



WEB COPY



S.A. No.834 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.834 of 2024

and

C.M.P.No. 26425 of 2024

Periyasamy (deceased)
S/o. Alan

1. Chellayee
2. Basker
3. Packiyam
4. Balu

... Appellants

Vs.

Periyasamy,
S/o. Ramasamy

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 31.10.2023 made in A.S.No.15 of 2018 on the file of Subordinate Judge, Perambalur confirming the judgment and decree dated 28.06.2017 passed in O.S.No.526 of 1995 on the file of District Munsif Judge, Perambalur.



S.A. No.834 of 2024

For Appellants

: Mr.S.Satish Rajan

JUDGMENT

Challenging the concurrent findings of the courts below rendered in A.S.No. 15 of 2018 by the Subordinate Judge, Perambalur arising out of trial court findings in O.S.No.526 of 1995 on the file of District Munsif Judge, Perambalur, this Second Appeal was preferred by the legal heirs of original defendant.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the respondent/plaintiff filed a suit seeking for the relief of declaration and consequential relief of permanent injunction stating that the suit property in S.F.Nos. 211/2 and 211/7 Old S.F.Nos. 912/2 and 912/7 belong to one Sattampillai Alan @ Alappan and after his demise, it devolves upon his two daughters Angammal and Nallathangal.

2/11



S.A. No.834 of 2024

Both of them entered into oral partition in the year 1980 and the same was reduced in writing by way of Muchalika. Accordingly, the suit property was allotted to the share of Angammal and patta was also granted in her favour. From her, the plaintiff purchased the suit property on 10.05.1995 through sale deed and ever since from the purchase, he is in possession of the property. The defendant being a stranger, attempted to cause interference. Hence, the suit.

4. The defendant denied the plaintiff's right as well as his vendor Angammal stating that Angammal and her sister Nallathangal were in joint possession of suit property, however he admits that patta was granted in the name of Angammal in respect of suit property, but it will not bind their right in the joint family property. Indeed, another sister Nallathangal sold her half share to this defendant through a sale deed dated 02.05.1995 but the plaintiff purchased the property from Angammal including half share of Nallathangal. Accordingly, the plaintiff is entitled only half share in the suit property. Already there was a partition suit filed in O.S.No. 319 of 1995 by his vendor Nallathangal. Therefore, he prayed to dismiss the suit.



S.A. No.834 of 2024

WEB COPY

5. Before the trial court, six issues were framed. In respect of alleged partition , the right and title of both plaintiff and defendant's vendor, on the side of plaintiff, Ex.A1 to Ex.A23 documents were marked and on the side of defendants, Ex.B1 to B2 alone were marked. Considering the both oral and evidence on record, the trial court concludes that there was a oral partition took place between both plaintiff and defendant's vendor Angalammal and her sister viz., Nallathangal on 27.03.1980. Before that, the property originally belongs to their father deceased Sattampillai Alan @ Alappan and as per the oral partition, suit properties were allotted to Nallathangal in the presence of panchayatars and a Muchalika was executed between them, which was marked as Ex.A1. Thereafter, the said Angalammal sold the property to defendant through Ex.A4 sale deed. So also, another sister Nallathangal was granted with patta in respect of Survey No.230/14 and 230/15 total extent of 0.13.0 hectares, however, she filed a suit in O.S.No.319 of 1995 seeking partition in the property as well as her property includes S.F.Nos.211/2 and 211/7, which was allotted as per muchalika Ex.A1, but the suit was dismissed due to non-appearance of



S.A. No.834 of 2024

Nallathangal in the year of 2005. In the meanwhile, she had executed a sale deed in respect of suit properties in favour of defendant during the pendency of earlier suit. Patta was granted in favour of plaintiff's vendor Angalammal after the Muchalika executed in the year 1980 and the Patta Passbook marked as Ex.A8 proves the same. Thereafter, the plaintiff purchased the property from her and necessary mutation has also been made in the revenue records and as on date, as per 'A' register, Ex.A20 suit properties stand in the name of plaintiff. Furthermore, the trial court relies boundaries in the sale deed Ex.B1 stands in the name of defendant, wherein four boundaries mentioned with the name of Nallathangal and the said boundary recitals as well as evidence of D.W.1 clearly proves that there was a division of the property. Accordingly, the plaintiff's vendor Angammal was in possession of the properties as per Ex.A1 Muchalika in the suit survey numbers and now in the hands of plaintiff, thereby the plaintiff proves the oral partition Ex.A1 Muchalika. Thus, the suit was decreed. Against which, an appeal suit was preferred in A.S.No.15 of 2018, wherein the first appellate judge independently analysed the facts and evidence on record and dismissed the suit by confirming the findings of the trial court.



