



S.A.NO.304 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

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CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.304 OF 2018
AND CMP NO.8438 OF 2018

C.Nagappan ... Appellant / Appellant /
Defendant

Versus

C.Mahendran ... Respondent / Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated February 10, 2017 made in A.S.No.16 of 2015 on the file of the IV Additional District Court, Erode District at Bhavani confirming the Judgment and Decree dated September 2, 2015 made in O.S.No.9 of 2012 on the file of the Sub Court, Bhavani.

For Appellant : Ms.Zeenath Begum
For Respondent : Mr.Arshadullah Sheriff
for M/s.A.L.Shanmugavel

J U D G M E N T



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This Second Appeal is directed by the unsuccessful defendant, assailing the Judgment and Decree dated February 10, 2017 passed in A.S.No.16 of 2015 by the 'learned IV Additional District Judge, Erode at Bhavani' [henceforth 'First Appellate Court' for brevity and convenience] whereby the Judgment and Decree dated September 2, 2015 passed in O.S.No.9 of 2012 by the 'learned Subordinate Judge, Bhavani' [henceforth 'Trial Court' for brevity and convenience] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case:

3. The defendant is the elder brother of the plaintiff. The Suit Property is joint family property of both, the plaintiff and the defendant, allotted under a registered Family Partition Deed dated July 14, 1973. The defendant being the *Karta* of the family has been managing the affairs of the family and the Suit Property. There arose some misunderstanding, and hence, the plaintiff demanded for an amicable partition on November 16, 2011, but the defendant did not agree for the same. Hence, the plaintiff issued a legal Notice on November 19, 2011 to the defendant. The



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defendant issued a reply Notice on November 26, 2011 containing false allegations. During the year 1975, the plaintiff, defendant and their mother sold a portion of the joint family property obtained in the partition for discharge of the joint family debts. Therefore, the said Sale binds the defendant also. The defendant was working as a Village Menial and unscrupulously manipulated and created revenue records in his favour. Since defendant is the *Karta* of the joint family, the revenue records stand in his name. However, the defendant cannot claim absolute and adverse title solely on the basis of the revenue records. Hence, the plaintiff filed a Suit for partition seeking to divide the Suit property into two equal shares and for allotment of one such share to the plaintiff.

Defendant's case:

4. The defendant filed a Written Statement admitting that the Suit Property, measuring an extent of 5 Acre 6 Cents in Survey No. 275 of Mayilambadi Village, was allotted to the plaintiff and the defendant jointly as 'C' Schedule property under a registered Partition Deed dated July 14, 1973. Subsequently, the plaintiff and the defendant had further partitioned the above said property, through an Oral Partition in the year 1974. In the said Oral Partition, the Suit property was allotted to the defendant and an



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extent of 1 Acre 86 Cents in Survey No.275 was allotted to the plaintiff, which the plaintiff later sold by describing four boundaries to one Palani Gounder vide registered Sale Deed dated July 7, 1975. Since the said Oral Partition, the defendant alone is in possession and enjoyment of the Suit Property continuously and uninterruptedly with an absolute title over the same and by paying the Kist also. The plaintiff has no manner of right, possession or interest over the Suit Property. The defendant has helped the plaintiff financially and spent a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) for his education. Also, the defendant has taken care of and maintained their mother till her death. The plaintiff and the defendant were never in joint possession and enjoyment over the Suit Property at any point of time after the Oral Partition. The defendant never being the *Karta* of the family, never managed the affairs of the family. Therefore, the Suit Property was never joint family property at all post the said Oral Partition, and absolutely belonged to the defendant. The revenue records for the Suit Property such as Chitta, Patta and Adangal *etc.*, all stand in the name of the defendant. Hence, the plaintiff has no manner of any right or share over the Suit Property under the provisions of law. Accordingly, he prayed for dismissal of the Suit with costs.



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Trial Court:

5. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.4 were marked on the side of the plaintiff. The defendant was examined as D.W.1 and Ex-B.1 to Ex-B.8 were marked on the side of the defendant.

