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SA.No.1163 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1163 of 2009

and

MP.No.1 of 2009

1. Mani
2. Subramani
3. Kasthuri

... Appellants

- Vs -

Jayaraman

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.02.2009 passed by the Hon'ble Sub Judge, Ranipettai in A.S.No.13/2007 confirming the judgment and decree passed by the Hon'ble District Munsiff, Sholingur in O.S.No.98/1999 dated 31.10.2006.

For Appellants : Mr.P.Mohan Raj

For Respondent : Mr.S.Doraisamy

JUDGMENT

The appellants are the defendants and the respondent is the plaintiff before the Trial Court.



SA.No.1163 of 2009

WEB COPY

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that; the suit property originally belongs to the plaintiff's father. The plaintiff's father was in possession and enjoyment of the same till his lifetime. During his lifetime, in the family an oral partition took place about 25 years ago among the plaintiff and his brothers. In the said oral partition, the suit property was allotted to the share of the plaintiff, and the plaintiff has been in physical possession and enjoyment of the same as the absolute owner thereof. The plaintiff further submits that the Government has also granted patta in respect of their suit property. It was also the case of the plaintiff that they have perfected title by way of adverse possession. However, the defendants were interfered with the possession of the plaintiff. Hence, they came forward with a suit for the relief of declaration and for permanent injunction.

4. The said suit was resisted by the defendants by contending that the alleged oral partition is false and that there was a registered partition between the plaintiff and the defendants on 15.10.1975, in which the B schedule property was allotted to the first defendant and the plaintiff jointly. It was also contended that the plaintiff has no absolute title over the property as the



SA.No.1163 of 2009

same jointly belongs to the plaintiff and the first defendant. Hence, prayed to dismiss the suit.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiff examined 4 witnesses as PW1 to PW4 and marked as many as 13 documents as Exs.A1 to A13. On behalf of the defendants, 23 documents have been marked as Exs.B1 to B23 and 6 witnesses have been examined as DW1 to DW6.

6. The Trial Court has disposed the suit in O.S.No.98 of 1999, along with the two other suits viz., O.S.Nos.83 and 162 of 2000, and ultimately, decreed the suit in OS.No.98 of 1999 and O.S.No.83 of 2000 and dismissed the suit in O.S.No.162 of 2000. Aggrieved with the said order, the defendants preferred appeals and the appeal in A.S.No.13 of 2007 arising against O.S.No.98 of 1999, wherein the First Appellate Court confirmed the decree of the Trial Court and dismissed all the appeals. However, the instant second appeal is arising out of one suit in O.S.No.98 of 1999 only and in respect of other two suits, no second appeal has been filed.

Substantial Question of Law:-

7. At the time of admission on 02.11.2009, this Court has formulated the following substantial question of law:-



SA.No.1163 of 2009

WEB COPY

“1. Whether the Courts below have correctly evaluated the documentary evidence Exs.A1 to A3 to decree the suit

2. Whether the Exs.A1 to A3 which have originated very recently would establish the adverse possession claimed by the Co-sharers

3. Whether the Courts below is right in passing the decree as prayed for when the partition amongst the family members was established before the Courts below.”

Submission of either side counsel:-

8. The learned counsel for the appellant would submit that the Trial Court as well as the First Appellate Court have relied upon the Revenue records and declared that the plaintiff is the absolute owner of the suit property. It is the submission of the learned counsel for the appellant that even according to the plaint averment, the plaintiff pleads a oral partition about 25 years prior to the date of filing of the suit. Therefore, the oral partition should have been during the period 1974, whereas there was a registered partition among the legal heirs of Seinurpillai and that the said Seinurpillai has got two wives Muniammal and Chinnakulanthaiammal. The plaintiff and the defendants are the children of Seiyanurpillai through his two wives. It is the further submission of the learned counsel for the appellant



SA.No.1163 of 2009

WEB COPY

that when there is a registered partition deed under Ex.B3 and when there are no documents to prove the oral partition since 1974, the suit ought to have been dismissed. However, the Trial Court, without even stating any reason has decreed the suit. Therefore, though there is a concurrent finding, the findings recorded by both the Courts below are without any evidence. Therefore, prayed to interfere with the same.

