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S.A(MD)No.274 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.02.2022

DELIVERED ON : 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.274 of 2019

and

C.M.P(MD)No.5277 of 2019

Natarajan

... Appellant/Appellant/Defendant

Vs.

Ramaiyan

... Respondent/Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed, dated, 22.11.2017, made in A.S.No.20 of 2016 on the file of the Additional Sub Court, Kumbakonam, Thanjavur District, confirming, the judgment and decree passed, dated, 02.03.2016, made in O.S.No.503 of 2012 on the file of the Additional District Munsif I, Kumbakonam, Thanjavur District.

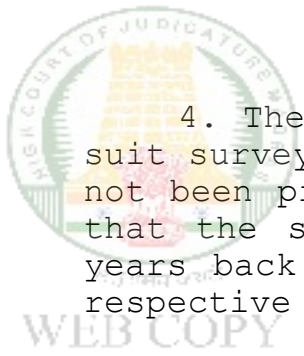
For Appellant : Mr.G.Gomathi Sankar
For Respondent : No appearance

JUDGMENT

The defendant is the appellant herein.

2. The plaintiff filed O.S.No.503 of 2012 before the I Additional District Munsif Court, Kumbakonam, for partition of his half share in the suit schedule properties. The suit was decreed by the trial Court. The defendant filed A.S.No.20 of 2016 before the Additional Sub Court, Kumbakonam. The learned Subordinate Judge was pleased to dismiss the appeal. As against the concurrent findings, the present Second Appeal has been filed by the defendant.

3. The plaintiff has contended that the suit schedule properties originally belonged to one Chinnammal, wife of Subramaniam under Exhibit A2 sale deed, dated 12.07.1965. The said Chinnammal had passed away 20 years back without executing any documents. Thereafter, Chinnammal's husband Subramaniam had also passed away. The plaintiff and the defendant are the only legal heirs of the said Chinnammal and they are entitled to each half share in the suit schedule properties. Hence, he prayed for a decree for partition.



4. The defendants filed a written statement contending that the suit survey number has been wrongly given and the sub divisions have not been properly identified. The main defence of the defendant was that the suit schedule properties have been orally partitioned 30 years back and they are in enjoyment of specific portions of their respective shares.

5. The trial Court arrived at a finding that the defendant has not established the oral partition and proceeded to grant a decree for partition.

6. The First Appellate Court also concurred with the findings of the trial Court and confirmed the judgment and decree with regard to the decree for partition. As against the concurrent findings, the present Second Appeal has been filed.

7. The learned Counsel for the appellant contended that the Courts below have not properly appreciated Exhibit B1 which is a sale deed executed by the plaintiff in favour of the defendant. He further contended that the plaintiff who was examined as P.W.1, has admitted in his deposition that he has executed Exhibit B1 sale deed in favour of the defendant. He has further admitted that the said sale deed also covers the suit schedule property. Hence, the learned Counsel for the appellant contended that only after oral partition, the plaintiff has sold away the property allotted to his share in favour of the defendant under Exhibit B1 sale deed. However, a perusal of Exhibit B1 shows that there is no recital in the said document about any oral partition. The revenue records have not been mutated in the name of the respective parties after the alleged oral partition.

8. It is a settled position of law that the burden of proof is upon the party who is asserting oral partition. In the present case except producing Exhibit B1 sale deed, the defendant is not able to prove the alleged oral partition. That apart, there is no plea in the written statement with regard to ouster. Hence, the same cannot be raised for the first time in the Second Appeal.

9. That apart, according to the plaintiff and the defendant, their mother namely the original owner of the property had passed away only in the year 1992. It is alleged by the defendant that suit schedule properties have been orally partitioned 30 years prior to the suit namely in the year 1982. It is highly unbelievable that the brothers have orally partitioned the property while the original owner was alive in the year 1982.

10. Hence, viewed from any angle, the defendant has not proved the plea of oral partition. The Courts below have rightly decreed the suit for partition. No substantial question of law arises for consideration in the Second Appeal. The Second Appeal stands



dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/ /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 Additional Sub Judge,
Kumbakonam,
Thanjavur District.
- 2.The I Additional District Munsif,
Kumbakonam,
Thanjavur District.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-5563[F] dated 11/02/2022)

Judgment made in
S.A(MD)No.274 of 2019
11.02.2022

PK(CO)
GC(28.02.2022) 3P 6C