



S.A.No.706 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 23.09.2024

Delivered on : 28.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.No.706 of 2012

1.V.T.Natarajan (died)

...Defendant / Appellant /
Appellant

2.Jaya

3.Arthi

4.Venkatesh

...Appellants

****Appellants 2 to 4 brought on record as legal heirs of the deceased sole appellant, viz., Natarajan vide Court Order dated 16.02.2023 made in C.M.P.Nos.3663, 3665 & 3666 of 2024 in S.A.No.706 of 2012.**

-Vs-

V.C.Nagarajan son of Sikkannan
Rep by his Power Agent Manickam
W/o V.C.Nagarajan
Door No.45, Mariamman Kovil Street,
Veerakeralam Post,
Coimbatore – 7.

Respondent

Prayer:-Second Appeal filed under Section 100 of CPC, to set aside the decree and judgment made in A.S.No.37 of 2007 dated 07.02.2012 before the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, confirming the decree and judgment in O.S.No.606 of 1998 dated 11.09.2006 by the II Subordinate Court, Coimbatore.



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For Appellants : Mr.P.Nagaraju
For Respondent : Mr.S.P.Vishnu Prasad
For Mr.V.Nicholas

J U D G M E N T

The second appeal is filed by the defendant in the suit, who has lost before the Courts below.

2. The suit was filed for partition with a prayer to division the suit property into two equal shares and to demarcate and allot 6 cents with 3 ½ anganam house in the southern side of the suit property by metes and bounds as per the settlement deed dated 04.11.1967 and put the plaintiff in possession of the same by appointing a Commissioner to demarcate the plaintiff's share with the assistance of the Government Surveyor.

3. The case of the plaintiff is that originally this property belongs to one Rangammal, w/o Eray Gounder, who had purchased the property under Ex.A-1 in the year 1936. The said Rangammal had two sons named Sikkanna, Eriatha Gowder and one daughter named Rukumani. The



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plaintiff is the son of Sikkanna and the grandson of Rangammal. The said Rangammal purchased the vacant site measuring 12 cents and constructed seven anganam east facing titled house with the assistance of her husband Eray Gowder.

4. The said Rangammal had settled a portion of the land on the northern side measuring 9 cubit x 12 cubit with 3 ½ anganam house in favour of her second son Eriatha Gowder on 04.12.1942, by way of settlement deed marked as Ex.A-2. The said Rangammal had retained 6 cents along with 3 ½ anganam house for her first son, Sikkanna. On 15.06.1947, the Rangammal's first son, Sikkanna and Rangammal together mortgaged the southern portion of the land in favour of one Thimmakkal. The said mortgage deed was marked as Ex.A-3.

5. Due to financial crisis, Rangammal sold the remaining portion of the suit property in favour of her daughter Rukmaniammal on 25.10.1960. At the instance of late Sikkanna, the said Rukmaniammal had returned the property to the plaintiff vide settlement deed dated 04.11.1967.



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Accordingly, the plaintiff had become an absolute owner of the southern share of the suit property.

6. The plaintiff was in continuous possession and enjoyment of 6 cents along with 3 ½ anganam house. The suit property with 7 ½ anganam east facing house was not at all partitioned by metes and bounds till date of filing the suit.

7. The plaintiff was requesting for partition of his share out of 12 cents viz., 6 cents of land along with 3 ½ anganam house on the southern side demarcating the boundary lines. However, the property was not divided. Taking advantage of the plaintiff's absence, the defendant made an attempt to grab a larger extent of the property. On 06.06.1998, the plaintiff had issued a legal notice to the defendant calling upon him for an amicable partition. The defendant instead of coming for an amicable partition, had issued a reply notice dated 12.06.1998 with untenable grounds. Therefore, the plaintiff has filed the present suit for partition.



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8. The defendant filed his written statement and contended that the defendant is the owner of the northern portion of the suit property with the specific boundaries by metes and bounds, totaling an extent of 3960 sq. ft., and another 50 sq.ft., house with front and backyard and remaining vacant space which was purchased by the defendant as per the document dated 15.07.1978. The specific case of the defendant is that the plaintiff had given away the suit schedule property to the adjacent owners who are residing on the southern side of the suit schedule property to an extent 350 sq.ft.

9. The contention of the defendant is that the suit schedule property was purchased by the respective parties from their predecessors in title with specific boundaries and therefore, the plaintiff is not entitled for any partition and the suit is not maintainable for non joinder of necessary parties. The defendant had filed additional written statement contending that the common owners who are necessary parties were not made as a party in the suit. Unless the entire S.F.No. has been surveyed, an effective



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decree cannot be passed in the suit. Therefore, the suit is bad for non-joinder of necessary parties. Accordingly, the defendant prayed for dismissal of the suit.

