



WEB COPY



S.A.Nos.1078 and 1079 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.Nos.1078 and 1079 of 2022

S.A.No.1078 of 2022:-

Natesan	..	Appellant
	Vs.	
Venkatesan	..	Respondent

S.A.No.1079 of 2022:-

Natesan	..	Appellant
	Vs.	
1. Venkatesan		
2. Subramaniyan	..	Respondents

Prayer in S.A.No.1078 of 2022:- Second Appeal filed under Section 100 of CPC to allow the appeal and set aside the Judgment and Decree dated 10.02.2021 made in A.S.No.137 of 2018 passed by the Principal Subordinate Judge, Myladudurai, confirming the Common Judgment and decree dated 30.10.2018 made in O.S.No.213 of 2012 passed by the Learned District Munsif Judge, Sirkazhi.

Prayer in S.A.No.1079 of 2022:- Second Appeal filed under Section 100 of CPC to allow the appeal and set aside the Judgment and Decree dated 10.02.2021 made in A.S.No.139 of 2018 passed by the Principal Subordinate Judge, Myladudurai, confirming the Common Judgment and decree dated



S.A.Nos.1078 and 1079 of 2022

30.10.2018 made in O.S.No.93 of 2014 passed by the Learned District Munsif Judge, Sirkazhi.

In both S.As

For Appellants : Mr.S.Sathish Rajan

COMMON JUDGMENT

The S.A.No.1078 of 2022 has been filed as against the Judgment and Decree dated 10.02.2021 made in A.S.No.137 of 2018 passed by the Principal Subordinate Judge, Myladudurai, confirming the Common Judgment and decree dated 30.10.2018 made in O.S.No.213 of 2012 passed by the Learned District Munsif Judge, Sirkazhi, thereby decreed the suit.

2. The S.A.No.1079 of 2022 has been filed as against the Judgment and Decree dated 10.02.2021 made in A.S.No.139 of 2018 passed by the Principal Subordinate Judge, Myladudurai, confirming the Common Judgment and decree dated 30.10.2018 made in O.S.No.93 of 2014 passed by the Learned District Munsif Judge, Sirkazhi, thereby dismissed the suit.

3. The appellant is the plaintiff in O.S.No.93 of 2014 and the defendant in the suit filed by the first respondent in O.S.No.213 of 2012. The case of the appellant is that the suit property was allotted in favour of him by an un-



S.A.Nos.1078 and 1079 of 2022

registered partition deed, dated 15.05.1994. As per the partition deed, he was put in possession and he is in enjoyment of the suit property. Further case of the appellant is that as claimed by the first respondent herein, it was not purchased by him from his own income and only from the joint income derived from the family members, he purchased the property. As per the partition deed, dated 15.05.1994, 'A' schedule property was allotted in favour of the first respondent. 'B' schedule property was allotted in favour of the appellant and 'C' schedule property was allotted in favour of the second respondent in S.A.No.1079 of 2022 and accordingly, the properties were allotted to them. The first respondent issued notice, in which, he categorically admitted about the partition deed dated 15.05.1994.

4. Resisting the same, the first respondent herein filed a written statement stating that even before filing the suit in O.S.93 of 2014 by the appellant herein, he had filed a suit in O.S.No.213 of 2012, for declaration and recovery of possession as per the sale deed dated 04.09.1968. According to him, the suit property was purchased by him by a registered sale deed, dated 04.09.1968 from one Kunjammal. Originally, the suit property belong to their ancestors. In the year 1949, the suit property was partitioned by three brothers, in which the property which was allotted in favour of one Thamban Chettiar



was purchased by the first respondent and the remaining property was allotted in favour of the appellant and the first respondent's father one Rathina Chettiar, in which also the first respondent has a share. However, the portion which was purchased by the first respondent was possessed by the appellant herein on permission. While being so, the first respondent had received a notice from the appellant dated 21.08.2012, claiming that the said property was partitioned as per the partition deed 15.05.1994 and accordingly, the first respondent was allotted with the suit property. That apart, the first respondent had sent a notice dated 29.08.2012 to the appellant to vacate the premises which was occupied by the appellant on permission from the first respondent and the same was also duly received by the appellant and he did not even reply and did not vacate from the suit premises. That apart, the first respondent categorically denied the partition deed dated 15.05.1994. Both the suits were jointly tried.

