



S.A.No.110 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM

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

S.A.No.110 of 2023
and C.M.P.No.3429 of 2023

1. Muthusamy
2. Parimalam
3. Leelavathi
4. Devagi
5. Kowsalya

.. Appellants

Vs.

1. Palanisamy
2. Rathika
3. Logeshkumar

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree passed in A.S.No.8 of 2018 by the 2nd Additional District Court, Erode dated 29.07.2019 confirming the Judgment and Decree passed by the 2nd Additional Sub Judge of Erode in O.S.No.163 of 2008, dated 10.08.2017 and to allow the second appeal.

For Appellants : Mr.V.S.Kesavan

JUDGMENT

This second appeal has been filed as against the Judgment and Decree passed in A.S.No.8 of 2018 by the II Additional District Court,



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Erode dated 29.07.2019, confirming the Judgment and Decree passed by the II Additional Sub Judge of Erode in O.S.No.163 of 2008, dated 10.08.2017, thereby decreeing the suit for partition.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The appellants are the defendants and the respondents are the plaintiffs in the suit filed in O.S.No.163 of 2008 for partition. The case of the plaintiffs is that the first plaintiff and first defendant are brothers. According to the plaintiffs, the suit property is a joint family property. The suit property was partitioned by a registered partition deed dated 12.09.1966 among the first plaintiff, first defendant and their father. “B” schedule property was allotted jointly in favour of the first plaintiff and the first defendant. From the date of partition, they were in possession and enjoyment of the suit schedule property. While being so, on 17.08.2005, the plaintiffs and the defendants sold 2.52 acres of land mentioned in the partition deed. The remaining “B” schedule property are the suit property in which the plaintiffs and the defendants are mentioned



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to have $\frac{1}{2}$ share each. For the purpose of improving the property, the plaintiffs demanded the defendants for amicable partition and the same was refused by the defendants. Hence, the suit.

4. Resisting the same, the appellants filed their written statement stating that already an oral partition was effected in respect of the suit properties into two equal share. On 14.11.1985, the same was reduced into writing in which “A” schedule property was allotted to the first defendant and “B” schedule property was allotted to the first plaintiff. Accordingly, the first plaintiff and the first defendant were enjoying their respective portion of the suit schedule property. They also marked Ex.B1 and the same was returned. Whereas, the respondents marked Ex.A2, sale deed in respect of the partitioned joint family property by the first appellant and the respondents herein. All the brothers and sisters are parties to the said sale deed. It was also admitted by P.W.1 that the property which was executed through Ex.A2 were developed through his mother and sisters. It was allotted to their father and thereafter it was partitioned by them in consequence to the suit filed by their sisters in O.S.No.403 of 1995.



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5. On the basis of the pleadings, the Trial Court framed the following issues:-

- “ 1. Whether the plaintiff is entitled the partition as prayed for?
2. To what relief the plaintiff is entitled? ”*

6. On the side of the plaintiffs, they had examined P.W.1 and marked Exs.A1 to 5. On the side of the defendants, they had examined D.W.1 and marked Exs.B1 to 6. On a perusal of oral and documentary evidences, the Trial Court decreed the suit. Aggrieved by the same, the defendants preferred an appeal and the same was dismissed, confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

7. The appellants had raised the following substantial questions of law:-

- “ a) Whether the decree passed by the first appellate Court is valid and maintainable in law ?
b) Whether the Appellate Court below right in allotting such shares to the plaintiffs ?*



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c) Whether the Courts below right in decreeing the suit without considering the admissions made by the P.W.1 ?

d) Whether Courts below right in rejecting the partition agreement in Ex.B1?

e) Whether the Courts below right in shifting the burden on the defendants, when the P.W.1 admits his signature in the Ex.B1?"

8. The learned counsel for the appellants would submit the signature found in Ex.B1 was admitted by the plaintiffs and proved that there was oral partition in respect of the suit properties.

9. Heard the learned counsel for the appellants.

10. Though the appellants had taken a specific stand that there was an oral partition and they marked Ex.B1, which was reduced in writing, admittedly, it was not a registered one. Further, it is also not a partition deed and it is a partition agreement. That apart, the appellants failed to examine any one of the witness in order to prove the oral partition between the parties. According to the appellants, the oral partition happened in the year 1985. However, a perusal of Exs.A3 and



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A4 revealed that it was categorically admitted by the appellants herein that the suit property is jointly being enjoyed by them.

11. Therefore, both the Courts below rightly decreed the suit and this Court finds no infirmity or illegality in the orders passed by the Courts below and also finds no substantial questions of law is involved in this case and the second appeal is liable to be dismissed.

12. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

24.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The II Additional District Court, Erode.
2. The II Additional Sub Judge, Erode.

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