



S.A.(MD) No.659 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**S.A.(MD) No.659 of 2023
and
C.M.P.(MD) No.15548 of 2023**

V.Rajamani

..Appellant

Vs.

V.Natarajan

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 25.07.2023 passed by the Sub Court, Manamadurai in A.S.No.25 of 2019 in confirming the judgment and decree of the District Munsif cum Judicial Magistrate Court, Ilayankudi dated 04.03.2016 in O.S.No.55 of 2013.

For Appellant

: Mr.S.Ramesh

JUDGMENT

Challenging the concurrent judgments in A.S.No.25 of 2019 on the file of the Sub Court, Manamadurai in O.S.No.55 of 2013 on the file of the District Munsif cum Judicial Magistrate, Ilayankudi, this second appeal is filed.



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2.The appellant filed the suit seeking the relief of declaration of title in respect of the suit property, for permanent injunction and for other reliefs. The case of the appellant as seen from the plaint averments, in brief, is as follows:-

2.1.The suit property along with its western property were purchased on 04.09.1966 in the name of the defendant for the benefit of both the plaintiff and the defendant. The plaintiff and the defendant had been enjoying the suit property and the ancestral house on the north of the suit property jointly. On the advise of elders, there was a partition on 09.09.1972. In the said partition, the suit property and other properties were allotted to the plaintiff and some other properties were allotted to the defendant. The mother was also allotted some properties.

2.2.As per the partition deed dated 09.09.1972, the parties had been enjoying their respective properties. In a settlement deed executed by the defendant on 25.06.2007, there is a specific mention in the description of property that on the east of the property settled, the property of the plaintiff situates. Therefore, it is established that there was a partition between the plaintiff and the defendant on 09.09.1972. There was a dispute between the plaintiff and the defendant in connection with the enjoyment of the properties, especially the suit property. The defendant tried to encroach the suit property, which necessitated the filing of the suit for the aforesaid reliefs.



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3.The defendant filed a written statement denying the plaint averments.

It is specifically denied that the suit property was purchased by both the plaintiff and the defendant in the name of the defendant for the benefit of plaintiff and the defendant. It is the specific case of the defendant that the suit property was purchased by the defendant with his own income. There is no ancestral properties available in the family. The plaintiff was only aged 18 years at the time of the purchase of the suit property on 04.09.1966. The defendant alone purchased the suit property. The claim that there was partition entered into between the plaintiff and the defendant on 09.09.1972 is not correct. No such partition had taken place on 09.09.1972 and no document evidencing the partition was executed. There was wrong description given in the boundaries in the settlement deed dated 25.06.2007 executed by the defendant in favour of his daughter. The defendant is an uneducated person and without the benefit of reading skill, he had signed in the settlement deed. The allegation that the defendant tried to encroach the suit property is not correct. The suit property is in possession and enjoyment of the defendant from the date of purchase.

4.During the course of trial, P.W1 and D.W1 were examined and Ex.A1 to Ex.A8 and Ex.B1 were marked.



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5.Considering the oral and documentary evidence, the learned trial Judge found that the plaintiff has not established that the suit property was purchased by using the funds of the plaintiff and the defendant and that there was a partition deed executed on 09.09.1972. It also found that merely because there is a wrong recital in the settlement deed, ie., Ex.A2, that will not confer any right on the plaintiff. In this view of the matter, the trial Court dismissed the suit. An appeal was filed in A.S.No.25 of 2019 against the judgment of the trial Court. The first appellate Court also concurred with the findings of the trial Court and dismissed the appeal and thus, the appellant is before this Court by way of this second appeal.

6.The learned counsel for the appellant reiterated that Ex.A1, partition deed is an unregistered partition deed. Though it is an unregistered partition deed, it truly evidences the partition that had taken place between the plaintiff and the defendant on 09.09.1972. That is confirmed by the recitals made in Ex.A2 that the settlement deed executed by the defendant in favour of his daughter, wherein it was clearly recited that on the east of the defendant's property, the plaintiff's property situates. It clearly establishes and confirms that there was a partition on 09.09.1972. He also drew the attention of this Court with regard to the evidence of P.W1, where he denies his signature in every document including his signature in the written statement. He went to the extent of saying, when he was asked about



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his signature in the settlement deed that he might have scribbled in Ex.A2. He further submitted that Ex.A3 and Ex.A5 show that there was mutation of revenue records and he is in possession and enjoyment of the suit property. However, both the Courts below have omitted to note this record and evidence and dismissed the suit. Thus, he prayed for admission of this appeal.

7.Heard the learned counsel appearing for the appellant and perused the records.

8.The primordial questions involved in this case is i) Whether the suit property was purchased by the plaintiff and the defendant in the name of the defendant for the benefit of both? and ii) Whether there was a partition dated 09.09.1972 between the plaintiff and the defendant and that was reduced into writing, though not registered? On going through the judgments of both the Courts below, especially the judgment of the trial Court, this Court finds that the plaintiff admitted that he was aged about 14 years, when the suit property was purchased through Ex.A1 in 1964. There is no evidence produced by the plaintiff to show that he was earning in 1964 and had contributed to the purchase of the suit property. Admittedly, there is no evidence produced by the plaintiff for the alleged contribution made by him for the purchase of the suit property in the name of the defendant in 1964. Therefore, this Court is of the view that the first and



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main issue that whether the plaintiff had contributed to the purchase of the suit property in the name of the defendant is not proved by the plaintiff. Admittedly, the alleged partition dated 09.09.1972 was said to have been entered into between the plaintiff and the defendant through an unregistered document. Both the Courts below have rightly found that the unregistered document cannot be received in evidence. When the unregistered partition cannot be received in evidence, no claim can be made based on that document.

9. Admittedly, in Ex.B2, while describing the property, it was shown that on the east of the property settled, the property of the plaintiff situates. Both the Courts have concurrently found that merely because there was a wrong recital in Ex.A2, that will not confer any right on the plaintiff in the suit property. The revenue records, namely Ex.A3 and Ex.A4, had come into existence only in 2013. When it is claimed by the plaintiff that there was partition on 09.09.1972, the fact that the mutation had taken place only in 2013 just before filing of the suit creates suspicion in the mind of the Court. Those documents were rightly rejected. From the oral and documentary evidence produced, it is established that the plaintiff was aged only 14 years, when the suit property was purchased in 1964. He was a student then. He could not have contributed to the purchase of the suit property by the defendant. Therefore, the claim of the plaintiff that the suit property was purchased with the money contributed by him and the defendant in the name of



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the defendant for the benefit of the plaintiff and the defendant cannot be accepted.

From the available evidence, it can only be concluded that the suit property was purchased by the defendant using his own funds.

10.As already stated, Ex.A1, partition deed, is an unregistered document and therefore, it cannot be received in evidence. Ex.A3 and Ex.A4, revenue records, had come into existence long after the alleged partition on 09.09.1972. On the basis of these revenue records, the plaintiff cannot claim title over the suit property, when the defendant had better evidence in the form of oral and documentary. Thus, this Court is of the considered view that both the Courts below have properly analyzed the evidence and rightly decided to dismiss the suit. The judgments of both the Courts below do not require any interference from this Court.

11.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)**



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

12.In the case before hand, the appellant has 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.

13.In fine, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

17.11.2023

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To

- 1.The Subordinate Judge,
Manamadurai.
- 2.The District Munsif cum Judicial Magistrate,
Ilayankudi.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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