



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2022
DELIVERED ON : 13.06.2022

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CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.406 of 2021

Gunasekaran ...Appellant/Respondent
/Defendant

Vs

S.Malayandi ...Respondent/Appellant
/Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 01.02.2020 passed in A.S.No.34 of 2019 on the file of the Subordinate Court, Sivagangai, reversing the judgment and decree dated 27.02.2019 in O.S.No.74 of 2014 on the file of the District Munsif Cum Judicial Magistrate Court, Thiruppattur.

For Appellant : Ms.S.Prabashini
For Mr.R.Ravindran
For Respondent : Mr.N.Rahamadullah

JUDGMENT

The defendant is the appellant.

2.The plaintiff had filed O.S.No.74 of 2014 before the District Munsif Cum Judicial Magistrate Court, Thiruppathur for the relief of partition claiming $\frac{1}{2}$ share in the suit schedule property. The suit was dismissed by the trial Court. The plaintiff had filed A.S.No.34 of 2019 before the Subordinate Court, Sivagangai. The learned Subordinate Judge was pleased to allow the appeal and decreed the suit as prayed for. As against the same, the defendant has filed the above second appeal.

3.The plaintiff had contended that the suit schedule property originally belonged to his father Sathappan who died intestate leaving behind his two sons namely the plaintiff and one Azhagu who is the father of the defendant. According to the plaintiff, after the death of his father Sathappan, himself and the father of the defendant were enjoying the suit schedule properties jointly. After the death of the defendant's father, the plaintiff is in joint



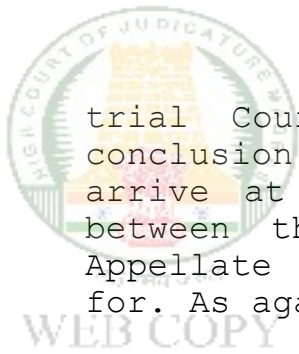
enjoyment of the suit schedule property along with the defendant.

4.The plaintiff had further contended that the defendant has objected to the enjoyment of the plaintiff with regard to certain properties. Thereafter, when the plaintiff verified the Government document, he came to know that for a larger extent of properties, patta has been issued in the name of the defendant's father and for a smaller extent of property, patta has been granted in favour of the plaintiff. Since the defendant's father was a revenue official, he had fraudulently created these documents. The plaintiff had further contended that the properties are yet to be partitioned and they are in joint possession and enjoyment of the plaintiff and the defendant. Hence, the plaintiff claimed $\frac{1}{2}$ share in the suit schedule property.

5.The defendant filed a written statement contending that under Exhibit B1 there was a partition between the plaintiff and the defendant's father in the year 1977. Thereafter, as per the said partition, the suit schedule properties were subdivided by an order of the revenue authorities on 28.10.1988 under Exhibit B2. According to the defendant, the shares were allotted to the plaintiff in all the suit survey numbers except item Nos.10 and 12 which exclusively belong to the defendant's father. The defendant had further contended that as per partition, the defendant's father has already put up a residential house and they are residing there. The defendant had further contended that the plaintiff has also put up a residential house in the portion allotted to him and hence, the parties are not in joint possession and the suit for partition may be dismissed.

6.The trial Court has considered Exhibit B1 partition deed and arrived at a finding that the defendant has established that already a partition has taken place as per Exhibit B1. Based upon the said partition, the suit survey numbers have already been subdivided between the plaintiff and the defendant as per Exhibit B2. Though the plaintiff would have been aware of the subdivision and the patta transfer, he has filed the suit after a period of 25 years. The said fact will clearly indicate that a partition has already taken place and the parties are in separate possession and enjoyment of their respective properties allotted to them. On the basis of the said finding, the trial Court dismissed the suit for partition.

7.The First Appellate Court considered the admissibility of Exhibit B1 partition deed. The First Appellate Court found that under Exhibit B1 partition deed, it is mentioned that the parties entered into a partition only on the said date and hence, it requires registration. Since Exhibit B1 is an unstamped and unregistered document, it cannot be looked into even for collateral purposes. When the defendant merely relied upon Exhibit B1 to prove the case of partition and the said document is inadmissible in evidence, the plaintiff is entitled to a decree for partition. The



trial Court considered the revenue records and arrived at a conclusion that the mere revenue records will not be enough to arrive at a finding that the partition has already taken place between the parties. Based upon the said findings, the First Appellate Court allowed the appeal and decreed the suit as prayed for. As against the same, the present second appeal has been filed.

