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S.A.No.301 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.301 of 2017
and
C.M.P.No.7194 of 2017

Ramathilagam

...Appellant

Vs.

Krishnaveni

...Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 23.11.2016 made in A.S.No.23 of 2015 on the file of the learned Subordinate Court, Dharapuram, reversal of the judgment and decree dated 23.02.2015 made in O.S.No.228 of 2012 on the file of the learned District Munsif Court, Kangayam, by allowing this Second Appeal.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.S.Jeyaganeshan

J U D G M E N T



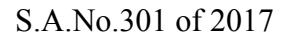
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The defendant in the suit is the appellant. The suit is for partition. The suit was dismissed by the Trial Court and the said judgment was reversed in First Appeal. Aggrieved by the judgment and decree passed by the First Appellate Court, the defendant has come up by way of this Second Appeal.

2. Plaint Averment:

According to the respondent/plaintiff, the suit property originally belongs to one K.Ramasamy Gounder and K.P.Periyasamy Gounder. The total extent of the suit property is 6 acres 95 cents in S.No.149/A1. One of the co-owner namely K.Ramasamy sold his undivided half share in favour of one Subramania Goundar under Ex.A.1 dated 29.06.1970. The said Subramania Goundar in turn sold the said property to the plaintiff under Ex.A3 dated 22.10.1999. Thus, it is the case of the respondent/plaintiff that she is entitled to undivided half share in the suit property. It was further averred by the respondent though there was no partition by metes and bounds between the parties, for the sake of convenience, they have been enjoying their shares separately. As the said enjoyment is not acceptable and convenient for both the parties, the respondent was constrained to file a suit for partition.

3. Averment in written statement:



4. The parties went to the trial on these pleadings and respondent was examined as PW.1 and one Mani was examined on her behalf as PW.2. Exhibits were marked on behalf of the respondent as Exs.A1 to A6. On behalf of the appellant, she examined herself as DW.1 and one independent witness was examined as DW.2. On behalf of the appellant, twenty seven exhibits were marked as Exs.B1 to B27.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant proved the oral partition pleaded by her and consequently dismissed the suit.



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Aggrieved by the same, the respondent filed an appeal in A.S.No.23 of 2015, on the file of Subordinate Court, Dharapuram. The First Appellate Court based on the recitals found in the title documents of the respective parties came to the conclusion that the oral partition pleaded by the appellant cannot be accepted and consequently reversed the findings of the trial Court and allowed the appeal by granting preliminary decree for partition as prayed for by the respondent. However, the Appellate Court observed that the appellant is entitled to workout equity in respect of the improvements made by her in the suit property. Aggrieved by the said judgment and decree, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 27.04.2017:

“(1) When the parties have been in possession of, and exercising right of ownership over separate blocks of land for a long time, whether the First Appellate Court is correct in ignoring the presumption that the lands have been already divided and rights of the parties have been defined in such a manner?;

(2) Whether the First Appellate Court erred in



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overlooking the factum of separate possession and enjoyment of the defendant over her portion as evident from the mutation entries marked as Ex.B2 to Ex.B27 as well as Ex.A4 and Ex.A5 especially in the absence of any challenge in the manner known to law?."

7. Elaborating the substantial questions of law framed at the time of admission, the learned counsel appearing for the appellant submitted that P.W.1 herself admitted about separate and exclusive enjoyment of the property by the appellant and the same has been corroborated by separate patta issued in the name of appellant and respondent. Therefore, when there are enough oral and documentary evidence available on record in support of separate enjoyment of respective shares by the parties, the Courts below ought not to have overlooked the same and held that the appellant failed to prove the plea of oral partition.

8. In support of his contention, the learned counsel of the appellant relied on the judgment of this Court in ***Seetharaman rep. by Power Agent, Narasimman Vs. Jayaraman and others*** reported in **2014 (3) CTC 802.**



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9. The learned counsel appearing for the respondent submitted that the appellant failed to lead any evidence in support of her plea of oral partition. The learned counsel further submitted that even in the plaint averment, it has been stated that both the parties are enjoying the suit property separately for the sake of convenience, without any actual partition by metes and bounds. In the absence of any evidence to prove factum of oral partition, the First Appellate Court is justified in reversing the findings of the trial Court and granting a decree for partition as prayed for.

