



S.A(MD)No.614 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)No.624 of 2023
and
C.M.P(MD) No.14449 of 2023

1.Ayyadurai

2.Prabha

...Appellants

-Vs-

Sivasankaran

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 29.03.2019 made in A.S.No.18 of 2018 on the file of Sub Court, Thuraiyur, confirming the judgment and decree dated 13.03.2017 made in O.S.No.180 of 2006 on the file of the District Munsif Court, Thuraiyur.

For Appellants : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.H.Lakshmi Shankar



S.A(MD)No.614 of 2023

WEB COPY

JUDGMENT

This second appeal is filed challenging the concurrent judgments in A.S.No.18 of 2018 on the file of Sub Court, Thuraiyur and in O.S.No.180 of 2006 on the file of District Munsif Court, Thuraiyur.

2. The respondent as plaintiff filed a suit for partition. The case of the plaintiff is that the plaintiff and first defendant are brothers. They purchased the suit property on 19.06.1984. It is manavari punja land measuring 0.54.0 ares in Survey No.209/4 of Alagapuri Revenue Village, Thuraiyur Taluk, Trichy District. The suit property has been in a common enjoyment of the plaintiff and first defendant. Despite the request of the plaintiff for effecting partition of the suit property, the first defendant did not take any steps for effecting partition. Therefore, a notice dated 31.03.2006 was issued seeking partition. Even thereafter, no steps were taken for partition. Later, the plaintiff came to know that the first defendant had executed a settlement deed in respect of the suit property in favour of second defendant. In the said circumstances, the suit is filed for the aforesaid relief.



S.A(MD)No.614 of 2023

WEB COPY

3. In the written statement of the defendants, it is admitted that the purchase of suit property by the plaintiff and first defendant on 19.06.1984. However, it is the case of the first defendant that after the marriage of the plaintiff and first defendant, they are living separately. As per the custom prevailed in the village, the suit property was partitioned and the elder brother was allotted western portion and younger brother was allotted eastern portion. Accordingly, they divided the suit property and they are in possession and enjoyment of their shares, i.e., 66 ½ cents. Suppressing this partition, the suit is filed only after the first defendant executed the settlement in respect of the property allotted to his daughter namely second defendant on 21.03.2006. Thus, he prayed for dismissing the suit.

4. During the trial before the trial Court, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to Ex.A5 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B4 were marked.

5. On considering the oral and documentary evidence, the trial Court found that the plea taken by the first defendant that the suit property was already



S.A(MD)No.614 of 2023

partitioned is not correct, but the suit property is in common possession and enjoyment of the plaintiff and first defendant. In this view of the matter, the trial Court decreed the suit. In the appeal filed in A.S.No.18 of 2018, the first appellate Court has also taken the same view. In this background, the second appeal is filed challenging the judgements of the Courts below.

6. During the course of submission, it is brought to the notice of this Court that the plaintiff filed I.A.No.1 of 2019 for passing final decree. It was represented by the parties that the suit property may be divided into two portions, i.e., north-south, so that parties have access to the road on the east of the suit properties. Accordingly, the Commissioner filed a report suggesting that the suit property may be divided equally on north- south demarcation of the property.

7. After enquiry, the learned District Munsif, Thuraiyur, has also passed final decree on 04.07.2023 allotting northern portion of the suit property to the plaintiff and southern portion of the suit property to the first defendant.



S.A(MD)No.614 of 2023

WEB COPY

8. When the Courts below on the basis of oral and documentary evidence have concurrently found that the suit property was not partitioned as claimed by the plaintiff and it remained unpartitioned and enjoyed in common by the plaintiff and first defendant and on that basis, the suit was decreed and now, on the basis of preliminary decree, final decree was also passed allotting northern portion to the plaintiff and southern portion to the first defendant, this Court is of the view that the Courts below have rightly and properly considered the oral and documentary evidence and decreed the suit in favour of the plaintiff and that does not require different view from this Court.

9. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd.*, **1962** reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) (*or*)



S.A(MD)No.614 of 2023

WEB COPY

4.The question is not free from difficulty and calls for discussion of alternative views.

10. In the case before hand, the appellants have not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

11. In fine, this Second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cp

To

1. The Subordinate Judge,
Thuraiyur.

2.The District Munsif,
Thuraiyur.



S.A(MD)No.614 of 2023

WEB COPY

3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.614 of 2023

G. CHANDRASEKHARAN, J.

cp

S.A(MD)No.624 of 2023

19.10.2023