



S.A.No.681 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.681 of 2017
and CMP.Nos.17551 and 24257 of 2017

1.Selvaraj
2.Usharani

...Appellants

Vs.

1.Ravichandran
2.Dhavamani
3.Chandrasahu
4.Royappan
5.Mayavel

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.02.2017 and passed in A.S.No.33 of 2012 on the file of the III Additional District and Sessions Judge, Cuddalore, Virudhachalam, confirming the judgment and decree dated 06.01.2012 passed in O.S.No.27 of 2006, on the file of the Principal Subordinate Judge, Virudhachalam.

For Appellant : Mr.R.Gururaj

For Respondents : Mr.R.Krishnasamy
for R1 and R2
R4-No appearance
R3 and R5-Not ready in notice



S.A.No.681 of 2017

J U D G M E N T

The unsuccessful plaintiff in a suit for declaration of title and injunction is the appellant. The suit filed by the appellant was dismissed by the Courts below. Aggrieved by the same, the appellant has come up by way of this second appeal.

2. According to the appellant/plaintiff, the suit property is the ancestral property. It was pleaded by the appellant that in the oral partition effected in the year 2004, the suit "B" schedule property was allotted to the share of first appellant and the suit "C" schedule property was allotted to another sharer namely one Narayanasamy. The second appellant purchased "C" schedule property from the sharer Narayanasamy under registered sale deed dated 31.08.2005. Thus claiming exclusive right over the suit property, he also laid a suit for declaration.

3. The respondents/defendants filed a written statement denying the oral partition pleaded by the appellant. In the written statement filed by the respondents they also reserved the right to file a suit for partition by including all the family properties.



S.A.No.681 of 2017

4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that oral partition pleaded by the appellant was not proved and therefore the appellant is not entitled to claim exclusive title over the suit property. In view of the said finding, the suit filed by the appellant seeking declaration and injunction was dismissed by the trial Court. Aggrieved by the same, the appellant preferred an Appeal in A.S.No.33 of 2012, on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam District. The First Appellate Court Judge also confirmed the findings of the trial Court that the appellant failed to prove the oral partition pleaded by him. Aggrieved by the same, the appellant/plaintiff has come up by way of this second appeal.

5. When the matter is taken up for hearing, the learned counsel for the appellant submitted that even though the Courts below have given concurrent finding that the oral partition pleaded by the appellant was not proved, still the Court can mould the relief by taking into consideration the relationship of the parties. In fact, the similar request was made before the First Appellate Court seeking relief of partition by moulding the relief. However, the same was rejected by the First Appellate Court on the ground that there was no prayer in the plaint seeking alternative relief of partition.



S.A.No.681 of 2017

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6. The learned counsel appearing for the appellant submitted that in case this Court comes to the conclusion that the findings rendered by the Courts below are correct, the appellant may be given liberty to file a fresh suit for partition . The appellant has filed a suit for declaration based on a plea that there was an oral partition in the family and the suit properties were allotted to the share of the first plaintiff and the predecessor of the second plaintiff. The plea of oral partition has not been proved by the appellant by leading any acceptable evidence. The findings of the facts rendered by the Courts below that the oral partition pleaded by the appellant does not require any interference by this Court.

7. Therefore, I do not find any substantial questions of law to interfere with the said findings of facts rendered by the Courts below and consequently, the second appeal is dismissed by confirming the findings of the Courts below. However, the dismissal of the second appeal will not come in the way of appellant filing a fresh suit for partition and workout his right in the manner known to law.



S.A.No.681 of 2017

8. Accordingly, the second appeal is dismissed with liberty to the appellant to file a fresh suit for partition. In case any such partition suit is filed, it is open to the defendants therein to take all defences available to them under law. No orders are necessary in CMP.No.24257 of 2023 and the same is closed. Consequently, connected Miscellaneous Petitions are closed. No costs.

07.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.
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S.A.No.681 of 2017

To
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- 1.The III Additional District and Sessions Judge, Cuddalore,
Virudhachalam.
- 2.The Principal Subordinate Judge, Virudhachalam.

S.A.No.681 of 2017

07.11.2023