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S.A.No.1005 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2022

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1005 of 2022 and
CMP.No.21574 of 2022

1.Thangarasu
2.Balasubramaniam
3.Selvaraj

...Appellants

Vs.

Kuppayi Ammal

...Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 15.03.2022 made in AS.No.49 of 2016 on the file of the Subordinate Judge, Bhavani confirming the judgment and decree dated 02.09.2015 made in OS.No.102 of 2014 on the file of the Principal District Munsif Court, Bhavani by allowing this second appeal.

For Appellants : Mr.C.Munusamy

For Respondent : Mr.S.Lakshmana Samy

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 15.03.2022 made in AS.No.49 of 2016 on the file of the



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Subordinate Judge, Bhavani confirming the judgment and decree dated 02.09.2015 made in OS.No.102 of 2014 on the file of the Principal District Munsif Court, Bhavani, thereby allowed the suit for partition.

2. The petitioners are the defendants in the suit filed by the respondent. The case of the respondent is that she has purchased the suit property by the registered sale deed dated 16.09.1986 to an extent of 83.5 cents and she is in possession and enjoyment of the suit property without any hindrance or whatsoever. Though the property was purchased by her with boundaries, it was stated wrongly as situated in centre of the property instead of common. Therefore, the respondent and the appellants are in joint possession of the entire extent of the property. Therefore, the respondent filed suit for partition.

3. The case of the appellants is that after purchase of the suit property, there was a oral partition and accordingly, the respondent is enjoying her property to an extent of 83 ½ cents and the property is situated in the northern side admeasuring 82 cents which was allotted in favour of the appellants and they are in possession and enjoyment of the same. Therefore,



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there is absolutely no necessity to file a suit for partition.

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4. On the side of the respondent, she had examined PW1 and marked Ex.P1 to Ex.P8. On the side of the appellants, they examined DW1 and no documents were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court allowed the suit. Aggrieved over the judgment and decree of the trial Court, the appellants preferred appeal suit in AS.No.49 of 2016 before the Subordinate Judge, Bhavani. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

5. The learned counsel for the appellants raised the following substantial questions of law.

a) Whether the suit for partition is liable to be dismissed in view of the specific recitals and boundaries specified in the registered sale deed dated 16.09.1986 which is marked as Ex.A1?

b) Whether the suit for partition is maintainable in law after a period of three decades



of uninterrupted possession and enjoyment of the suit property with specific boundaries based on the oral partition?

c) Whether both the courts below failed to decide the lis adhering to the principles governing the burden of proof?

d) Whether there is any perversity or illegality in the judgments and decrees of both the courts below?

e) Whether the judgments and decrees of the courts below are sustainable on the facts and circumstances of this case?

6. Heard, Mr.C.Munusamy, the learned counsel appearing for the appellants and Mr.S.Lakshmana Samy, the learned counsel appearing for the respondent.

7. Even as per the sale deed, the suit properties are bounded with boundaries and accordingly, the respondent is in possession and enjoyment of the same. Now, only to usurp the share which was allotted in favour of the appellants, she filed suit for partition. The suit property has already been partitioned between the vendors and the respondent and the appellants to the effect that the southern portion of the property belongs to the vendor of the



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respondent and the northern portion of the property belongs to the appellants.

After purchase, the respondent could not enjoy the property without partition, that too for a period of thirty years. The suit property is an ancestral property of the appellants and they have divided much prior to the sale deed executed in favour of the respondent. Therefore, there is absolutely no necessity to divide the property once again, that too after a period of thirty years. On perusal of Ex.A1, sale deed which was executed in favour of the respondent dated 16.09.1986, though the boundaries mentioned, the properties situated at the centre of the total extent of the property instead of 'in common' out of the total extent. Subsequently, the respondent executed rectification deed in that regard and as such, there was no partition after sale of the property. All the appellants and the respondent are in joint possession and enjoyment of the properties. It is not the case of the appellants that the respondent did not purchase any land. They categorically admitted the sale deed executed in favour of the respondent and as such, the property which was purchased by the respondent has to be partitioned as per boundaries. Hence, the courts below rightly decreed the suit and as such, no substantial question of law involved in this appeal and the same are answered in favour of the respondent.



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8. Accordingly, this Second Appeal is dismissed and the judgment and decree dated 15.03.2022 made in AS.No.49 of 2016 on the file of the Subordinate Judge, Bhavani confirming the judgment and decree dated 02.09.2015 made in OS.No.102 of 2014 on the file of the Principal District Munsif Court, Bhavani is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.12.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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To

- 1.The Subordinate Judge,
Bhavani
- 2.The Principal District Munsif Court,
Bhavani
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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