



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2022
DELIVERED ON : 08.03.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.150 of 2021
and
C.M.P(MD)No.2193 of 2021

Velladurai Pandian

... Appellant/Appellant/
Plaintiff

Vs

1.Lakshmana Pandian
2.J.V.P.Moses

Through his Power Agent
Shanthalakshmi

... Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 16.03.2020 passed in A.S.No.61 of 2016 on the file of the learned Subordinate Judge, Sankarankovil, confirming the judgment and decree, dated 20.01.2015 passed in O.S.No.419 of 2010 on the file of the learned Additional District Munsif, Sankarankovil.

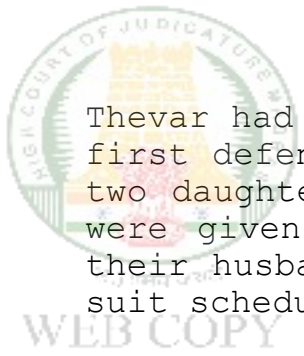
For Appellant : Mr.N.Sankar Ganesh
For Respondents : Mr.S.Ramesh @ Ramiah
for R1 & R2

JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff filed O.S.No.419 of 2010 before the Additional District Munsif, Sankarankovil for declaration of title and permanent injunction. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.61 of 2016 before the Sub Court, Sankarankovil. The learned Subordinate Judge dismissed the appeal. As against the concurrent findings, the present Second Appeal has been filed by the plaintiff.

3. The plaintiff has contended that the suit schedule properties and other properties were originally owned by the plaintiff and the first defendant's father namely, Muthu Perumal Thavar ancestrally and by self-acquisition. The said Muthu Perumal



Thevar had four sons by name, Shanmugaiya Thevar, Chinnapandian, the first defendant and the plaintiff. Apart from the four sons, he had two daughters by name, Chinnathai and Backiyalakshmi. The daughters were given in marriage forty years back and they have settled in their husband's house and they are not evincing any interest in the suit schedule properties.

4. The plaintiff further contended that even during the lifetime of the plaintiff's father, the suit schedule properties were orally partitioned by the four sons, in which the suit schedule properties were allotted to the share of the plaintiff. According to the plaintiff, he sold away the suit schedule properties under Exhibit A2, in favour of one Sivathaiyapandian on 23.06.2003 and thereafter, on 26.08.2009, he re-purchased the properties from the said Sivathaiyapandian under Exhibit A3. According to the plaintiff, he is in possession and enjoyment of the suit schedule properties. However, the defendants are disturbing his possession. Hence, the present suit for declaration of title and permanent injunction.

5. The first defendant filed a written statement though admitting that the properties of Muthu Perumal Thevar were orally partitioned, the defendant disputed the manner of partition as contended by the plaintiff. According to the defendant, the suit schedule properties were allotted to his share and they are in his possession and enjoyment. The defendant further contended that the properties allotted to the share of the plaintiff have been sold under Exhibit B1 on 16.09.1991 in favour of one Pulikutty Pandian.

6. The defendant further contended that after an oral partition, a written partition deed was executed on 15.12.1977 under Exhibit B2, in which the plaintiff is also a party. As per the said Exhibit B2 partition deed, the suit schedule properties were allotted to the share of the first defendant. The defendant also contended that since the suit schedule properties were allotted to his share, he sold away the suit schedule properties under Exhibit B6 on 26.09.2002 in favour of one Francis. Thereafter, the said Francis sold the suit schedule properties in favour of the second defendant on 09.06.2006 under Exhibit B9. Hence, the second defendant is in possession and enjoyment of the suit schedule properties.

7. The defendants further contended that the entire suit survey number lies in a single plot. Hence, the contention of the plaintiff that suit survey number has been sub-divided into four is not factually correct. According to the defendants, the suit survey number has been fenced on all the four sides and a gate was also put up with a lock. The defendants further contended that the plaintiff disturbed his possession and hence, he lodged a police complaint on 13.08.2003 before the Deputy Superintendent of Police, Tirunelveli. The plaintiff appeared before the police and agreed to settle the



has been filed by the plaintiff. Hence, he prayed for dismissal of the suit.