10. The Trial Court formulated the following issues for consideration:

- a) Whether the suit for partition is maintainable?
- b) Whether the suit is bad for non-joinder of necessary parties?
- c) Whether the Court fee was paid in accordance with the Tamil Nadu Court Fee and Suit Valuation Act?
- d) Whether the plaintiff is entitled for the relief of partition as prayed for?
- e) Any other relief could be granted?

11. The Trial Court on 31.01.2006 had framed additional issues namely:

- a) Whether the boundaries of the suit property is to be identified by conducting a survey with the aid of surveyor and fix the boundaries?
- b) Whether the suit is beyond the limitation?
- c) Any other relief could be granted?

12. Before the Trial Court, P.W-1 to P.W-3 were examined and Exs.A-1



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to A-16 were marked on the side of the plaintiff. The defendant was examined as D.W-1 and the said Thimmakkal, w/o. Eriatha Gowder was examined as D.W-2. On the side of the defendant, Exs.B-1 to B-7 were marked.

13. While answering issues 1, 2, 4 and Additional issue No.1, the Trial Court noted that as per the evidence of D.W-2, the defendant obtained the northern share of the suit property by way of sale deed dated 15.07.1978 marked as Ex.B-1, executed by Thimmakkal who is the wife of Eriatha Gowder. The defendant is the son-in-law of the said Thimmakkal. The half share of the suit property transferred by Rangammal in favour of her second son Eriatha Gowder was subsequently settled in favour of his wife Thimmakkal vide A-8. Therefore, the said extent of property obtained by Eriatha Gowder vide settlement deed marked as Ex.A-2 was only transferred to the defendant vide Ex.B-1 which is also marked by the plaintiff as Ex.A-9.

14. The Trial Court has taken note of the fact that the extent in Ex.A-2



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was only 9 cubit x 12 cubit x 12 cubit with 3 ½ angalam house. However, an excess extent of 3960 Sq.ft was sold in favour of the defendant vide Ex.B-1. There was no explanation as to how an excess extent of 3960 sq.ft was sold by D.W-2 while she obtained only the extent mentioned in Ex.A-2 i.e., the northern share of the suit property vide Ex.A-8 executed by Eriatha Gowder. Therefore, the Trial Court disbelieved the evidence of D.W-1 and D.W-2 and found that D.W-2 is not entitled to execute sale deed to an extent larger than what was settled in her favour vide A-8.

15. The Trial Court held that though the names of 42 persons are found in the joint patta marked as Ex.B-6, the said Rangammal obtained the suit property to an extent of 12 cents in her favour after demarcation of the boundary lines on all the four sides as per Ex.A-1. Therefore it is not necessary to include 42 persons whose names are found in the joint patta as parties to the suit. Therefore, the suit is not bad non-joinder of parties. The Trial Court found that the defendant failed to produce any document to prove that the suit property was surveyed during execution of sale deed marked as Ex.B-1.



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16. The Trial Court disbelieved the contention of the defendant that the suit for partition will not lie as the suit property was transferred to many persons. The Trial Court found that the suit property was not divided at any point of time. Therefore, the suit for partition is maintainable and the plaintiff is entitled to the relief as prayed for.

17. While answering Issue No.2 and additional issue No.2, the Trial Court held that the Court fee is properly paid and the suit is not barred by limitation as the plaintiff is in possession of equal half share of the suit schedule property. Accordingly, the Trial Court passed the preliminary decree for partition as prayed for.

18. The defendant having lost before the Trial Court had filed the appeal in A.S.No.37 of 2007 before the Additional District and Sessions Court, Fast Track No.II, Coimbatore.

19. The defendant filed I.A.No.526 of 2011 before the First Appellate



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Court to receive additional documents 1 to 8. The said application was dismissed by the First Appellate Court for the reason that the documents produced at the appellate stage were obtained subsequent to the disposal of the suit. The First Appellate Court found that the very filing of application in I.A.No.526 of 2011 after disposal of suit would prove that the appellant / defendant did not have title over the suit property during trial and till the disposal of the suit.

20. The First Appellate Court noted that there is no dispute regarding title of Rangammal to the suit properties and execution of settlement deed marked as Ex.A-2 in favour of Eriatha Gowder and sale deed in favour of Rukmaniammal which is marked as Ex.A-12. The First Appellate Court concurred with the finding of the Trial Court that Thimmakkal has no title to execute sale of 3960 Sq.ft of vacant land. Therefore, the defendant failed to prove his right over the larger extent of 3960 Sq.ft vacant site through the evidence of D.W-1 and 2.

21. The First Appellate Court held that Thimmakkal is entitled only to



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the extent settled in her favour vide Ex.A-2 and nothing more. Therefore, she is entitled to execute sale deed only to an extent of 3 ½ anganam house and 243 Sq.ft vacant land which is the extent mentioned in Ex. A2.