8.The second appeal has been admitted on the following substantial questions of law:

(a)Whether the lower appellate Court is justified in equating?

(b)Whether the proposed list Exhibit B1 prepared to allot share to this appellant can be treated as Muchalika as per law?

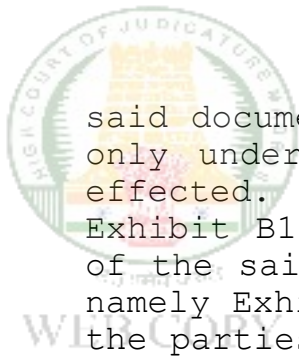
(c)Whether in the absence of word Muchalika in Exhibit B1 can be treated as Muchalika as per law?

(d)Whether the plaintiff can succeed in the first appeal by way of suppressing vital records in the trial Court?

(e)Whether the First Appellate Court is proper in interfering with the findings of the fact by the trial Court in the absence of documentary evidence?"

9.The learned counsel appearing for the defendant/appellant had contended that the plaintiff and the defendant's father have entered into a partition on 15.07.1971 under Exhibit B1 and thereafter, it was followed up by an another agreement on 25.07.1978. Under both these agreements, all the suit schedule properties have been divided equally between the plaintiff and the defendant's father. Based upon the said partition deed, subdivision were effected in the suit schedule property by an order of Tahsildar under Exhibit B2. Based upon the said subdivision, separate patta have also been issued in favour of the plaintiff as well as the defendant's father. The subdivision and separate patta issued in the name of the plaintiff and the defendant will clearly disclose that the parties have already partitioned the suit schedule properties and they are in separate possession and enjoyment of their respective shares. He had further contended that even assuming that Exhibit B1 partition deed is not admissible in evidence, public records namely Exhibits B2 to B6 will clearly demonstrate the partition that has taken place between the plaintiff and the defendant's father. He had further contended that the First Appellate Court had erroneously decreed the suit without properly appreciating Exhibits B2 to B7. Hence, he prayed for allowing the second appeal.

10.Per contra, the learned counsel for the respondent had contended that the defendant alone had raised the plea that already partition has taken place between the parties. It is settled position of law that who were plead that already partition has taken place as to prove the same. In the present case, the only document that was relied upon by the defendant was Exhibit B1 Muchalika. The



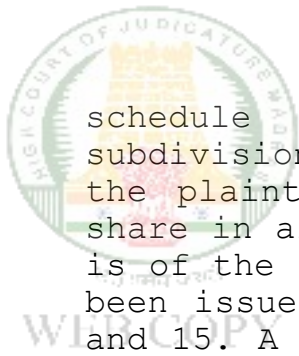
said document does not disclose the suit survey numbers. That apart, only under the said document, the partition is said to have been effected. The First Appellate Court was right in holding that Exhibit B1 is inadmissible in evidence, in view of non-registration of the said document. He had further contended that revenue records namely Exhibits B2 to B7 will not be sufficient enough to prove that the parties have already partitioned the suit schedule property. The learned counsel had further contended that the plaintiff had already made an allegation in the plaint that the defendant's father was a revenue official. Hence, he has created Exhibits B2 to B7. Hence, the First Appellate Court was right in granting a decree in favour of the plaintiff. He had further contended that no substantial questions of law arises for consideration in the appeal and hence, he prayed for dismissal of the second appeal.

11.I have carefully considered the submissions made on either side.

12.There is no dispute that the plaintiff and the defendant's father are sons of one Sathappan who is admittedly the owner of the suit schedule property. The plaintiff claims that after death of his father, the plaintiff and the defendant's father were enjoying the suit schedule properties jointly. Hence, he prayed for a preliminary decree for $\frac{1}{2}$ share in the suit schedule property. However, the defendant had contended that during the life of his father Azhagu, a partition has been effected between the plaintiff and his father under Exhibit B1 partition deed and the revenue records have already been mutated by the parties for their respective shares.

13.A perusal of Exhibit B1 document will show that the plaintiff and the defendant's father are signatories to the said document under which some properties have been partitioned. However, no survey number is mentioned in order to identify whether the present suit schedule properties have been partitioned or not. That apart, under the said document, partition is effected on the said date and hence, it requires mandatory registration. Being an unregistered and unstamped document, it is inadmissible in evidence and hence, the finding of the First Appellate Court with regard to inadmissibility of the document is confirmed. Even assuming that the document is admissible in evidence, when the same is bereft of any details about survey numbers or extent allotted to each one of them, the said document cannot be of any use to arrive at a finding that already partition has taken place between the parties as contended by the defendant.