8. The trial Court based upon the oral and documentary evidence, arrived at a finding that both the parties admit that there was an oral partition among the four brothers of Muthu Perumal Thevar. But the manner of partition and the allotment of the properties are in dispute. According to the plaintiff, he was allotted the suit schedule properties. But the first defendant contends that he was allotted the suit schedule properties as per Exhibit B2 partition deed.

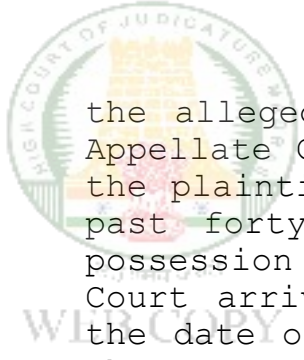
9. The trial Court held that plaintiff has not established the oral partition alleged by him. The trial Court also found that the plaintiff does not have any knowledge about what were the properties allotted to the other co-sharers in the said oral partition. According to the plaintiff, the suit schedule properties have been divided into four from East to West. However, the plaintiff has admitted in his cross-examination that the entire suit survey number remains undivided as a single survey number. The Commissioner's report also confirms the fact that the suit schedule properties remain as a single plot and fenced on all the four sides.

10. The trial Court also found that Exhibit B2 is an unregistered un-stamped document, under which the sons of Muthu Perumal Thevar are said to have partitioned the properties. A perusal of the document will indicate that the partition has taken place on the basis of Exhibit B2 and it is not a record of the past transaction. Hence, the said document is not admissible in evidence.

11. The trial Court after perusal of Exhibits A2 and A3, found that there is no reference about the oral partition pleaded by the plaintiff in Exhibits A2 and A3. The trial Court also found that though the plaintiff contended that suit schedule properties were allotted to his share in the year 1977, he is not able to produce any revenue record for the past forty years, till the filing of the present suit for declaration of title.

12. The trial Court also found that not a single revenue record has been produced in the name of the plaintiff to establish his possession over the suit schedule properties. The trial Court also relied upon the deposition of P.W.2 to arrive at a conclusion that the purchaser under Exhibit A2 was never in possession of the suit schedule properties. Based upon the said findings, the trial Court dismissed the suit.

13. The First Appellate Court also relied upon the deposition of P.W.1 to record a finding that the plaintiff is not aware of the allotment of properties to the other co-sharers who are the sons of Muthu Perumal Thevar. The First Appellate Court also found that the



the alleged oral partition is said to have taken place. The First Appellate Court concurred with the findings of the trial Court that the plaintiff has not produced even a single revenue record for the past forty years, during which the plaintiff is said to be in possession of the suit schedule properties. The First Appellate Court arrived at a finding that the plaintiff has not established the date of oral partition. The plaintiff has also not established the manner and the properties allotted to the other co-sharers in the said alleged oral partition. That apart, even after UDR proceedings, the patta continues to stand in the name of the plaintiff's father. The First Appellate Court also relied upon the Commissioner's report to arrive at a finding that the entire suit survey number remains as a single plot, fenced on all the four sides quite contrary to the pleadings on the side of the plaintiff. Even though the plaintiff alleges that, oral partition had taken place in the year 1977, no sub-divisions have been effected in the suit survey numbers for the past forty years. The First Appellate Court refused to go into the validity or otherwise of Exhibit B2 unregistered partition deed, on the ground, that all the parties to the said document are not parties to the suit. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the same, the plaintiff has filed the above Second Appeal.

