



WEB COPY

S.A. No.297 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.03.2024

Pronounced on: 12.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.297 of 2018
and
CMP. No.8770 of 2018

1.Jayaraman
2.Jayapal
3.Palani
4.Manivannan
5.Natesan

...Appellants

Vs.

1.Santhakumari
2.Ravi
3.Eswari
4.Venkatesan
5.Saraswathi

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and the Decree dated 22.02.2018 made in A.S. No.77 of 2017 on the file of the learned Additional District Judge, (Fast Track Court) and Sessions Court, Arani, reversing the Judgment and Decree of dismissal dated 26.02.2015 made in O.S. No.109 of 2010 on the file of the learned Subordinate Court, Arani, Thiruvannamalai.



S.A. No.297 of 2018

For Appellants : Mr.P.G.Thiyagu

For Respondents : Mr.V.Pavel

JUDGMENT

The defendants in a suit for partition are the appellants.

2. The parties are described as per their litigative status before the Trial Court.

3. The material particulars that are necessary for adjudicating the present Second Appeal are as here under:

3.1. The case of the plaintiff is that the suit property was purchased when the plaintiff was a minor, in his name and in the names of his brothers namely, Duraisamy and Narayanan. The father of the plaintiff is Chinnasamy. According to the plaintiff the first Item of the suit property was purchased in and by sale deed dated 07.07.1953 and the second Item of the suit property was purchased in and by sale deed dated 19.02.1965. The suit has been filed on the ground that they are the joint family properties of the plaintiff and his two brothers, Duraisamy and



Narayanan, each entitled to a 1/3rd share. After issuance of a pre-suit notice, the plaintiff instituted the suit for partition.

3.2. The suit was resisted by the defendants contending that there was an oral partition, 40 years back, even during the lifetime of the defendants' father and the three brothers had been in separate possession of divided properties. As the suit property was already partitioned and therefore, the defendants sought for dismissal of the suit.

4. The Trial Court dismissed the suit, accepting the plea of oral partition set out by the defendants. However, the First Appellate Court reversed the findings of the Trial Court and decreed the suit.

5. Aggrieved by the reversal findings, the defendants have come up by way of the present Second Appeal. On 09.07.2018, the Second Appeal was admitted on the following two substantial questions of law:

“(i) Whether without any pleading towards the character of the property as Joint Family Property as on date of filing suit and without any specific pleadings as accretion of income as Joint Family and throwing the same into common hotchpot of the common family property, the suit is maintainable or not?”

“(ii) Whether the viability of Ex.B.1, B.2 that stand would be in the name of co-brothers as independent property, Ex.B.8, B9 stands in the name of respective successors in line, the viability of interpreting



WEB COPY

S.A. No.297 of 2018



Ex.A5, B5 which are prior document holding the name joint family property before the family separation took place in 1965-1970 could be taken consideration for a plea of partition? Is it proper?"

6. I have heard Mr.P.G.Thiyagu, learned counsel for the appellants and Mr.V.Pavel, learned counsel for the respondents.

7. The learned counsel for the appellants would submit that the defendants have exhibited Exs.B1 to B11, which clearly indicated that there was an oral partition. Moreover in the plaint, according to the learned counsel for the appellants, there is no pleading of any joint family property but the case pleaded was only co-ownership and the plaintiff being entitled to 1/3rd share. He would also state that even to the pre-suit notice, a factual reply had been sent, setting out the fact that there was an oral partition which had already been given effect to and the parties were in separate enjoyment of their respective allotments and therefore, a claim could not be made for partition. He would also invite my attention to the documents that were exhibited on the side of the defendants which according to the learned counsel for the defendants would go a long way to establish the plea of oral partition.



8. Per contra, the learned counsel for the respondents would submit that admittedly, the three brothers had acquired independent properties in their names and only in respect of the joint family property held by them, the partition had not taken place. He would contend that the oral partition had not been clearly proved by the defendants. He would point out to the contradictions in the evidence of D.W.2, who has stated that the oral partition took place 30 years back, whereas in the written statement the oral partition is said to have taken place 40 years back. The learned counsel would also invite my attention to the date of the mutation of revenue records namely, patta in the name of the defendants, being after the pre-suit notice issued by the plaintiff, which according to the plaintiff would clearly establish that there was no oral partition, much less, the same being acted upon. He would therefore, pray for dismissal of the Second Appeal.

9. I have carefully considered the rival submissions advanced by the learned counsel on either side. I have also gone through the pleadings, oral and documentary evidence adduced by the parties before the Trial Court and the First Appellate Court.



10. In order to establish oral partition, the defendants have exhibited Exs.B1 to B3, Chitta and Exs.B8 to B10, revenue records. Admittedly, all these documents are after the pre-suit notice issued by the plaintiff seeking partition. When the defendants plead oral partition, that too atleast three decades or four decades both, in order to establish that the oral partition had indeed been effected, the defendants have to show immediate mutation of revenue records and separate enjoyment of the properties so allotted under the oral partition. Admittedly, the patta continued to be in the father's name in respect of the suit property and only after the notice issued by the plaintiff on 19.07.2010, the defendants have hurriedly effected mutation of patta on 27.07.2010, in their names and thereafter, chosen to send the reply notice on 29.07.2010.

11. The First Appellate Court has rightly assessed the oral and documentary evidence available on record and came to a right conclusion that the defendants have not established their plea of oral partition. In the absence of the oral partition being established, the plaintiff is entitled to a decree of partition. Therefore, I do not find any material irregularity, perversity or illegality in the findings arrived at by the First Appellate Court, warranting interference in the Second Appeal.



S.A. No.297 of 2018

WEB COPY

12. In fine, the substantial questions of law are answered against the appellants. The Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

12.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp

To

1. The Additional District Judge,
(Fast Track Court) and Sessions Court, Arani.
2. The Subordinate Judge,
Subordinate Court, Arani, Thiruvannamalai.



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P.B.BALAJI, J.

rkp

Pre-delivery Judgment in

S.A.No.297 of 2018

and

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