6. The Trial Court, after considering the documents and evidence, came to the conclusion that the plaintiff and the defendant were each entitled to 2 Acres 53 Cents in Survey No.275 (Resurvey No.379) and that the plaintiff had sold an extent of 1 Acre 86 Cents vide Ex-B.1 – Sale Deed dated July 7, 1975. Hence the plaintiff is having a remaining extent of 67 Cents in the Suit property. There is no sufficient evidence available on record to conclude that the defendant acquired title by adverse possession. Accordingly, the Trial Court passed a preliminary Decree for an extent of 67 Cents in the Suit Property in favour of the plaintiff.

First Appellate Court:

7. Feeling aggrieved with Judgment and Decree passed by the Trial Court, the defendant preferred an appeal in A.S.No.16 of 2015 before the First Appellate Court. The First Appellate Court after considering the



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materials available on record, held that the plaintiff is estopped from contending otherwise than in the recitals of Ex-B.1; that there was an Oral Partition between the plaintiff and the defendant; that the defendant miserably failed to establish that he was in possession and enjoyment of the entire Suit Property excluding the plaintiff; that recitals in Ex-B.1 would show that the plaintiff has some land in the Suit Property. Accordingly, the First Appellate Court concurred with the decision of the Trial Court and dismissed the appeal.

Second Appeal:

8. Feeling aggrieved with the concurrent findings recorded by the First Appellate Court as well as the Trial Court, the defendant has preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

9. This Second Appeal was admitted on June 4, 2018 on the following Substantial Questions of Law:

“1. When the Courts below have categorically found that there has already been an oral partition between the appellant and the respondent and it is not the case of the respondent that there was only a partial partition of properties, whether the



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judgments of the Courts below are vitiated in that they have granted a decree for partition?

2. When a finding has been given regarding severance of status, whether a cause of action arises for instituting a suit for partition?”

Arguments:

10. The learned Counsel for the appellant / defendant submits that there was an Oral Partition between the plaintiff and the defendant, wherein an extent of 1 Acre 86 Cents was allotted to the plaintiff and remaining extent *i.e.*, 3 Acres 20 Cents was allotted to the defendant. He further submits that the plaintiff left for the City to pursue higher studies and thereafter, he got job in Government service. Hence, the plaintiff sold his share allotted in the Oral Partition vide Ex-B.1 – Sale Deed. The plaintiff has no right in the Suit property after execution of Ex-B.1 – Sale Deed, the recitals whereof would clearly establish the factum of Oral Partition. The plaintiff suppressed the aforesaid factum and filed this Suit as if the plaintiff has right in the Suit Property. He further submits that on and after the Oral Partition *i.e.*, since the year 1974, the defendant has been in continuous, exclusive and uninterrupted possession over the Suit Property. The revenue records namely Patta, Chitta and Adangal all stand in the name of the defendant. The Trial Court as well as the First Appellate



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Court failed to appreciate the said evidence in right perspective and decreed the Suit for an extent of 67 Cents in the Suit Property which is erroneous. Accordingly, he prays to allow the appeal.

11. Per contra, learned Counsel for the respondent / plaintiff submits that in Ex-B.1 – Sale Deed itself, it has been specifically stated that the plaintiff retained some land in the Suit Property which would show that in the Oral Partition, an extent of 2 Acres 53 Cents was allotted to each of them. Hence, the Trial Court as well as the First Appellate Court has rightly concluded that the plaintiff is having an extent of 67 Cents in the Suit Property and accordingly, passed a preliminary Decree in which there is no warrant of interference by this Court. Accordingly, he prays to dismiss the Second Appeal.

