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S.A.No.197 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM : JUSTICE N.SESHASAYEE

S.A.No.197 of 2023
and CMP.No.5693 of 2023

Ayyaswamy Udayar

.. Appellant / Appellant / Defendant

Vs

Ayyaswamy

Rep by Power Agent Poongavanam .. Respondent / Respondent / Plaintiff

Prayer : Second Appeal filed under Section 100 of CPC., praying to set aside the judgment and decree in A.S.No.156/2019 on the file of the III Additional District and Sessions Court, Cuddalore at Vridhachalam dated 18.10.2022, confirming the judgment and decree in O.S.No.267/2004 on the file of District Munsif cum Judicial Magistrate Court, Tittakudi, dated 20.02.2017.

For Appellant : Ms.Abhirami
for Mrs.Srimathi V.



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JUDGMENT

The defendant who lost his defence successively both before the trial Court in O.S.No.267/2004, and before the first appellate Court in A.S.No.156/2019, is the appellant herein. Parties would be referred to by their rank before the trial Court.

2.The suit is laid for declaration of title and for recovery of possession with mesne profits. The defendant / appellant herein is the brother of P.W.4, a certain Muthusamy. On 08.05.1967, under Ext.A1, Muthusamy had purchased a block of land measuring 1.96 acres comprised in S.No.45/14. Out of this, he sold one *Kaani* (32 cents) to the defendant, and the rest he retained, which the latter sold to the plaintiff vide Ext.A-2 sale deed dated 01.07.2003. While so, the defendant required the plaintiff to sell the property that he had purchased under Ext.A2 to himself, and when the latter refused, the defendant forcibly entered the property.

3. The defendant/appellant herein admits that the property was purchased by P.W.4, and later it was pooled for partition along with the other properties



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of his family, by which the P.W.4, the defendant and their brothers orally partitioned, and that the entire 1.96 acres was allotted to the share of P.W.4, While so, on 25.03.1983, P.W.4 and his sons divided the property under a memorandum of partition, in which P.W.4's son Subramanian was allotted 1.33 acres in the said survey field. And that the defendant claims that he had purchased the property validly from the said Subramanian (examined as P.W.2) vide Ext.B1, sale deed dated 07.07.2003.

4. The dispute went to trial, before which, both sides adduced oral and documentary evidence. As could be gathered by now, the plaintiff had *inter alia* examined his own vendor P.W.4, under whom the plaintiff claims title to the suit property. The entire defence was pivoted on a partition list dated 25.03.1983. During the examination of P.W.4, this document was confronted to P.W.4, but he denied his signature in the said document. Subsequently, the defendant did not do anything to produce or prove the partition list.

5. Ultimately, the trial Court decreed the suit, which was later confirmed in A.S.No.156/2019 by the first appellate Court in an appeal preferred by the



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defendant.

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6. Heard the learned counsel for the appellant. The learned counsel contended that Ext.A2 document though was executed on 01.07.2003, but was registered only on 21.07.2003, and this time difference between the date of execution and date of registration has not been adequately explained, and that Ext.A2 was deliberately ante-dated.

7. This Court is at a loss to understand how this contention is going to benefit the appellant in any way. Ext.A2 was executed and was also registered within the time stipulated for registering the document. Secondly, the defendant had purchased the property few months later, to be precise on 07.07.2003 under Ext.B1, on which date, Ext.A2 had already come into existence. Now to defeat the right of the plaintiff, the defendant attacks the right of P.W.4 to alienate the suit property in favour of plaintiff under Ext.A2. To achieve this, he pleads a certain memorandum of partition dated 25.03.1983. But it was neither produced nor proved in the manner known to law.



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8. While the defendant had admitted that the entire 1.96 acres was allotted to the share of P.W.4 under an oral partition between P.W.4, himself and other brothers, unless he could prove the alleged partition between P.W.4 and his son D.W.2, he cannot succeed. That precisely had happened to him before the Courts below.

9. After carefully perusing the pleadings and the judgments of the Courts below, this Court does not find any substantial questions of law to be considered by this Court in this second appeal. The second appeal is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2023

Index : Yes / No
Speaking Order / Non-speaking Order
ds



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N.SESHASAYEE.J.,

ds

To:

- 1.The III Additional District and Sessions Judge
Cuddalore at Vridhachalam.
- 2.The District Munsif cum Judicial Magistrate
Tittakudi.
- 3.The Section Officer
VR Section, High Court, Madras.

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