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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.NO.697 OF 2014
IN M.P.NO.1 OF 2014

A.Kanagaraj

...Appellant/
Appellant/4th Defendant

Vs.

1.Meenatchi

... 1st Respondent/Plaintiff

2.Kannan alias Kundamani

... 2nd Respondent/2nd Defendant

3.Radhakrishnan

... 3rd Respondent/3rd Defendant

4.Ponnambalam

... 4th Respondent/4th Defendant/
5th Defendant

PRAYER:

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 01.04.2014 made in A.S.No.13 of 2013 on the file of the Court of the II Additional District Judge, Tindivanam, confirming the judgment and decree dated 11.04.2012 made in O.S.No.74 of 2006 on the file of the Court of the Additional Subordinate Judge, Tindivanam.

For Appellant : Mr.T.Dhanasekaran

For Respondents: Mr.S.Kaithamalai Kumaran for R1
Mr.M.P.Saravanan for R3
No Appearance for R2 & R4
(Notice Served)

JUDGMENT

The 4th defendant is the appellant in the present Second Appeal.



2.The 1st respondent/plaintiff filed a suit seeking for the relief of partition and allotment of $\frac{1}{2}$ share in both "A" and "B" Schedule properties.

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3.The case of the plaintiff is that the father of the plaintiff and the 1st defendant are brothers. They were enjoying the suit properties as joint family properties. The father of the plaintiff executed a Will on 07.10.1993 with respect to the undivided share in the "A" Schedule property in favour of the plaintiff. The father of the plaintiff died on 11.01.1998. Insofar as the "B" Schedule property is concerned, it was purchased in the name of the 1st defendant, but however, it was also treated as a joint family property. The plaintiff had sent a legal notice to the defendants and had claimed for the partition of the suit properties and allotment of $\frac{1}{2}$ share. Since it was not acted upon, the present suit was filed seeking for the relief of partition.

4.The 1st defendant filed a written statement and took a defence that all the joint family properties were orally partitioned in the year 1945 itself and Item Nos.1 and 2 and a portion in Item Nos.5 and 6 of "A" Schedule property was allotted to the 1st defendant in the said oral partition. The further defence taken by the 1st defendant was that the father of the plaintiff had dealt with all the properties that was allotted in his favour and he settled at Pondyicherry. Insofar as the "B" Schedule property is concerned, the 1st defendant took a stand that it is a self-acquired property.

5.Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to a conclusion that the plaintiff is entitled for claiming partition and allotment of $\frac{1}{2}$ share in the "A" Schedule property. Insofar as the "B" Schedule property is concerned, the relief was rejected. Aggrieved by the same, the present Second Appeal has been filed by the 4th defendant.

6.Heard the learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

7.A careful reading of the judgments of both the Courts below shows that there was absolutely no proof to establish that there was an oral partition in the year 1945. From the year 1945 till the year 2010, not a single document was produced by the defendant to establish oral partition. The defendants had attempted to bring in additional evidence at the stage of appeal and Exhibits B3 to B.15 were marked. Even these documents had been obtained for three of the items in the "A" Schedule property in the year 2011. Therefore, from 1945 till 2010, the



defendant was not able to show that the revenue records were mutated in his name, if really any oral partition had taken place as claimed by the 1st defendant.

8.Both the Courts below also found that the "B" Schedule property is the separate property of the 1st defendant and the plaintiff is not entitled for any share in this property.

9.The findings rendered by both the Courts below are on the basis of the evidence available on record and this Court does not find any findings to be perverse. No substantial questions of law are involved in the second appeal.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

To

1.The II Addiqtional District Judge, Tindivanam.

2.The Additional Subordinate Judge, Tindivanam.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.10595
+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.11113

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in M.P.No.1 of 2014

GSM(CO)
PM/22/04/2022