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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.527 of 2017
and
C.M.P. No.12737 of 2017

1. Meenakshi
2. S.Padmanaban
3. S.Manivannan

.. Appellants/Plaintiffs

Vs.

1. C.Ragavendiran
2. V.Santha
3. C.Prema
4. C.Mohanram
5. C.Ramakrishnan

.. Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree in A.S. No.43 of 2008 dated 15.02.2011 on the file of Sub Court, Tirupattur, Vellore District, confirming the judgment ad decree in O.S. No.77 of 2001 dated 28.02.2008 on the file of District Munsif Court, Tirupattur, Vellore District.

For Appellant : Mr. P.A.Sudesh Kumar

JUDGMENT

The plaintiffs 2 to 4 in suit in O.S.No.77 of 2001 on the file of District Munsif Court, Tirupattur, Vellore District, are the appellants in this Second Appeal. The appellants are the legal heirs of one C.Sairam who filed the suit in O.S. No.77 of 2001 before the District Munsif Court, Tirupattur, for permanent injunction against the defendants restraining them from committing any act of trespass or causing any disturbance to their peaceful possession and enjoyment of the plaintiffs in the suit property. The plaintiff died during pendency of suit in O.S. No.77 of 2001. Hence, his wife and two sons were impleaded as plaintiffs 2 to 4 and the above appeal is preferred by plaintiffs 2 to 4.



2. The case of the appellants in the plaint is that the suit properties and other properties belonged to first plaintiff's father by name Chinthamani Mudaliar who was in possession and enjoyment of the property till his death in 1980. It is the case of the plaintiffs that the first plaintiff and defendants are the legal heirs of father Chinthamani Mudaliar to succeed to the property left by him. It is the further case that first plaintiff's mother Vijayammal also died in the year 1987. It is stated that after the death of mother Vijayammal, the children of Chindamani Mudaliar effected an oral partition of property on 12.08.1989 and that the suit property was allotted to the share of plaintiff who is in possession and enjoyment of the property from the date of oral partition. It is further stated that the plaintiff is in possession and enjoyment of the property by paying taxes to the Municipality and his separate possession was never disputed by other defendants. Since an attempt was made by the defendants to trespass into the suit property on 25.02.2001, the plaintiffs stated that they were constrained to file the suit for permanent injunction.

3. The first defendant in the suit filed a written statement specifically disputing the oral partition dated 12.08.1999. It is further stated that the properties left by Chindamani Mudaliar and his wife Vijayammal were never the subject matter of any partition and that all the parties are enjoying the property as their common property divisible amongst them. However, in the written statement there is a reference to the similar suit filed by other legal heirs for bare injunction in O.S. No.411 of 2000 and O.S. No.45 of 2002 for partition. The suit was dismissed by the trial Court after holding that the properties are the joint properties of all the sharers and that the oral partition was not proved or established by acceptable evidence by the plaintiffs in the suit. The suit property is a house site measuring an extent of 17 ft x 66 $\frac{3}{4}$ ft. The findings of the trial Court was also confirmed in an appeal preferred by the plaintiffs in A.S. No.43 of 2008 before the Sub Court, Tirupattur. The lower appellate Court also confirmed the findings of the trial Court on all issues. Since the lower appellate Court also found that the property belongs to several sharers and the partition pleaded by the plaintiffs / appellants was not proved in the manner known to law, a co-owner is not entitled to ask for injunction. Aggrieved by the concurrent findings of the Courts below, the above second appeal is preferred by the plaintiffs 2 to 4 who are the legal heirs of deceased first plaintiff.

4. It is to be noted that the Courts below have categorically held that the oral partition pleaded by the plaintiffs was not established. It is to be noted that the



plaintiff has not produced any other material evidence except the order issued by the municipal office of Tirupattur changing the name in the assessment. When the property is admittedly the property of plaintiff's father, and the plaintiff does not claim any exclusive right on the basis of any deed of conveyance but pleading oral partition, the burden lies on the plaintiffs to prove by producing acceptable evidence. Aggrieved by the concurrent findings of the Courts below, the above Second Appeal is preferred by the plaintiffs.

5. Learned counsel appearing for the appellants after deeply narrating the facts submitted that few other defendants have also claimed / admitted the oral partition as contended by the plaintiffs. It is submitted that the trial Court and the appellate Court failed to consider the important aspect of the case. This Court is unable to see any substance in the argument of the learned counsel for the appellant.

6. First of all, the plaintiffs in the other suits relied upon by the appellants in the present Second Appeal are also parties to the suit. Merely by referring to the plaint pleadings which were filed by some of the parties to the lis, the appellants cannot presume that the oral partition is admitted by the plaintiffs or defendants in the other suit. In the present case, the plaintiffs have ample opportunity to prove partition. If some of the defendants also admit that there was oral partition, plaintiffs could have examined by summoning those persons so as to establish their case of oral partition. The plaintiffs have not even produced before this Court the pleadings that were filed by the defendants in the other suits referred to by the plaintiffs / appellants. In such circumstances, this Court is unable to appreciate the contention.

7. The issue whether there was a oral partition is a question of fact. Both the Courts have concurrently held after proper appreciation of oral and documentary evidence adduced by both sides. This is not a case where the Courts below have failed to consider any important or relevant piece of evidence or material. The findings of Court below are supported by reasons. The learned counsel for the appellant submitted that the plaintiffs have produced record to prove mutation of name in the records of local body. The substantial questions of law raised by the appellants indicate that the appellants want this Court to accept the oral partition on the basis of mutation effected in revenue records. The mutation relied upon by the appellant's counsel is by relying upon the order issued by the Municipal Office of Tirupattur on the application for transfer of assessment. The change of name in the municipal records in relation to assessment of property tax or related affairs cannot



be a clinching evidence to prove a oral partition as there is no proof that the order was issued after issuing notice to all parties. Secondly the Assistant Accounts Officer is not competent to decide title.

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8. Having regard to the concurrent findings of the Courts below, this Court is unable to appreciate the argument which was also considered by the Courts below. Having regard to the limited scope of the power of this Court under Section 100 C.P.C., this Court is unable to find any irregularity in the judgment of Courts below warranting interference. Hence, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Tirupattur,
Vellore District.
2. The District Munsif,
Tirupattur,
Vellore District.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras.

S.A. No. 527 of 2017

PA (CO)
SU (06/04/2022)