



S.A.No.532 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 22.02.2024	Judgment Pronounced on 05.04.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.532 of 2017
and C.M.P.No.12906 of 2017

Saravanan

..Appellant

Vs.

1.Devaraj
2.Srinivasan
3.Murugesan
4.Ramasamy

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.02.2017 made in A.S.No.36 of 2014 on the file of the Subordinate Court, Uthangarai, reversing the judgment and decree dated 20.12.2011 passed in O.S.No.60 of 2006 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

For Appellant : Mr.R.Thirugnanam

For Respondents : Mr.C.Mariappan



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 08.02.2017 made in A.S.No.36 of 2014 on the file of the Subordinate Court, Uthangarai, reversing the judgment and decree dated 20.12.2011 passed in O.S.No.60 of 2006 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

2.The plaintiff in a suit for declaration and permanent injunction is the appellant herein, aggrieved by the reversal findings rendered by the First Appellate Court, dismissing the suit, setting aside the judgment and decree of the Trial Court granting a decree in favour of the plaintiff.

3.The parties are described as per their litigating status before the Trial Court.

4.According to the plaintiff, the suit property was originally belonging to one Govinda Naicker. The plaintiff's mother, Rukmani was married about 30 years back and after five years of marital life, her husband deserted her



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and thereafter, she was living with her parents and her brothers for about 25 years. She started enjoying the family properties along with her parents and her brothers. According to the plaintiff, there was an oral partition in the family amongst the parents of the mother and brothers of the mother of the plaintiff and separate properties were allotted to the brothers, keeping an extent of 2 acres in common, in order to divide the same in future, so that the portion could also be allotted to the plaintiff's mother, Rukmani. In and by an oral arrangement, 2 acres of land was allotted to the plaintiff's mother and the Tahsildar also issued patta in favour of the plaintiff's mother, Rukmani. The mother also executed a Settlement Deed bequeathing the suit properties in favour of the plaintiff on 06.02.2006 and the plaintiff has also mutated revenue records in his favour. The plaintiff has paid kists to the Government and he has in possession of the suit property and the defendants have no right over the same. According to the plaintiff, since he married one of the daughters of his uncle, i.e., Molugu's daughter, the brother of his mother not being in cordial terms with the other brother, Molugu, developed enmity towards the plaintiff and started attempting to grab the suit property and therefore, the suit came to be instituted, seeking declaration of the plaintiff's right and also for a permanent injunction to restrain the defendants from



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interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

5.The suit was resisted by the 1st defendant stating that the patta in favour of the plaintiff's mother was obtained fraudulently and consequently, the plaintiff's mother had no right to execute the Settlement Deed in favour of the plaintiff. It is also contended that the suit was bad for non joinder of proper and necessary parties namely, said Molugu and the plaintiff's mother Rukmani.

6.The Trial Court, after assessing oral and documentary evidence, decreed the suit, placing reliance on evidence of P.W.2, who was examined to establish the oral partition amongst the family members. The First Appellate Court, however, reversed the findings of the Trial Court on the ground that the plaintiff had not established the allotment in favour of his mother, Rukmani and finding that the plaintiff's mother had no right or title over the said property and having failed to establish the oral arrangement, the plaintiff was not entitled to any relief. The First Appellate Court also found that the plaintiff has not proved the exclusive possession and enjoyment of



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the suit property and allowed the appeal, setting aside the judgment and decree passed by the Trial Court.

7.The above Second Appeal was admitted by this Court on 10.08.2017, on the following substantial questions of law:

“i) Whether the Lower Appellate Court has not committed an error of law in not considering the material documents Viz Settlement Deed under Ex.A6 and Kist receipts under Ex.A7 to Ex.A10 and Ex.A15 to prove the Appellant's title and possession in respect of the Suit properties?

ii) Whether the Lower Appellate Court has erred in holding that the Appellant has not proved the Oral Partition between the Appellant's Mother and other family members in respect of the Suit Property, when the mutation of records was transferred in favour of the Appellant's mother under Ex.A1 to Ex.A4 and Ex.A17?”

8.I have heard Mr.R.Thirugnanam, learned counsel for the appellant and Mr.C.Mariappan, learned counsel for the respondent.



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9.The learned counsel for the appellant would submit the fact that the separate patta had been issued to the plaintiff's mother, confirmed the oral partition. Moreover, the Courts below failed to consider Ex.A3 and Ex.A4, kists paid by the mother of the plaintiff, which again evidenced that the oral partition had been acted upon. He would also refer to Ex.A1 and Ex.A2 patta in the name of the plaintiff's mother and Ex.A6 and Ex.A17 in the name of the plaintiff and similarly, kists receipts in Ex.A7 to Ex.A10 and Ex.18 and Ex.A19 to evidence absolute and separate peaceful possession being in the hands of the plaintiff. He would also refer to the revenue records to evidence that kists have been paid only by the plaintiff's mother and plaintiff. The learned counsel for the appellant would also refer to Ex.A16, patta, which is in the name of the defendants and the same does not include the suit property in S.No.58/6A and S.No.59/3A, which probablises the oral partition pleaded by the plaintiff.

10.The learned counsel for the appellant would also place reliance on the decision of the Division Bench of this Court in ***Boomathi (Died) and Others Vs. Murugesan (Died) and Others***, reported in ***2023-2-L.W.162***, where I was a part of the Division Bench that rendered the said judgment and



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in the said judgment, he would draw my attention to the distinction between “not specifically denied” and “admitted” and the ratio laid down that in view of Sections 17 and 58 of the Indian Evidence Act, admitted facts need not be proved.