S.A. No.834 of 2024

WEB COPY

6. Challenging the said concurrent findings, this Second Appeal was preferred by the legal heirs of original defendant. Accordingly, the learned counsel for appellants prayed to set aside the findings of the courts below by raising the following grounds:-

(i) The courts below had given more weightage to Ex.A1, which is an unregistered partition deed alleged to have been entered between Angammal and Nallathanga, who are the vendors of the plaintiff and defendant respectively.

(ii) The courts below failed to consider that Ex.A1, which is a unregistered and unstamped instrument cannot be looked into for any purpose even for collateral purpose. But, the courts below based on the Ex.A1 (unregistered partition deed) decreed the suit as prayed for.

(iii) The courts below failed to note that the plaintiff has not established the unregistered partition deed Ex.A1 by examining the witnesses to the said document or the scribe of the document or the village panchayatars. When a document under which the plaintiff claims right and title over the suit property has not established the same in the manner



S.A. No.834 of 2024

known to law and hence, the courts below ought to have rejected the same, but in the present case, the courts below based on the unregistered and unstamped and unestablished Ex.A1 partition deed decreed the suit, which is not in accordance with law.

(iv) The courts below failed to note that the plaintiff has not produced the Ex.A1 at the first instance at the time of filing the suit or at the time of hearing I.A.No.520 of 1995. But, after two decades in the year 2017, the plaintiff introduced the Ex.A1 which is an unregistered and unstamped partition deed, which is a created document for the purpose of the suit.

(v) The courts below failed to note that insufficient stamp papers and documents not registered in accordance with Sec.17 and 49 of Indian Registration Act, 1908 are inadmissible in evidence and cannot be received in evidence by the courts below.

7. The learned counsel for appellants would further submit that the courts below gave more weightage to unregistered partition deed alleged to



S.A. No.834 of 2024

have been Muchalika, which is inadmissible in evidence, but the courts below erroneously appreciated the same and granted the relief in favour of plaintiff as such is erroneous one and liable to be set aside.

8. Heard and considered the submissions of learned counsel for appellants and perused the materials available on record.

9. Considering entire submissions of the appellants and on perusal of Ex.B1 sale deed with four boundaries relied on by them, the same could be proved that already there was a partition between plaintiff's vendor and defendant's vendor, who were sisters and all the properties originally belong to their father Sattampillai Alan @ Alappan. As per the contention of plaintiff, already there was a oral partition and the same was reduced in writing by way of Muchalika through Ex.A1. Admittedly, Ex.A1 Muchalika is an unregistered document. But, it can be used for collateral purpose, which is settled proposition of law in respect of arrangement of the properties. As per Ex.A1 Muchalika, the suit properties were allotted to the plaintiff's vendor Angammal and another extent of property in entire survey



S.A. No.834 of 2024

number was allotted to her sister Nallathangal, vendor of defendant.

Moreover, the sale deed relied on by the defendant reveals that the share allotted to the plaintiff's vendor Angammal was shown as boundaries and in fact, it is admitted by the defendant during trial. Moreover, patta was also granted in favour of plaintiff's vendor as per Muchalika Ex.A1 executed between the parties and the same has also been admitted by the defendant. Hence, the trial court as well as first appellate court rightly concludes that already the property was orally divided and the same could be inferred from Ex.A1. Though it is an unregistered one, it can be used for collateral purpose in respect of arrangement of family property and the same was also substantiated by the recitals of Ex.B1 sale deed. Accordingly, the plaintiff proved that already there was a oral partition was effected between his vendor as well as defendant's vendor, who are sisters by nature. Therefore, the courts below rightly observed that the plaintiff is owner of property and already partition was effected between the vendors, which needs no interference and well-reasoned one. Hence, there is no substantial question of law is involved for consideration in this Second Appeal. Accordingly, this Second Appeal is dismissed and the findings of courts below is confirmed.



S.A. No.834 of 2024

No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

25.11.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

Sub-Judge,
Perambalur.

T.V.THAMILSELVI, J.



WEB COPY



S.A. No.834 of 2024

rpp

S.A. No.834 of 2024

25.11.2024