9. Per contra, the learned counsel appearing on behalf of the respondents would submit that there was a oral partition and that such oral partition is evident through the Revenue records. It was also further contended that they have been in continuous possession since 1975 through their oral partition. Therefore, they have perfected title by way of adverse possession. Hence, contended that the judgment and decree passed by the Trial Court is perfectly in order and that in the Second Appeal stage, the concurrent finding recorded by both the Trial Court and the First Appellate Court should not be interfered unless there is a compelling reason. Therefore, prayed to dismiss the second appeal.

10. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-



SA.No.1163 of 2009

WEB COPY

11. In order to decide the substantial question of law, it is incumbent upon this Court to find out is there any oral partition as pleaded in the plaint.

If we closely read the judgment of both the Court below, this Court could not find any finding as to the existence of a oral partition. However, the learned Trial Judge has simply come to the conclusion that since the property is the ancestral property of the plaintiff, based upon the Revenue records, premised oral partition and granted a declaration.

12. It is settled principle of law that the Revenue records is not the document of title. Here, the very case put forth by the plaintiff is that there was a oral partition about 25 years back. The instant suit was filed in the year 1999. Therefore, if there was any oral partition about 25 years back, it should have been between 1973-1974. Whereas, the learned counsel for the appellant invited the attention of this Court in respect of a registered partition deed (Exs.A5 = B3) dated 15.10.1975. Therefore, even if there was any oral partition during 1974, such oral partition was superseded by the registered partition under Ex.A5=B3. Further, to substantiate the oral partition, the learned counsel for the respondent would only rely upon the Revenue records. However, while perusing the Revenue records Ex.A1-patta, Ex.A2-kist receipts, it was only from the year 1995. Therefore, this Court is of the



SA.No.1163 of 2009

firm view that there are no materials to prove the oral partition.

WEB COPY

13. Coming to the adverse possession, as rightly contended by the learned counsel for the appellant, the document is of the year 1995 and 1997. Whereas, they have filed a suit during 1999. In order to claim adverse possession, it is mandatory on the part of the plaintiff to prove from when onwards their possession become adverse, and they have to prove the continuity and they must also prove the possession is in hostile to the real owner. In our case, the Revenue records were originated only during 1995 and there are no material to show that the plaintiff have been in continuous possession prior to 1995. Therefore, this Court is of the firm view that their next line of defence of adverse possession also has not been proved before this Court. However, the Trial Court as well as the First Appellate Court, without going into all these aspects, have simply reached a conclusion superficially based upon the ancestral nature of property and the existing Revenue records stands in the name of the plaintiff since 1995 and granted a declaration. As there are no acceptable material in support of the plaintiff, such finding is perverse and the same is contrary to the oral and documentary evidence and also against the settled principles of law. Therefore, though



SA.No.1163 of 2009

there is a concurrent finding, since the finding are contrary to the evidence and law, this Court under Section 100 of CPC, can interfere with the finding. Thus, in view of the above detailed discussion, the substantial question of law are answered in favour of the appellant.

14. At this juncture, the learned counsel for the respondent seeks for a leave to file a suit for partition. Considering the peculiar facts of this case, the respondent is given liberty to file such suit. If any such suit is filed, the Courts are directed to proceed with the same according to law, without being influenced by the order of this Court.

15. In the result, this Second Appeal is allowed and the judgment and decree of both the Courts below are set aside. There shall be no order as to costs. Consequently, connected MP is also closed.

18.12.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Sub Court,
Ranipettai.
2. The District Munsif,
Sholingur.



WEB COPY



SA.No.1163 of 2009

C.KUMARAPPAN,J

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S.A.No.1163 of 2009

18.12.2023