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S.A.No.237 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.237 of 2018
and
CMP.No.5975 of 2018

V.Ramadoss

...Appellant

Vs.

1.M.Komala
2.V.Nalinasekaran
3.V.Jayaseelan

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 31.10.2017 made in A.S.No.75 of 2013 on the file of the Sub-Court, Tambaram by reversing the judgment and decree in OS.No.556 of 2010 dated 22.11.2013 on the file of the Additional District Munsif Court, Alandur.



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For Appellant : Mr.N.Kumar Rajan

For Respondents : Mr.K.V.Sundararajan for R1

Mr.J.Stalin for R3
R2-unclaimed

JUDGMENT

The first defendant in the suit is the appellant. The first respondent filed a suit for declaration that the partition deed dated 12.02.1983 entered between the appellant and the respondents 2 & 3/defendants 1 to 3 was null and void and for injunction restraining the defendants from interfering with her possession. She also prayed for injunction restraining the defendants not to alienate the suit property. The suit was dismissed by the trial Court, and in the appeal filed by the first respondent the findings of the trial Court were reversed by the first Appellate Court. Aggrieved by the same, the first defendant has come up with this Second Appeal.

2. According to the first respondent/plaintiff, her husband Mugunthan and his brother Achuthan were sons of Kanniappan. The said Kanniappan and one Vedachalam were brothers and they owned the ancestral property in S.No.61/5, at Zameen Pallavaram Village, Tambaram Taluk,



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Kancheepuram District. Even during the life time of Vedachalam and Kaniappan, the eastern portion of the land along with eastern half of the Madras Terrace house was allotted to the share of the Kaniappan and he had been in possession and enjoyment of the same exclusively. Likewise, the western half of the land and western portion of the Madras Terrace house was allotted to the share of Vedachalam and he had enjoyed the same exclusively. The appellant, respondents 2 & 3 / defendants 1 to 3 are sons of the said Vedachalam. After the death of Vedachalam and Kanniappan, the appellant and the respondents 2 & 3 have been in possession and enjoyment of the eastern half and the plaintiff, Mugunthan and brother Achuthan have been in possession of western half. The husband of first respondent Mugunthan died on 08.05.1999. During June 2010, one Pandian claiming himself as purchaser of a portion of the suit property from the appellant attempted to interfere with the first respondent's possession. In this regard, a police complaint was given and the partition deed dated 12.02.1983 entered between the appellant and other respondents was shown to the first respondent at the police station. The appellant and other respondents wrongly included the eastern portion of the property which had been in possession and enjoyment of the first respondent and Achuthan in the said partition deed. Therefore, the first respondent was



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constrained to file a suit seeking declaration that the said partition deed dated 12.02.1983 was null and void and for consequential injunction as prayed .

3. The appellant herein filed a written statement and the same was adopted by the respondents 2 & 3. In the written statement it was specifically admitted by the appellant and other respondents that the suit property was ancestral property of the family and eastern half was allotted to the share of Kanniappan, who is the predecessor in title of the first respondent and western half was allotted to the share of Vedachalam father of the appellant and other respondents. It was further averred by the appellant and other respondents that the eastern portion of the property allotted to the share of Kanniappan was not included in the partition deed entered among them. It was contended that the first respondent/plaintiff had no *locus standi* to question the partition deed entered among the legal representatives of Vedachalam.

4. Before the trial Court, the first respondent/plaintiff was examined as PW1 and on behalf of the first respondent/plaintiff 's side 8 documents were marked as Ex.A1 to Ex.A8. On behalf of the appellant and



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other respondents the appellant was examined as DW1, 3 documents were marked as Ex.B1 to Ex.B3. The trial Court also appointed an Advocate Commissioner and he filed a report and plan, which were marked as Ex.C1 and Ex.C2.

