW-1 to DW-3 who were examined on the side of the defendants. Even though the plaintiff pointed out to some of the portions of the evidence where DW-1 is said to have admitted the division of properties between Kemban and Akkumari, the Lower Appellate Court found that the evidence cannot be read in bits and pieces and the plaintiff cannot be allowed to pick holes in the case of the defendants in order to prove her case. The Lower Appellate Court found that, if really Akkumari was allotted the suit properties and she was in possession and enjoyment of the same for nearly 10 years, she should have paid some kist to the Government and got the patta transferred in her name. However, no such documents were marked on the side of the plaintiff. There was nothing to show on the side of the plaintiff to establish possession and enjoyment of the properties except Ex.A1 sale deed.

14. The Lower Appellate Court also looked at this case from a different angle. The total extent of the properties that was enjoyed by Siddhan and his son Kemban were nearly 4 acres. Both of them will be entitled for 2 acres each since it is an ancestral property. On the demise of Siddhan, his son Kemban, his wife Akkumari and his daughter viz. the 4th defendant and his mother will be entitled to claim for 1/4th share each in the half-share of Siddhan. In the absence of the plaintiff proving the so called oral partition, at the best, the said Akkumari would have got 1/8th share in the properties which will work out to just over 50 cents. However, plaintiff was claiming through Akkumari an extent of 2.92 acres. This claim made by the plaintiff was found to be improbable. Accordingly, the Lower Appellate Court held that Akkumari could not have conveyed more than what she was entitled to.

15. In the considered view of this Court, the Lower Appellate Court has rendered cogent reasons while arriving at a



conclusion that the plaintiff has not made out a case for declaration of title and permanent injunction. This finding was based on appreciation of the evidence available on record. The Lower Appellate Court also found that the defendants 1 to 3 were in possession and enjoyment of the suit properties since the patta was standing in their names from the year 2004 onwards and they had also paid the revenue for the years 2005, 2006 and 2007. This Court does not find any perversity in the findings of the Lower Appellate Court and the Judgment and Decree of the Trial Court has been reversed after assigning proper reasons. It looks like the plaintiff had sought for a wrong relief without realising that in a suit for declaration of title, the entire burden is upon the plaintiff to prove her case and once the plaintiff fails to discharge the said burden, howsoever bad is the defence of the defendants, that will not come to the aid of the plaintiff. The plaintiff should have claimed the relief of partition and sought for the division of the properties. This observation has also been made in the Judgment of the Lower Appellate Court. To that extent, liberty is granted to the appellant. This Court does not find any substantial question of law involved in this Second Appeal.

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

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Dharmapuri.

2.The District Munsif, Palacode.

+1cc to Mr.V.Raghavachari, Advocate SR.No.29815

Second Appeal No.445 of 2012

MG(CO)

GMV(10/06/2022)