14. The learned Counsel for the appellant contended that even during the lifetime of Muthu Perumal Thevar, there was an oral partition among the sons of Muthu Perumal Thevar and the suit schedule properties were allotted to his share. He further contended that the plaintiff has sold away the suit schedule properties under Exhibit A2 to third party and repurchased the same under Exhibit A3. According to the plaintiff, he is in possession and enjoyment of the suit schedule properties. The learned Counsel for the appellant further contended that the Courts below have been carried away by Exhibit B2 unregistered partition deed, under which the suit schedule properties are said to have been allotted to the share of his first defendant. He further contended that, when Exhibit B2 has been held to be inadmissible by the trial Court, then the version of the plaintiff with regard to the allotment of properties should have been believed. The learned Counsel for the appellant further contended that the Courts below have erroneously placed the burden of proof on the plaintiff, when the defendants have relied upon Exhibit B2 partition deed which is an unregistered and un-stamped document. The learned Counsel for the appellant further contended that mere mutation of revenue records in the name of the defendants will not have the effect of disturbing the title of the plaintiff. In fact, those mutations have been carried out without notice to the plaintiff.

15. The learned Counsel for the appellant further contended that the first defendant has not chosen to examine himself as a witness and only his power of attorney has been before the Court.

<https://hccservices.courts.gov.in/hccservices/>



ought to have drawn adverse inference for non examination of the first defendant. Hence, he prayed for allowing the Second Appeal and granting a decree in favour of the plaintiff as prayed for.

16. Per contra, the learned Counsel for the respondent contended that the plaintiff has specifically pleaded about the oral partition without even mentioning the date of said oral partition. According to the plaintiff, the suit schedule properties are the allotted to his share in the said oral partition. However the sale deed executed by the plaintiff under Exhibit A2, does not reflect any such oral partition. The burden is entirely upon the plaintiff who alleges that there was an oral partition pursuant to which the suit schedule properties were allotted to his share. The learned Counsel for the respondent further contended that even assuming without admitting that Exhibit B2 is inadmissible in order to evidence, the plaintiff cannot rely upon the weakness of the case projected by the defendant. The plaintiff has to establish the oral partition through independent evidence and also the fact that the suit schedule properties were allotted to his share in the said oral partition. He further contended that if really, an oral partition has taken place as contended by the plaintiff, the plaintiff would be aware of the properties allotted to the other co-owners, in the said partition. The fact that the entire suit schedule property is lying as a single plot, will clearly disprove the case of the plaintiff that the suit schedule properties have been divided into four portions for the four co-owners. Hence, he prayed for dismissal of the Second Appeal.

17. I have carefully considered the submissions on either side.

18. When the plaintiff has come out with a case that there was an oral partition and in such an oral partition, the suit schedule property was allotted to his share, the entire burden is upon the plaintiff to establish the same. In the plaint, the plaintiff has not specified any date, month or year of oral partition. The plaintiff has only contended that during the lifetime of their father, the oral partition had taken place. During his cross-examination, the plaintiff has admitted that the partition had taken place in the year 1977. But the plaintiff has categorically deposed that he is not aware about the properties that were allotted to the other co-sharers in the said oral partition.

19. The plaintiff has contended that the entire suit schedule properties have been divided into four portions for the four co-sharers, in the alleged oral partition. But, even after forty years of the alleged oral partition, there are no mutation of revenue records in the name of the plaintiff, no sub-divisions have been effected in the suit survey numbers. According to the Commissioner's report, the entire suit schedule property lies as a single plot. The plaintiff has also admitted, in his cross-examination that the suit

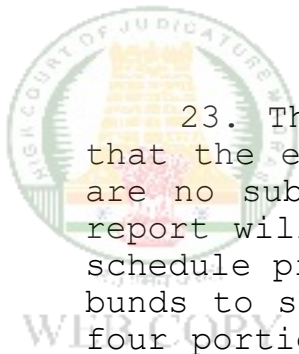


The Advocate Commissioner has found that the entire suit schedule property has been fenced on all the sides with a gate. When the plaintiff was enquired upon the same in the cross-examination, he has feigned ignorance.