5. The trial Court after consideration of evidence available on record came to the conclusion that the suit prayer was barred by limitation. The trial Court also held that the suit filed by the first respondent without impleading Kanniappan's another son Achuthan was bad for non joinder of necessary parties. Ultimately, the trial Court dismissed the suit. Aggrieved by the same, the first respondent preferred an appeal in A.S.No.75 of 2013 on the file of the Subordinate Judge, Tambaram. The first Appellate Court reversed the findings of the trial Court and allowed the appeal and granted a decree declaring impugned partition deed as null and void in respect of item No.3 in the schedule to partition deed marked as Ex.A4 = Ex.B2. The first Appellate Court also granted injunction as prayed for. Aggrieved by the said judgment and decree, the unsuccessful first defendant has come up with this Second Appeal.



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6. The learned counsel for the appellant vehemently contended that the first respondent failed to prove her right over the suit property and when she failed to prove her right, the first Appellate Court ought not to have granted the decree as prayed for.

7. The learned counsel for the appellant further submitted that the partition deed was challenged in the suit dated 12.02.1983 and hence, the suit filed in the year 2010 hopelessly barred by limitation. The learned counsel for the appellant further submitted that the suit is bad for non joinder of necessary parties, namely, the first respondent's husband brother Achuthan. As per pleadings of the parties it is clear that the suit property in S.No.61/5 was the ancestral property of the parties and the same was originally owned by Vedachalam and Kanniappan. Even as per the admission of appellant, eastern half of the land with eastern half of the building, was allotted to the share of Kanniappan and the western portion was allotted to the share to Vedachalam. The appellant and other respondents are sons of the said Vedachalam. The first respondent/plaintiff, who is the wife of Mugunthan, her sons, daughter and Achuthan are said to be owning the eastern portion of the land and eastern



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portion of Madras Terrace house. The said Achuthan and his family are residing at North-Eastern portion of Madras Terrace house.

8. It is the case of the first respondent that the appellant and other respondents while entering into partition on 12.02.1983 included the eastern half portion of Kanniappan and therefore, the partition deed shall be declared as null and void. It was claimed by her that the partition entered among sons of Vedachalam came to her knowledge only during June 2010 when one Pandian attempted to interfere with the possession claiming himself as purchaser of a portion of the suit property from the appellant. When the appellant was examined as DW1 he clearly admitted that on 18.06.2010, he alienated the property to Pandian and in that regard there was a misunderstanding between the appellant and the first respondent. A police complaint was prepared by the first respondent and in order to show his right over the suit property the partition deed entered among the appellant and the other respondents was shown to the first respondent in police station. Therefore, based on the evidence of the appellant PW1, the first appellate Court came to the conclusion that the fact of partition between the appellant and the other respondents came to knowledge to the first respondent only during June 2010 and therefore, the



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suit filed on 20.07.2010 was within the limitation. The first respondent seeks declaration of partition deed among the appellant and the other respondents as null and void. The above said Achuthan need not be impleaded since he was not a party to the partition deed. Therefore, the said factual conclusion reached by the First Appellate Court is also in accordance with law.

9. The allotment of exclusive right over eastern portion to Kanniappan, based on Koorchit of the year 1961, was very well admitted by the appellant and other respondents in their written statement. In these circumstances, the exclusive right of the first respondent along with other heirs of Kanniappan is not in dispute. The first Appellate Court on consideration of Ex.A1 partition deed came to the conclusion that third item of Ex.A4 [equivalent to Ex.B2] partition deed is the present suit property. The said factual conclusion reached by the first Appellate Court is binding on this Court unless it is shown that item No.3 of the partition deed is not the present suit property (i.e.,) eastern half allotted to Kanniappan. Therefore, this Court agrees with the said factual conclusion reached by the first Appellate Court.

10. In view of the discussions made earlier, I do not find any



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substantial question of law arising for consideration in the Second Appeal to interfere with the factual findings arrived by the first Appellate Court. Hence, this Second Appeal is dismissed.

11. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

1.The Sub-Court, Tambaram.

2.The Additional District Munsif Court, Alandur.



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