Discussion:

12. This Court has considered the submissions made on either side and perused the materials available on record.

13. Admittedly, an extent of 5 Acres 6 Cents was allotted to the plaintiff and the defendant in the registered partition as 'C' Schedule



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property under Ex-A.1. Thereafter, according to the plaintiff, the plaintiff sold an extent of 1 Acre 86 Cents for the purpose of clearing family debts vide Ex-B.1 – Sale Deed and the plaintiff and the defendant has been in joint possession and enjoyment of the remaining extent of 3 Acres 20 Cents i.e., Suit property. According to the defendant, subsequent to Ex-A.1, an Oral Partition took place between the plaintiff and the defendant, whereby an extent of 1 Acre 86 Cents alone was allotted to the plaintiff and the remaining extent, which constitutes the Suit Property, was allotted to the defendant. This Court has perused Ex-B.1 – Sale Deed. In Ex-B.1 – Sale Deed, it is specifically stated that the property described therein was orally allotted to the plaintiff. Notably, in Ex-B.1 – Sale Deed, the defendant also has signed as one of the witnesses. This confirms that an Oral Partition took place between the plaintiff and the defendant prior to execution of Ex-B.1 – Sale Deed. Hence, the plaintiff is estopped from contending otherwise by way of Deed of Estoppel.

14. Generally in a Partition between brothers / co-owners, the property will be divided equally for the reason that they have equal right thereof. In this case, the defendant takes a stand that the property was unequally divided giving larger extent to the defendant for the reason that



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the defendant spent for plaintiff's education and took care of their mother as well. In such a scenario, the burden is upon the defendant to prove his assertion that he was allotted a larger extent *viz.*, 3 Acres 20 Cents in the Oral Partition as per Section 103 of Indian Evidence Act, 1872.

15. The defendant did not adduce sufficient evidence nor examined independent witnesses to prove the extent allotted in the Oral Partition. The defendant failed to discharge the burden on him satisfactorily. On the other hand, Ex-B.1–Sale Deed, wherein the defendant has signed as a witness, would show that the plaintiff sold the property covered thereunder while retaining some portion of land in the Suit Survey number. Hence, the plaintiff still has right over the Suit Property.

16. It is true that the revenue records in Ex-B.2 to Ex-B.5 *viz.*, Patta, Chitta and Adangal *etc.*, were jointly issued in the names of the defendant and others, and that the plaintiff's name does not appear in the aforesaid revenue records. Admittedly, the plaintiff had been residing outside his native place. He had been working in various places across Tamil Nadu. It is natural for the revenue records namely Patta, Chitta and Adangal *etc.*, to be in the name of the defendant alone, who resides in the native. Mere fact that these revenue records are in the defendant's name



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does not entitle him to deny the plaintiff's rights over Suit Property.

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17. Since the defendant failed to discharge the burden casted upon him, this Court is of the view that the joint family property would have been most probably equally divided in the said Oral Partition and the parties would have been allotted 2 Acre 53 Cents each. In these circumstances, the findings of the Trial Court as well as the First Appellate Court are correct and there is no need to interfere with the same.

18. It is true that the plaintiff ought to have filed a Suit for declaration and recovery of possession instead of one for Partition. Though in *stricto sensu* a partition Suit would not lie after severance of status, the effect of outcomes of both *viz.*, Suit for declaration and recovery of possession instead of one for Partition in this case, would be the same. As regards Court Fee, the plaintiff paid a fixed Court Fee of Rs.750/- under Section 37 (2) of the 'Tamil Nadu Court-Fee and Suits Valuation Act, 1955' ['TNCF Act' for short]. The Suit Property being agricultural land, if the Suit is valued for declaration and recovery of possession under Section 25 (a) of TNCF Act, the Court Fee payable would be less than that paid by the plaintiff for the reason that the then Section 7 of TNCF Act prescribed



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the market value of agricultural land as 30 times the Survey Assessment on the land. Hence, there is no revenue loss to the State. Hence, considering the facts and circumstances of this case, bearing in mind that process of adjudication involves not only adjudication of law but also justice, with a view to avoid multiplicity of proceedings and in the interest of justice, this Court is of the view that the concurrent findings of the Trial Court as well as the First Appellate Court need not be disturbed. The Substantial Questions of Law are answered accordingly in favour of the plaintiff.

Result:

19. In fine, the Second Appeal is dismissed. The Judgment and Decree of the Trial Court as well the First Appellate Court are hereby confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes



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1.The IV Additional District Judge
IV Additional District Court
Erode District at Bhavani.

2.The Sub Judge
Sub Court
Bhavani.



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R.SAKTHIVEL, J.

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