20. If really, an oral partition as alleged by the plaintiff has taken place in the year 1977, revenue records would have been mutated in the name of the plaintiff. Not a single revenue record has been produced, even though forty years have elapsed from the year of alleged partition. All the above said facts will clearly establish that the plaintiff has not proved the alleged oral partition that is said to have taken place in the year 1977.

21. The plaintiff has further contended that Exhibit A2 is an inadmissible document in which his signature has been forged. According to the plaintiff, the Courts below have been carried away by Exhibit B2 unregistered partition deed. A perusal of the trial Court judgment will clearly show that Exhibit B2 has been rejected by the trial Court, on the ground that it is an inadmissible document. The First Appellate Court has refused to consider the validity or otherwise of the document, on the ground that all the parties to the document or not parties to the suit. In fact, the First Appellate Court also has not relied upon Exhibit B2 to non-suit the plaintiff. Hence, the contention of the learned Counsel for the appellant that the Courts below have relied upon an unregistered partition deed to non suit the plaintiff is not factually correct.

22. Though the plaintiff has contended that he is in possession of the suit schedule properties from the date of oral partition, he has not chosen to produce any revenue record or any other document to establish his possession over the suit schedule properties. The first defendant has contended that the suit schedule properties were allotted to his share under Exhibit B2 partition deed. Based upon the said document, the first defendant has executed a sale deed on 26.09.2002 under Exhibit B6 in favour of one Francis. The said Francis has executed a sale deed in favour of the second defendant on 09.06.2006 under Exhibit B9. Hence, it is evident that the suit schedule properties have been dealt with by the first defendant, even prior to Exhibits A1 and A3. The first defendant had dealt with the suit schedule properties on 26.09.2002 and only thereafter, the plaintiff has chosen to alienate the same property in favour of his close relative on 23.06.2003. Thereafter, the purchaser under Exhibit B6 has alienated the suit schedule properties in favour of the second defendant on 09.06.2006. Only, thereafter, the plaintiff has chosen to repurchase the property on 26.08.2009 under Exhibit A3. Hence, the conduct of the plaintiff would reveal that he has attempted to create Exhibit A2 and A3 in order to establish possession over the suit schedule properties. Admittedly, the suit schedule properties are in the hands of the second defendant, pursuant to Exhibit B9 sale deed.



23. The plaintiff has categorically admitted in his deposition that the entire suit survey number lies as a single plot and there are no sub-divisions in the suit survey number. The Commissioner's report will only strengthen the case of the defendant that the suit schedule property lies as a single plot and there are no markings or bunds to show that the suit schedule property has been divided into four portions in the oral partition as alleged by the plaintiff. In fact, the Commissioner's report reveals that the suit schedule property has been fenced on all the four sides and it is under lock and key. These facts would clearly establish that the plaintiff was not in possession of the suit schedule properties.

24. The plaintiff has not established the oral partition as well as the allotment of shares made in the said oral partition. The plaintiff has also not established his possession over the suit schedule properties. The Courts below after careful consideration of oral and documentary evidence have arrived at a concurrent finding and rejected the case of the plaintiff.

25. In view of the above said discussion, there is no ground to interfere in the judgment and decree of the Courts below. The judgment and decree of the Courts below are confirmed. There is no question of law much less a substantial question of law that arises for consideration in the above Second Appeal. Therefore, the Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :

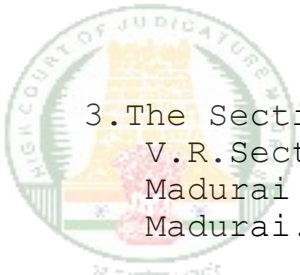
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Subordinate Judge,
Sankarankovil.

2.The Additional District Munsif,
Sankarankovil.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.RAMESH @ RAMIAH, Advocate (SR-10757[F] dated
09/03/2022)

S.A(MD)No.150 of 2021
08.03.2022

SS (CO)
KB(23.03.2022) 8P 6C