



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.758 of 2016
and
C.M.P.No.14269 of 2016

B.Subramani

...Appellant/Defendant

Vs.

Krishnamoorthy (died)

1. Daivakanni,
2. Minor K.Uma
3. Minor K.Srikanth
4. Minor K.Priya

...Respondents/Plaintiffs

Minor respondents 2 to 4 are
rep.by their mother/Next friend/
Guardian Daivakanni.

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.04.2016 made in A.S.No.57/2015 on the file of Sub Court, Ranipet, Vellore District, modifying the judgment and decree dated 31.03.2015 in O.S.No.134/2009 on the file of District Munsif Cum Judicial Magistrate No.1, Walajahpet, Vellore District.

For Appellant : Mr.S.Mukunth

For Respondents : No appearance
1 to 4 Notice served

JUDGMENT

The learned Counsel for the appellant advanced his arguments on the substantial questions of law framed by this Court. The respondents have been served and their names have also been printed in the cause list. There is no appearance on the side of the respondents either in person or through Counsel.



2. The plaintiff is the appellant in this Second appeal. The plaintiff filed the suit seeking for the relief of partition and claimed 10/11th share in the suit properties.

3. The case of the plaintiff is that the suit properties originally belonged to his great grandmother Periammal who became the owner of the property by virtue of a Registered Sale deed dated 11.09.1920. On her demise, the property was inherited by her two sons Munusamy and Muthusamy. It is stated that there was oral partition among the two sons and they divided the property among themselves. In the present case, this Court is concerned about the share that fell in favour of Munusamy.

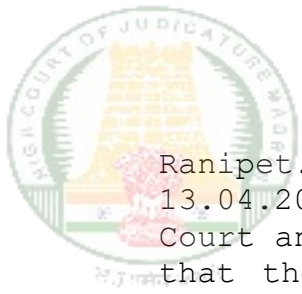
4. The above said Munusamy had two sons namely Balasundaram and Chandra Reddiar. Balasundaram died intestate in the year 1988 leaving behind his two wives and the children born to them. The other half share was under the possession and enjoyment of the Chandra Reddiar and his two sons.

5. The further case of the plaintiff is that after the death of Balasundaram, there was an oral partition and it was agreed that all the shares except one will be allotted in favour of the plaintiff. Incidentally the plaintiff and the original defendant are brothers who are born to the second wife Susila. The other co-sharers stood as witnesses in this document and there is substantial oral evidence available to the effect that they have all given up their shares and they have all acknowledged the right and title of the plaintiff with regard to all the shares except one share that was given to the brother of the plaintiff.

6. It is under these circumstances, the plaintiff filed the suit before the Court below seeking for 10/11th share in the suit properties against his brother, who was originally the defendant on the ground that he is refusing to effect partition of the suit properties in line with their respective shares.

7. The Trial Court on considering the oral and documentary evidence and after taking into consideration the facts and circumstances of the case, passed a judgment and decree dated 31.03.2015 and by virtue of the same, a preliminary decree for partition was passed declaring that the plaintiff is entitled for 17/18 share in the suit properties and that the defendant is entitled for 1/18th share in the suit property.

8. Aggrieved by the above judgment and decree of the Trial court, the defendant filed an appeal before the Sub Court,



Ranipet. The Lower Appellate Court by judgment and decree dated 13.04.2016 interfered with the judgment and decree of the Trial Court and modified the share allotted by the Trial Court and held that there will be a preliminary decree of partition declaring half share to the plaintiff and half share to the defendant. Aggrieved by the same the present second appeal was filed before this Court.

9. This Court formulated the following substantial questions of law:

"(1) Whether the Appellate Court was right in finding that the relinquishment made by the other sharers in favour of the plaintiff was only his capacity as the Elder brother (Elder Member of the family) and hence in respect of the relinquishment, the plaintiff will be entitled only for half share and the balance half share will go in favour of the defendant ?

(2) Whether the Appellate Court properly exercised its jurisdiction under order 41 Rule 31 of Civil Procedure Code while reversing the finding of the Trial Court in so far as allotment of share is concerned ?"

10. Heard, the learned counsel for the appellant. The respondents were served with notice and their name was also printed in the cause list and they neither appeared in person nor through counsel.

11. This Court has carefully gone through the judgment and decree passed by the Lower Appellate Court. There is no dispute with regard to the facts of the case and therefore, this Court will directly go into the findings rendered by the Lower Appellate Court. The Lower Appellate Court after having found that all the sharers have relinquished / released their share in favour of the plaintiff, seems to assign a different meaning for such relinquishment. The Lower Appellate Court finds that even though the other sharers have renounced / relinquished their share in favour of the plaintiff, it was done only for the reason that the plaintiff is the elder male member of the family. Therefore according to the Lower Appellate Court, such relinquishment will not enure in favour of the plaintiff absolutely. Having given such a finding, the Lower Appellate Court straight away comes to the conclusion that the plaintiff is entitled for half share and the defendants are entitled for the other half share.



12. The above findings rendered by the Lower Appellate Court is without any basis and such a finding has been rendered more out of assumption and surmises. None of the witnesses state in their evidence that they relinquished in favour of the plaintiff only because he was the elder male member. Every witness categorically states that they relinquished their share in favour of the plaintiff and in many of the cases they have also taken some money for releasing their share. When such a categoric statement is made, it cannot be interpreted by the Lower Appellate Court in a particular way which will defeat the very purport of the relinquishment made by the other sharers. Those sharers never intended to give their share in favour of the defendants. However the Lower Appellate court by giving a peculiar interpretation, has virtually taken away their share and given it in favour of the defendant and thereby has held that the defendant will be entitled for half share in the suit properties. This finding rendered by the Lower Appellate court is perverse and it is opposed to the oral and documentary evidence that is available on record. In view of the same, it requires the interference of this Court.

13. In view of the above discussion, the questions of law framed by this Court are answered in favour of the appellant and the judgment and decree of the Appellate court made in A.S.No.57 of 2015, dated 13.04.2016 is here by set aside and the judgment and decree of the Trial Court made in O.S.No.134 of 2009, dated 31.03.2015 is restored and it is made clear that the appellant will be entitled for 17/18 shares in the suit properties and the respondents will be entitled for 1/18th share in the suit properties. Accordingly the Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Nti/Jeni

To

1.The Subordinate Judge,
Ranipet, Vellore District.



2.The District Munsif Cum Judicial Magistrate,
No.1, Walajahpet, Vellore District.

Copy To:-

The Section Officer

VR Section, High Court Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.7843

S.A.No.758 of 2016

RR(CO)

CB(25/04/2022)