14.Whether the defendant has established the plea of partition dehors of Exhibit B1, is the issue to be decided. A perusal of Exhibit B2 is an order passed by the Tahsildar effecting subdivision of various survey numbers between the plaintiff and the defendant's

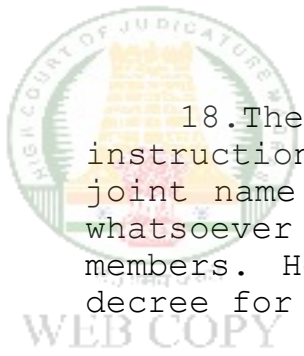


schedule property. A perusal of Exhibit B2 shows that the subdivision has been effected in all the above said suit items and the plaintiff and the defendant's father have been allotted equal share in all the survey numbers covered under Exhibit B2. Exhibit B2 is of the year 1988. Exhibit B3 indicates that a separate patta has been issued in the name of the defendant for suit items 10, 11, 12 and 15. A perusal of Exhibit B4 to B6 indicates that separate patta have been issued in the name of the plaintiff for item Nos.10,11, 12 and 15.

15.A combined reading of Exhibit B3 to B7 will clearly indicate that all the suit schedule properties except item Nos.5, 6 and 7 have been subdivided and separate patta have been issued in the name of the plaintiff and the defendant. The contention of the plaintiff is that patta has been granted to the defendant for valuable property for a larger extent and patta has been created in the name of the plaintiff for lesser extent seems to be factually incorrect. In all the suit survey numbers (except item Nos.5,6 and 7), the plaintiff and the defendant have been allotted equal share and subdivisions have been effected and separate pattas have been issued in the name of the plaintiff and the defendant. This clearly demonstrates that though Exhibit B1 partition deed is inadmissible in evidence, in effect, the parties have entered into some kind of agreement or arrangement under which they are in separate possession and enjoyment of respective arrears.

16.The plaintiff has contended that just because the defendant's father was a revenue official, he has created the revenue records. A perusal of Exhibits B2 to 7 will clearly show that the extent covered under the subdivision of the respective parties are equal in nature and that to in all the survey numbers. Moreover, separate patta has been issued in the name of the plaintiff also under Exhibits B4 to B7 with regard to items Nos.8 to 12 and 15. This Court can take judicial notice of the fact unless a party applies, separate patta would not be issued by the revenue authorities. Hence, it is clear that only on an application made by the plaintiff, this separate patta under Exhibits B4 to B7 have been issued by the revenue officials. Hence, the contention of the plaintiff that this revenue records were created by the father of the defendant is also not legally sustainable.

17.It clearly establishes that already partition has taken place between the plaintiff and the defendant's family and the parties are in separate possession and enjoyment of the same. The present suit for partition has been filed by the plaintiff only due to certain dispute that arose out of some encroachment made in a common pathway as alleged by the defendant. None of the revenue records are produced on the side of the plaintiff or the defendant would establish that there was an partition for item Nos.5 to 7.



18.The learned counsel for the defendant/appellant on instructions submitted that item Nos.6 and 7 continue to be in the joint name of the plaintiff and the defendant. There are no records whatsoever to show that Item No. 5 was partitioned among the family members. Hence, I find that the plaintiff would be entitled to a decree for partition with regard to Item Nos.5 to 7.

19.In view of the above said discussions, the substantial questions of law are answered as follows:

(i)Exhibit B1 being an unregistered and unstamped document is inadmissible in evidence.

(ii)the revenue records under Exhibits B2 to B7 indicate that all the suit items except Items Nos. 5,6 and 7 have been partitioned and they are in separate possession and enjoyment of the parties and these documents have been suppressed by the plaintiff.

(iii)the First Appellate Court had not properly appreciated Exhibits B2 to B7.

20. The decree of the First Appellate court is modified to the extent as stated below:

(i)the decree of the First Appellate Court granting partition with regard to item Nos. 1 to 4 and Item Nos.8 to 13 are hereby set aside. The suit for partition with regard to the above said items are dismissed.

(ii) There shall be a preliminary decree for partition of $\frac{1}{2}$ share in favour of the plaintiff with regard to Item Nos. 5,6 and 7 alone.

In other respects, the judgment and decree of the First Appellate Court are confirmed. The Second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

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/06/2022

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge, Sivagangai

2.The District Munsif Cum Judicial
Magistrate, Thiruppattur.



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

S.A(MD)No.406 of 2021

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S.A (MD) No.406 of 2021
13.06.2022

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