



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2024**

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CORAM:

THE HONOURABLE MR.JUSTICE. S. SOUNTHAR

S.A.(MD)Nos.866 & 886 of 2008

Balasubramanian

...Appellant in both appeals

/Vs/

1.Ramar

2.Duraisami

...Respondents in both appeals

PRAYER in S.A.(MD)No.866 of 2008: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.07.2007 passed in A.S.No.69 of 2005 on the file of the Additional Subordinate Court, Tiruchirappalli, by confirming the judgment and decree passed in O.S.No.130 of 2003 on the file of the District Munsif Court, Musiri dated 10.09.2004.

PRAYER in S.A.(MD)No.886 of 2008: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.07.2007 passed in A.S.No.76 of 2005 on the file of the Additional Subordinate Court, Tiruchirappalli, by modifying the judgment and decree passed in O.S.No.33 of 2003 on the file of the District Munsif Court, Musiri dated 10.09.2004.



Appearance in both appeals:-

For Appellant : Mr.R.Govindarajan

For Respondents : No appearance

COMMON JUDGMENT

The second appeal in SA(MD)No.886 of 2008 is arising out of the suit for injunction in O.S. No.33 of 2008, filed by the appellant in respect of the four items of the properties. The suit was dismissed in entirety. The appeal filed by the appellant was partly allowed in respect of the house portion in Item 4. In respect of other items, the trial Court decree was confirmed by the first appellate Court. Aggrieved by the same, the appellant has come by way of the second appeal in SA(MD)No.886 of 2008.

2. The second appeal in SA(MD)No.866 of 2008 arising out of the suit for bare injunction filed by the first respondent, namely, Ramar. The suit was laid in respect of the item 4 of the suit properties in O.S.No.33 of 2008 filed by the appellant except the house property. Thus item 4 in SA(MD)No.886 of 2008 and suit property in SA(MD)No.866 of 2008 are one and the same. The suit was decreed by the trial Court. The appeal



filed by the appellant has been dismissed. Aggrieved by the concurrent findings, the appellant has filed the second appeals.

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3. The appellant / plaintiff in O.S.No.33 of 2003 is the step brother of the first respondent, Ramar. Both are sons of one Karuppazhagi. It is the case of the appellant that item 1 in O.S.No.33 of 2003 was purchased by Karuppazhagi. Items 2 and 3 were assigned in the name of Karuppazhagi. It was further averred by the appellant that item 4 was assigned in the name of the first respondent, Ramar, but the same was treated as family property and the amount payable to the Government was paid out of the family funds. It was further averred by the appellant / plaintiff that after death of Karuppazhagi, the appellant and the respondents orally divided 4 items of the suit properties and they have been in possession and enjoyment of the respective portion allotted to them as described in the plan appended with the plaint. It was the specific case of the appellant that the defendants made an attempt to interfere with his possession in the portion marked as A in the sample plan, which was allotted to his share and hence, the suit was laid for injunction.



4. The suit was resisted by the first defendant, Ramar on the ground that there was no partition of the properties after death of Karuppazhagi and they had been enjoying separate portions only for the sake of convenience. It was also averred by the first respondent that item 4 of the suit property was assigned in his name and he paid the amount payable to the Government as per the order of the assignment. Thus, the first respondent claimed that item 4 of the suit property was his self acquired property. In respect of other items, it was the case of the first respondent that there had been no division by metes and bounds. Hence, he claimed that the suit for injunction would not lie. On these pleadings, he sought for dismissal of the suit.

5. The suit in O.S.No.130 of 2003 out of which, SA(MD)No.866 of 2008 arises was filed by the first respondent, Ramar in respect of a property assigned to him. The suit was resisted by the appellant on the ground that though assignment was made in the name of the first respondent, Ramar, the property was treated as joint family property and the amount due to the Government paid out of the family funds.

6. Both the suits were tried together and evidence was recorded in the suit filed by the appellant in O.S.No.33 of 2003. The plaintiff was



examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the appellant / plaintiff, 43 documents were marked as Ex.A1 to Ex.A43. The first respondent, Ramar was examined as D.W.1 and an Official of Land Reforms Department was examined as D.W.2. On behalf of the respondents / defendants, 10 documents were marked as Ex.B1 to Ex.B10. The Advocate Commissioner's reports and the plans were marked as Ex.C1 to Ex.C4. The documents relating to assignment proceedings in favour of the first respondent, Ramar were marked as Ex.X1 to Ex.X4 through D.W.2.

7. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff failed to prove the oral partition pleaded by him. The trial Court also found that item 4 was assigned in favour of the first respondent and hence, it was his self acquired property. On these findings, the suit for injunction filed by the appellant was dismissed and the suit for injunction filed by the first respondent was decreed.

8. Aggrieved by the same, the appellant preferred two appeals in A.S.Nos.69 and 79 of 2005 on the file of the II Additional Sub Court, Tiruchirappalli. The first appellate Court, on re-appreciation of evidence,



came to the conclusion that even as per the admitted case of the first respondent, the appellant had been in possession of the house portion in item 4 and therefore, he was entitled to injunction in respect of that portion alone. As far as items 1 to 3 and remaining portion item 4, findings of the trial Court were confirmed and the appeals were dismissed. Aggrieved by the same, the appellant is before this Court.

9. The learned counsel appearing for the appellant vehemently contended that Ex.A17 statement made by the first respondent before the panchayathar would establish the oral partition among the parties and the said document was overlooked by both the Courts below. The learned counsel further submitted that the first respondent admitted the right of the appellant over the well and pumpset in item 4 and overlooking the same, the Courts below found that the item 4 of the suit property is the self acquired property of the first respondent.

10. The appellant filed the suit mainly on the ground that the suit properties were partitioned among the parties after death of Karuppazhagi. Both the Courts below, on proper appreciation of evidence available on record, came to the conclusion that the appellant / plaintiff failed to substantiate the plea of oral partition. The Courts



below, by taking into consideration Ex.A18, joint patta which stands in the name of the parties, repelled the contention of the appellant with regard to the alleged oral partition. The document pressed into service by the learned counsel appearing for the appellant, namely, Ex.A17 was also considered by the Courts below. Ex.A17 is only a statement of the first respondent and the same was not signed by the appellant or the second respondent. Taking into consideration Ex.A17, the first appellant Court observed that there is no reference in Ex.A17 regarding earlier oral partition. When there is no reference in Ex.A17 regarding oral partition between the parties, the contention raised by the learned counsel appearing for the appellant as if Ex.A17 would advance the case of the appellant is not acceptable. Ex.A17 is signed only by the first respondent and the same has not been signed by the appellant and the second respondent. In such circumstances, Ex.A17 cannot be taken as an evidence for alleged oral partition.

11. There is a reference in Ex.A17 as if the well in item 4 was constructed by the contribution of all the three parties and all of them are entitled to equal share in the electricity service connection no.245 and other articles available thereon. However, there is no reference in Ex.A17 regarding the oral partition. Therefore, the Courts below rightly



came to the conclusion that the appellant failed to establish the plea of oral partition made by him.

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12. The Courts below, taking into consideration the evidence of D.W.2 and the documents relating to assignment of item 4 in the name of the first respondent, Ramar, marked as Ex.X1 to Ex.X4, came to the conclusion that the said property was assigned in the name of the first respondent, Ramar and he paid the dues to the Government. Therefore, the plea made by the appellant, though the property was assigned in the name of Ramar it was treated as joint family property, was negatived by the Courts below on proper appreciation of evidence available on record.

13. Merely because there is some reference in Ex.A17 that the well in item 4 was constructed out of the contribution by all the parties and all of them are entitled to equal share in the electricity service connection installed in the well, we cannot come to the conclusion that all of them are entitled to equal share in item 4, which was assigned in the name of the first respondent. However, with regard to the contribution made by the parties, they are entitled to work out their remedy in the manner known to law in appropriate proceedings.



14. In view of the discussion made earlier, the contentions raised by the learned counsel appearing for the appellant are rejected and I don't find any substantial questions of law to interfere with the finding of facts rendered by the Courts below. Accordingly, the second appeals are dismissed with the observation that the parties are at liberty to work out their remedy in the manner known to law with regard to the contribution made by them in respect of the construction of well and obtaining electricity service connection in item 4 of the suit property. No costs.

14.06.2024

Index: Yes / No
NCC : Yes / No
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TO:

- 1.The Additional Subordinate Court, Tiruchirappalli.
- 2.The District Munsif Court, Musiri.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S. SOUNTHAR, J.

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Common Judgment made in
S.A.(MD)Nos.866 & 886 of 2008

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