



S.A.(MD).No.148 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.148 of 2017

1.Sivanandam
2.Selvaraj
3.Amirthavalli

... Appellants

Vs.

1.Sachithanantham
2.Sivakumar

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 17.12.2015 in A.S.No.61 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur, concurring with the Judgment and Decree dated 26.03.2014 made in O.S.No.8 of 2010 on the file of Additional Subordinate Judge, Thanjavur.

For Appellants : Mr.V.Chandrasekar

For Respondents : Mr.N.Tamilmani

JUDGMENT

The present second appeal is filed by the 1st, 2nd and 4th defendant in the suit against the Judgment and Decree dated 17.12.2015 passed in A.S.No.61 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur, concurring



S.A.(MD).No.148 of 2017

with the Judgment and Decree dated 26.03.2014 passed in O.S.No.8 of 2010 on the file of the Additional Sub Court, Thanjavur.

2.The plaintiff in the suit is the 1st respondent herein, the 1st defendant, 2nd defendant and 4th defendant in the suit are the appellants herein and the 3rd defendant in the suit is the 2nd respondent herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff and defendants as per the ranking in the suit.

3.The plaintiff Sachithanantham had filed the suit for partition. The suit property originally belongs to one Manicka Thondamar. The plaintiff is the son of the said Manicka Thondamar through his first wife Late. Jayam. The 4th defendant Amirthavalli is the second wife of the said Manicka Thondamar and the 1st defendant, Sivanandam and 2nd defendant, Selvaraj are the sons of the said Manicka Thondamar through his second wife. The 3rd defendant is the subsequent purchaser of the property.

4. The brief facts as stated by the plaintiff are that the said Manicka



S.A.(MD).No.148 of 2017

Thondamar was the owner of the property and he was in possession and enjoyment until his in the year 1995. After his demise the plaintiff and the defendants 1,2 and 4 were enjoying the said property as the legal heirs. However, defendants 1 and 2, along with the 4th defendant had sold the property to the 3rd defendant without the plaintiff's knowledge. Hence the plaintiff has issued legal notice dated 05.10.2009 to the defendants and the defendants had issued reply notice dated 20.10.2009 with false averments. As the plaintiff is a coparcener under Hindu law, he claims partition of 1/3rd share through the suit.

5. The contention of the 1st, 2nd and 4th defendantS is that there was an oral partition of the suit properties in 1992 during the lifetime of Manicka Thondamar, wherein the plaintiff and the defendants 1 and 2 were allotted specific shares. But the plaintiff sold his share as evidenced by sale deeds Ex. B1, dated 24.09.1976 and Ex. B2, dated 10.08.1978, where the plaintiff acknowledged receiving his portion of the ancestral property and hence the oral partition was valid and binding and the suit ought to be dismissed.

6. The contention of the 3rd defendant is aligned with the averments of the



S.A.(MD).No.148 of 2017

other defendants by asserting the validity of the oral partition in 1992. Further contended that the plaintiff had already received his share of the ancestral property, which he subsequently sold. The 3rd defendant learned that the patta is in the name of the 4th defendant, and the 4th defendant is the mother of the 1st defendant and 2nd defendant. On 04.09.2006, the 3rd defendant had purchased the suit property for a valid sale consideration of Rs. 16,000/- and is in possession of the property since then, hence prayed to dismiss the suit.

7. After considering the pleadings of the parties, documentary evidence and depositions of the parties, the Learned Trial Court held that the plaintiff is entitled to a 1/4th share in the suit properties. Aggrieved over the same, defendants 1,2,4 had preferred an appeal and the Learned First Appellate Court had found that the Trial Court had miscalculated the shares by applying Section 8 of the Hindu Succession Act instead of Section 6. Hence modified the shares and decreed in favour of the plaintiff. Aggrieved over the same, the defendants 1,2,4 has preferred this Second Appeal.

8. The second appeal was admitted on the following substantial question of



law:

- a) *“Whether the first appellate court was right in treating the suit property as ancestral in the absence of any pleading for both sides?”*

9. The contention of the defendants is that the suit property belongs to Manicka Thondamar and the same is not ancestral property. However on perusal of the sale deed dated 11.07.1979 marked as Ex.B6 it is seen that the said Manicka Thondamar along with the plaintiff and minor 1st defendant (represented by the natural guardian father) had sold the property, wherein it is specifically stated that the property is “ancestral property”. The Trial Court had referred to the said Ex.B6 and has correctly come to the conclusion that the property is an ancestral property. Therefore, the substantial question of law is answered in favour of the plaintiff and against the defendants.

10. Further, it is seen that the Trial Court had recorded that the plaintiff was not living with the father Manicka Thondamar. After the demise of plaintiff’s mother / first wife of Manicka Thondamar, the plaintiff was living with maternal grandparents. Hence there would not be any partition at all and oral



S.A.(MD).No.148 of 2017

partition claimed by the defendants was rejected.

11. The specific case of the defendants that the plaintiff had executed a sale deed dated 02.09.1976, wherein it is stated by the plaintiff that he had inherited through his father and hence it ought to be considered that there was oral partition. But the same was considered by the Trial Court and held that the property shown in the sale deed dated 02.09.1976 marked as Ex.B1 was again sold by the father Manicka Thondamar along with plaintiff and minor 1st defendant to the same purchaser vide sale deed dated 11.07.1979 marked as Ex.A6. The Trial Court has also held that in the sale deed dated 11.07.1979 it has been stated that there was agreement to sale executed between the parties on 29.06.1978. When the father had dealt with the properties after the alleged sale deed dated 02.09.1976, then the plea of the defendants that there was oral partition is not proved and the same is rejected.

12. It is seen that the contention of the defendants is against the documents and the contents of the documents marked as exhibits. It is held in several cases that any oral evidence cannot contradict the documentary evidence



and one such case is ***Ramachandran Vs.Y.Theva Nesom Ammal*** reported in (2003) 2 MLJ 130, wherein it is held that,

“13. ...Section 92 of the Indian Evidence Act contemplates that when terms of any contract, grant or other disposition of the property or any matter required by law to be reduced in the form of written documents have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting the said written document....”

13. In the case of ***G.Arumugham Vs Palani and another*** reported in 2011 AIR CC 1578 (MAD) it has been held that,

“10... A mere perusal of those decisions would highlight and spotlight that if there are certain recitals in such registered document then contra evidence cannot be adduced by either parties. Pleading that the said document was not intended to be acted upon, is different from pleading that certain averments found set out therein are untrue.”

Therefore, this Court following the aforesaid judgments is of the considered opinion that the oral partition claimed by the defendants are against the documents adduced by the parties. Hence the contention of oral partition by the defendants is rejected.

14. For the reasons stated supra, the Judgment and Decree granting



S.A.(MD).No.148 of 2017

5/16th shares to the plaintiff by the First Appellate Court is confirmed. Hence, the Second Appeal is dismissed. No costs.

01.11.2023

Index : Yes / No
NCC : Yes / No

Tmg

TO:



S.A.(MD).No.148 of 2017

1. II Additional District and Sessions Judge, Thanjavur.

2. Additional Subordinate Judge, Thanjavur.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.148 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.148 of 2017

Dated:
01.11.2023