



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.627 of 2013

and

MP No.1 of 2013

A.M.Akbar

...Appellant/Defendant
in Trial Court

Vs.

1. A.M.Abdul Kareem

...1st Respondent/Plaintiff
in Trial Court

2. Smt. Jeenath

... 2nd respondent

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 25.04.2008 made in O.S.No.46 of 2007 on the file of Subordinate Judge, Pollachi as confirmed by the Judgement and decree dated 30.11.2011 made in A.S.No.59 of 2010 on the file of Additional District cum Fast track court, No.1, Coimbatore.

For Appellant :M/s.R.Gouri

For Respondents :M/s.C.R.Prasanan

for R1

M/s.I.Abrar Md.Abdullah

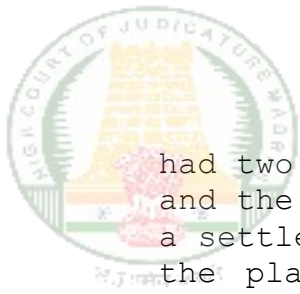
for R2

JUDGMENT

The defendant is the appellant in this second appeal.

2. The 1st respondent / plaintiff filed a suit seeking for the relief of partition and for allotment of $\frac{1}{2}$ share in the suit property.

3. The case of the plaintiff is that the suit property was allotted to one Mohammed Hanifa under a partition deed dated 26.09.1969, marked as Ex.A1. The said Mohammed Hanifa



had two sons viz., Abdual Karim and Akbar. They are the plaintiff and the defendant in this suit. The said Mohammed Hanifa executed a settlement deed dated 15.02.1983, marked as Ex.A2, in favour of the plaintiff and the defendant. Mohammed Hanifa died leaving behind the plaintiff and the defendant as his legal heirs. Since the plaintiff did not want to continue in joint possession, the suit came to be filed seeking for allotment of $\frac{1}{2}$ share through metes and bounds.

4. The defendant filed a written statement and took a stand that there was a oral partition between the plaintiff and the defendant even during the life time of their father and as per the oral partition, the plaintiff was allotted the western side of the suit property and the defendant was allotted the eastern side of the suit property. Therefore, the defendant took a stand that there is no cause of action to once again seek for partition and sought for the dismissal of the suit.

5. Both the Courts below on appreciation of oral and documentary evidence and after considering the facts and circumstances of the case, concurrently held in favour of the plaintiff and passed the preliminary decree. Aggrieved by the same, the defendant has filed this second appeal.

6. Heard the learned counsel for the Appellant and the learned counsel for the respondent and this Court has also carefully perused the materials available on record and the findings of both the Courts below.

7. Both the Courts below found that under Ex.A2 settlement deed, the entire property was settled in favour of the plaintiff and the defendant jointly. The defendant who came with a specific plea that there was a oral partition between him and the plaintiff, did not even get into the witness box. It is the wife and the father-in-law of the defendant who were examined on the side of the defendant. Therefore, adverse inference was drawn by both the Courts below and it was held that the plea of oral partition taken by the defendant was not proved. Both the Courts below also took into consideration the documents relied upon by the defendant and found that all the documents stood in the name of Mohammed Hanifa. Hence, there was no documentary proof on the side of the defendant to substantiate the plea of oral partition.

8. In the considered view of this Court, the defendant did not prove that the western portion was allotted to



the plaintiff and the eastern portion was allotted to the defendant and the materials on records goes to show that the suit property remained undivided as on the date of the suit. The findings rendered by both the Courts below is based on appreciation of evidence and this Court does not find any perversity in those findings. In any event, no substantial question of law is involved in the present second appeal.

9. 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, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Subordinate Judge, Pollachi
2. The Additional District cum Fast track Court, No.1,
Coimbatore.

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1cc to Mr.C.R.Prasanan, Advocate SR.No.21229
+3cc to Mr.I.Abrar MD Abdullah, Advocate SR.No.21132

SA.No.627 of 2013

GPL(CO)
CB(13/04/2022)