5. On the side of the appellant, he had examined P.Ws.1 to 3 and marked Exs.A1 to 11. On the side of the first respondent, he had examined D.Ws.1 to 3 and marked Exs.D1 to 7. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit filed by the appellant and decreed the suit filed by the first respondent herein. Aggrieved by the same, the appellant preferred two appeals and the same were also dismissed, confirming the Judgment and



Decree passed by the Trial Court. Hence, these second appeals.

WEB COPY

6. The appellant raised the following substantial questions of law in S.A.No.1078 of 2022:-

“ a) Whether the defendant has proved his title and possession over the suit property by way of Revenue Records ?

b) Whether the Plaintiff is estopped in denying the partition already effected when there is a specific and categorical admission in Ex.A3 Legal Notice issued by the Plaintiff ?

c) Is it Correct to hold that it is the defendant who has to prove the issuance of Ex.A3 by the plaintiff or it is the plaintiff who denies the issuance of Ex.A3 has to prove the issuance of the said Legal Notice Ex.A3 ?

d) Whether the defendant have proved the purchase of the suit property in the name of the Plaintiff out of the income of the mother and also out of the income of the parties to the suit ? ”

In S.A.No.1079 of 2022, the appellant raised the following substantial questions of law:-

“a) Whether the Plaintiff has proved his title and possession over the suit property by way of Revenue Records ?

b) Whether the 1st defendant is estopped in denying the partition already effected when there is a specific and categorical admission in Ex.A3 Legal Notice issued by the 1st defendant?

c) Is it Correct to hold that it is the plaintiff who has to prove the issuance of Ex.A3 by the 1st defendant or it is the 1st defendant who denies the issuance of Ex.A3 has to prove the issuance of the said Legal Notice Ex.A3 ?



d) Whether the plaintiff has proved the purchase of the suit property in the name of the 1st defendant out of the income of the mother and also out of the income of the parties to the suit ?”

7. The learned counsel for the appellant would submit that the first respondent categorically admitted the partition deed dated 15.05.1994. The first respondent also failed to prove his case and even then both the Courts below dismissed the suit filed by the appellant and decreed the suit filed by the first respondent herein. The suit property was purchased from and out of the income of mother's property and also from the income of all the family members and it was purchased in the name of the first respondent only for the reason that he is the eldest son. Thereafter, the properties were partitioned as per the partition deed dated 15.05.1994. As per Ex.A6, the reply notice was issued by the first respondent for the legal notice issued by the appellant which was marked as Ex.A4 was not denied by the first respondent. When the first respondent admitted the partition between the parties which happened in the year 1994, the first respondent is estopped from claiming any right over the suit property. Admittedly, all the properties were joint family properties.

8. A perusal of records revealed that the suit property was originally partitioned by three brothers in the year 1949. The share allotted in favour of one Thamban Chettiar was purchased by the first respondent herein by the



S.A.Nos.1078 and 1079 of 2022

registered sale deed dated 04.09.1968. According to the appellant, on 15.05.1994, there was partition between his family members and he was allotted the suit schedule property. However, it was denied by the first respondent. In order to substantiate the same, the appellant failed to prove the partition. Admittedly, the first respondent is in possession and enjoyment of the portion of the suit property. It is also curious to note that the appellant prayed for partition in respect of the property which was purchased by the first respondent alone. Even according to the first respondent, except this property, in all the remaining properties which was purchased by him, all are having equal rights. It shows that the first respondent alone purchased the suit property by the registered sale deed dated 04.09.1968. The appellant failed to subject the remaining properties for partition. That apart, the first respondent only had filed a suit at the first instance for declaration and recovery of possession and only after two years from the said suit, the appellant had filed the present suit for declaration and partition. Therefore, the Courts below rightly concluded that the appellant is not entitled for any relief and dismissed the suit filed by him and decreed the suit filed by the first respondent herein. Therefore, this Court finds no substantial questions of law involved in both the appeals and they are liable to be dismissed. However, the appellant is at liberty to file a partition suit in respect of the remaining properties.



S.A.Nos.1078 and 1079 of 2022

WEB COPY 9. Accordingly, these Second Appeals are dismissed. No costs.

09.01.2023
(2/2)

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
mn



WEB COPY



S.A.Nos.1078 and 1079 of 2022

G.K.ILANTHIRAIYAN,J.

mn

To

1. The Principal Subordinate Judge, Myladudurai.
2. The District Munsif Judge, Sirkazhi.

S.A.Nos.1078 and 1079 of 2022

09.01.2023