22. The First Appellate Court concurred with the finding of the Trial Court that the suit properties had not been measured and demarcated as the patta marked by the defendant as Ex.B-6 itself shows the name of the owner as Rangammal.

23. The First Appellate Court dismissed the appeal filed by the defendant with cost. Challenging the judgment and decree in A.S.No.37 of 2007 dated 07.02.2012, the present second appeal has been filed.

24. This Court while admitting the second appeal, had formulated two substantial questions of law, which read as follows:

a)Whether the Courts below have rendered a perverse finding that the suit property is an undivided property in respect of which the plaintiff can seek the relief of partition?



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b)Whether the suit for partition is not maintainable in the light of the fact that Eriatha Gowder got a property by way settlement from his mother not as an undivided share, but as a property within specified boundaries?

25. Learned counsel for the appellant would submit that the suit properties were already measured and demarcated which is evident from Ex.B-1 which is the sale deed in favour of the defendant, executed by his mother-in-law, Thimmakkal and Ex.A-12 executed by Rangammal in favour of her daughter, Rukmaniammal.

26. Learned counsel for the appellant would submit that in the said sale deeds, boundaries and measurements of both the portions in the suit schedule property are clearly mentioned. Therefore, the suit properties are already subjected to partition. The plaintiff ought not to have filed the suit for partition as the suit properties are already demarcated.

27. Per contra, learned counsel for the respondent submitted that the



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property was never surveyed and demarcated. Eriatha Gowder obtained the northern side of the suit property vide Ex.A-2, and the remaining share in the property was initially sold to Rukmaniammal. However, till the date of filing of the present suit, the property was not surveyed and demarcated. Therefore, taking advantage of the same, the defendant is claiming the larger extent of land in which he has no right whatsoever. Therefore, the respondent is entitled to the relief of partition and the suit for partition is maintainable.

28. It is clear that the title of Rangammal, execution of Ex.A-2 in favour of Eriatha Gowder, Ex.A-8 in favour of Thimmakkal, w/o.Eriatha Gowder, Exs.A-9 and B-1 which is the sale deed in favour of the defendant, the execution of sale deed marked as Ex.A-12 in favour of Rukmaniammal and the settlement deed in favour of the plaintiff marked as Ex.A-4 executed by Rukmaniammal are all admitted by both the parties and there is no dispute regarding the title of Rangammal and Eriatha Gowder in executing Ex.A-2 and Ex.A-8 settlement deeds. However, title of Thimmakkal to execute sale of a larger extent of 3960 Sq.ft of vacant



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land vide Ex.B-1 in favour of the defendant was examined and the Courts below have rightly held that the said Thimmakkal does not have title over the larger extent as only 3 ½ anganam house and an extent of 243 Sq.ft vacant land was settled in favour of Eriatha Gowder vide Ex.A-2 which is the parent document of Exs.A-8 and B-1.

29. With regard to the demarcation of the suit properties, after careful consideration of evidence of D.W-1 and D.W-2, the Courts below have reached a conclusion that the suit properties were not partitioned till the date of filing of suit. It is seen from the records that the defendant has admitted in his cross-examination that there is no evidence for survey and partition of northern share and southern share of the suit property and the tax receipts in respect of his share which is Door No.46 is in the name of Rangammal and tax receipts in respect of Door No.45 is in the name of the plaintiff.

30. The evidence of D.W-2 clarifies that the said Thimmakkal who is the vendor of the defendant has admitted that the suit property was not



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surveyed till the date of evidence. Therefore, the defendant has failed to prove by way of oral and documentary evidence that the property was already divided.

31. This Court is of the view that the findings of the Courts below regarding the suit property being an undivided property and the said Eriatha Gowder got the northern side of the property as an undivided share is not a perverse finding.

32. The evidence of P.W-1 and the documentary evidence produced by the plaintiff has made it clear that the said Thimmakkal has conveyed a larger extent to the defendant without any right and title over the same. Therefore, the plaintiff is entitled to seek the relief of partition and the suit is maintainable.

33. Accordingly, both the substantial questions of law are answered in favour of the respondent.



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34. In view of the above, the **second appeal is dismissed** and the judgment and decree in A.S.No.37 of 2007 dated 07.02.2012 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore is confirmed. No costs. Consequently, connected miscellaneous applications are closed.

28.10.2024

cda

Index : Yes / No

Speaking / Non-Speaking Order

Neutral Citation : Yes / No



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To

- 1.The Sub Court, Hosur.
- 2.The District Munsif cum Judicial Magistrate No.I,
Hosur.
- 3.The Section Officer
VR Section, High Court,
Chennai.



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N.SENTHILKUMAR, J.

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Judgment in
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