10. The respondent/plaintiff purchased undivided half share in the suit property from one Subramania Gounder under Ex.A3. The description of the property found in Ex.A3 clearly establish that the respondent/plaintiff purchased only undivided half share in the year 1999. Likewise, the appellant's father Nanchappa Gounder purchased only undivided half share in the suit property from K.P.Periyasamy Gounder. The said K.P.Periyasamy Gounder is the co-owner of the vendor's vendor of the plaintiff namely K.Ramasamy. Therefore, perusal of the description of the property found in Exs.A2 and A3 would suggest both the appellant and respondent purchased only undivided half share in the suit property. Though



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the appellant in her written statement pleaded there was a oral partition by metes and bounds and subsequently the revenue documents were also got mutated, the appellant failed to plead the date of alleged oral partition. The appellant also failed to examine any independent witness to prove the factum of oral partition pleaded by her. The only independent witness examined on behalf of the appellant namely DW.2, is the brother of respondent's husband. It is seen from the evidence of PW.1 and Ex.A6 marked on behalf of the respondent that a criminal complaint has been given against DW.2 by respondent's husband with regard to an assault case. Therefore, it is clear that the relationship between DW.2 and respondent's family got strained. Therefore, the trial Court discarded the evidence of DW.2. If the evidence of DW.2 is ignored, the appellant has no other evidence except her interested testimony in support of the factum of oral partition.

11. The learned counsel appearing for the appellant by relying on revenue documents produced by both the parties contended that separate enjoyment by both the parties for quite long time has been proved by patta issued in the respective names. The First Appellate Court has taken into consideration the patta/Ex.A5 issued in the name of respondent and patta/Ex.B4 issued in the name of appellant and observed that there is a



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discrepancy with regard to the extent mentioned in the revenue documents. As per Ex.A5/patta issued in the name of respondent, one hectare 88 cents of land in S.No.302/2B is found to be in possession of respondent. 1.88 hectares is equivalent to 4.64 acres. Therefore, under Ex.A5, the respondent/plaintiff is issued with patta more than what she is entitled to in the suit property. When there is a serious discrepancy with regard to the extent of property in possession of the respective parties, we cannot safely come to the conclusion that there was partition by metes and bounds and based on oral partition, the parties mutated their respective names in the revenue records. In such circumstances, the revenue documents relied on by the appellant cannot be the sole basis for proving the factum of oral partition pleaded by her. Therefore, the First Appellate Court rightly came to the conclusion that oral partition pleaded by the appellant has not been proved.

12. The learned counsel appearing for the appellant submitted that the appellant improved the portion of the suit property in her possession by putting up a residential house. It is also stated in respect of the remaining land in her possession, she improved it by installing water sprinklers for the purpose of cultivation. As far as improvements made by the appellant is concerned, it is always open to her to work out equity in the final decree



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proceedings. In fact, the First Appellate Court, while allowing the appeal observed that the appellant/defendant is entitled to seek allotment of the portion of the property in respect of which she had made improvements. Any such request made by appellant regarding allotment of portion of the property in respect of which she had made improvements, shall be considered by Court below on its own merits in final decree proceedings. In such circumstances, I do not find any error in the finding of facts rendered by the First Appellate Court with regard to the oral partition pleaded by the appellant.

13. In view of the discussions made earlier, both the questions of law framed at the time of admission are answered against the appellant and consequently the Second Appeal stands dismissed.

14. In these circumstances,

(a) The Second Appeal is dismissed by confirming the judgment and decree in A.S.No.23 of 2015, on the file of the learned Subordinate Court, Dharapuram, dated 23.11.2016 and the judgment and decree in O.S.No.228 of 2012, on the file of the learned District Munsif Court, Kangayam, dated 23.02.2015 is set aside.

b) In the facts and circumstances of the case, there shall be no



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order as to costs; and

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c) consequently, connected Miscellaneous Petition is closed.

04.10.2023

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

1. The Subordinate Court,
Dharapuram.

2.The District Munsif Court,
Kangayam.



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