11.The said judgment is pressed into service since the defendants have admitted that there was an oral partition in the family and therefore, the claim of the plaintiff that his mother was allotted 2 acres, which was left in common and not subject matter of the partition could only be true and genuine. He would also place reliance on the decision of this Court in ***G.Prabhakar Vs. G.Venkatraman and Others***, reported in ***2022-5-L.W.390***, where this Court held that the Settlement Deed can be proved by producing the document alone and it was not necessary for examining the attesting witnesses. The learned counsel for the appellant would therefore pray for the Second Appeal being allowed.

12.Per contra, the learned counsel for the respondents would support the findings of the First Appellate Court and invite my attention to the relevant discussion regarding the oral partition and conclusion of the First



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Appellate Court regarding reference to the joint patta in Ex.B1, including the suit properties, which was issued in the year 1987. He would also contend that the plaintiff ought to have examined his mother to prove the Settlement Deed and also her entitlement over the suit property. The learned counsel would also rely on Exs.B8, B9, B10, B11, B12 and Ex.B13 with regard to the patta transfer proceedings and he would contend that the plaintiff's mother was not entitled to the suit property and the alleged oral allotment in favour of the plaintiff's mother had also not been established. He would therefore pray for the Second Appeal being dismissed.

13.I have carefully considered the rival submissions advanced by the learned counsel on either side.

14.It is the specific case of the plaintiff that there was an oral partition amongst his mother's family members namely, the mother and the brothers and in the said partition, three of the brothers were allotted separate properties and they are in enjoyment of the same. An extent of approximately 2 acres was left in common and thereafter, it was allotted to the mother of the plaintiff, Rukmani. The plaintiff's mother had admittedly obtained patta in



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her name and she had also paid kists for the suit property. Subsequently, the plaintiff's mother has executed a registered Settlement Deed in favour of the plaintiff and there is no issue framed by the Trial Court regarding the validity or truth of the Settlement Deed in favour of the plaintiff and there was no necessity to examine the witnesses to the Settlement Deed of the mother since the Settlement Deed had been exhibited before the Court and it came from proper custody. Regarding Ex.B5, Settlement Deed, the parties are never at issue regarding the truth and the genuine of the said Settlement Deed.

15.The defendants also admitted that there was an oral family partition and 2 acres was left in common in S.Nos.58/6, 58/7B, 59/3 and 63/3 for future division. In the plaint, the plaintiff has specifically stated that there was an oral arrangement about 15 years back and 2 acres was allotted to his mother, Rukmani. However, the First Appellate Court has misread the pleadings and proceeded to hold that the plaintiff has not stated as to when the suit property was allotted to his mother and what was the extent allotted. I find sufficient pleadings available in the plaint in this regard, which the First Appellate Court has unfortunately not taken note of. Even otherwise,



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the plaintiff's mother has obtained patta in her name and she has produced kist receipts to show that she has been in possession and her claim of oral allotment in her favour has been acted upon and proved. Thereafter, pursuant to the Settlement Deed in favour of the plaintiff, the plaintiff has also mutated revenue records in his name and he has paid kists. Therefore, the plaintiff has sufficiently discharged the burden imposed upon him to establish that there was an oral allotment of 2 acres of land in favour of his mother, Rukmani. There was no necessity for the plaintiff to have impleaded his mother, as a party to the suit and examined her when there was no serious challenge to the execution of the Settlement Deed, as rightly contended by Mr.Thirugnanam, learned counsel for the appellant.

16.It was only the case of the defendants that the mother had no right to execute the Settlement Deed and execution of Settlement Deed was not denied. Unfortunately, the First Appellate Court has held that the plaintiff has not examined his mother or the attesting witnesses to prove the Settlement Deed in Ex.A5 dated 06.02.2006. In fact, I find that the First Appellate Court has contradicted its own findings. At one breath, the First Appellate Court states that the plaintiff has failed to prove entitlement and



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title and has not impleaded his mother in the suit. However, at another breath, the First Appellate Court holds that the suit is not bad for non joinder of plaintiff's mother.

17.The First Appellate Court having found that there is no dispute with regard to identity of the property and admittedly, there was a Settlement Deed executed by the plaintiff's mother in his favour, the plaintiff could not be non suited on the ground that the oral partition had not been established when it is the admitted case of the defendants themselves that there was an oral partition initially and extent of 2 acres was set apart in common. This clearly gels with the version put forth by the plaintiff even in the plaint and thereafter reinforced by production of patta and kist receipts, the plaintiff's mother and the plaintiff have established that the said extent of 2 acres kept in common, was allotted to the plaintiff's mother. The Trial Court had rightly found that the oral partition had been established and proceeded to decree the suit. However, the First Appellate Court, on an erroneous footing that the plaintiff has not examined the attestors to the Settlement Deed in Ex.A5 and has also failed to prove the oral partition, which was in fact admitted by the defendants themselves, erroneously proceeded to allow the appeal. The



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findings arrived at by the First Appellate Court are clearly perverse and materially irregular. For all these reasons, the substantial questions of law are answered in favour of the appellant herein.

18.In the result, the Second Appeal is allowed. The judgment and decree dated 08.02.2017 made in A.S.No.36 of 2014 on the file of the Subordinate Court, Uthangarai, is hereby set aside and the judgment and decree dated 20.12.2011 passed in O.S.No.60 of 2006 on the file of the District Munsif cum Judicial Magistrate, Uthangarai, is restored on file. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Subordinate Court, Uthangarai.
- 2.The District Munsif cum Judicial Magistrate, Uthangarai.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI., J.

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Pre-delivery judgment made in
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