



S.A.No.1708 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1708 of 2002

Ramasamy

... Appellant

-vs-

1.Ponnaiyan (died)

2.Chellan

3.Krishnan

4.Santha

... Respondents

(Respondents 3 and 4 are brought on record
as L.Rs.of deceased first respondent)

PRAYER: Appeal against the judgment and decree, dated 19.02.2002, passed in A.S.No.144 of 1997 on the file of Subordinate Judge, Kuzhithurai, confirming the judgment and decree, dated 29.03.1996, passed in O.S.No.211 of 1983 on the file of Principal District Munsif, Kuzhithurai.



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For Appellant : Mr.G.Ramanathan
for Mr.K.Sreekumaran

For Respondent 1 : Died

For Respondents 2,3 & 4 : No appearance

JUDGMENT

The unsuccessful plaintiff is the appellant herein. He filed a suit for partition. His Suit and the First Appeal were dismissed. Aggrieved by the concurrent findings of both the Courts below, the plaintiff is before this Court.

2. According to the plaintiff, the suit properties originally belonged to the father of the plaintiff and the defendants 1 and 2. After the death of their father, the plaintiff and the defendants are entitled one-third share each in the suit properties. The suit properties, belonged to the father of the parties, were shown as Items 1 to 3. The remaining properties, namely, Items 4 to 8 were allotted to the share of the plaintiff and the defendants under Ex.A-1. Thus, the plaintiff claimed one-third share in all the eight items of the suit properties.



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3. The suit was resisted by the defendants mainly on the ground that the suit properties were orally partitioned among the parties long back and the plaintiff and the defendants 1 and 2 were allotted one-third share each. Subsequently, in order to confirm the earlier partition, a written document was prepared and the plaintiff refused to bear the expenses for registering the same and failed to sign the document. Further, it was claimed by the defendants that the plaintiff as well as the defendants 1 and 2 have been in possession and enjoyment of their one-third share allotted to them as per the earlier oral partition. Hence, they sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and, on his behalf, 9 documents were marked as Exs.A-1 to A-9. The second defendant was examined as D.W.1 and yet another witness was examined as D.W.2 and, on behalf of defendants, 17 documents were marked as Exs.B-1 to B-17. Advocate Commissioner's Report and Plan were marked as Exs.C-1 to C-3.

5. The trial Court, on appreciation of evidence, came to the conclusion that the properties were orally partitioned among the parties earlier and hence the suit for partition filed by the plaintiff was not maintainable and, accordingly, dismissed the suit. Aggrieved by the same, the plaintiff preferred



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an appeal in A.S.No.144 of 1997 on the file of Sub-Court, Kuzhithurai. The first appellate Court confirmed the findings of the trial Court. Aggrieved by the same, the plaintiff is before this Court.

6. At the time of admission, this Court formulated the following substantial question of law, by an order, dated 08.10.2002 :

After having held that the plaintiff did not sign or accept Ex.B-1 partition deed, whether the lower Court is right in holding that the plaintiff is bound by the terms of Ex.B-1 partition ?

7. Heard the arguments of the learned counsel for the appellant. Though the respondents 2 to 4 are served and their names are printed in the Cause List, there is no representation for them. Perused the records.

8. The Learned counsel for the appellant submitted that in order to prove the oral partition, the defendants pressed into service Ex.B-1 partition deed and the appellant/plaintiff, though was shown as a party to the said document, had not subscribed his signature in the said document. In such a case, Ex.B-1, partition deed, would not advance the case of the defendants to prove oral partition. The learned counsel submitted that the Courts below



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committed a serious error in assuming that Ex.B-1, partition/confirmation deed, would bind the plaintiff, and hence dismissing the suit.

9. The suit for partition filed by the appellant/plaintiff was mainly resisted by the defendants on the ground that, earlier, there was oral partition and all the parties had been in possession and enjoyment of their respective shares as per the said partition. In order to prove the same, the partition/confirmation deed, prepared on 21.12.1982, was marked as Ex.B-1.

10. A perusal of Ex.B-1 would suggest that properties were partitioned among the parties under the document. The Courts below held that partition had taken place earlier and the parties have been in possession and enjoyment of their respective shares allotted in the earlier partition. However, the recitals found in Ex.B-1 would suggest that partition had taken place under the document. It cannot be treated as a document evidencing the past transaction of partition. Though the name of the appellant/plaintiff was shown as one of the parties to the partition under Ex.B-1, admittedly, the plaintiff had not subscribed his signature in the said document. Therefore, Ex.B-1 partition/confirmation deed will not bind the plaintiff.



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11. The Courts below also held that physical features noted by the Advocate Commissioner under Exs.C-1 to C-3 would suggest that the plaintiff as well as the defendants have been in enjoyment of the portions of the property allotted to them under Ex.B-1. The plaintiff, in the plaint pleadings, claimed that for the sake of convenience, the parties have been in possession and enjoyment of separate portions of the suit property. Merely because the co-owners are in enjoyment of separate portions of the property, we cannot presume that partition had taken place among them earlier, especially, when the plaintiff had not put his signature in Ex.B-1 partition deed. If Ex.B-1 is excluded on the ground that the plaintiff has not signed the same, then, the other evidence available in support of the oral partition is the oral evidence of D.W.2. In his evidence, D.W.2 deposed as if the properties were partitioned among the parties 35 years back. If the evidence of D.W.2 is true and the property had been divided 35 years back, the said fact should have been mentioned in Ex.B-1, relied on by the defendants. Both the defendants have put their signatures in Ex.B-1 and it was produced and marked by them. Therefore, the recitals found in the said document are binding on them. As mentioned earlier, a perusal of recitals in Ex.B-1 would suggest that partition had taken place under the document and there is no recital as if partition had taken place earlier. Therefore, there is a material contradiction between the



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evidence of D.W.2 and the recitals in Ex.B-1. Therefore, only based on the evidence of D.W.2, we cannot come to a conclusion that oral partition, pleaded by the defendants, had been proved.

12. The Courts below, by placing reliance on Ex.B-1, which was not signed by the plaintiff, came to an erroneous conclusion that the defendants proved the oral partition, pleaded by them. The said conclusion requires interference in view of the fact that Ex.B-1 was not signed by the plaintiff and the contradiction between the version of D.W.2 and the recitals of Ex.B-1. Accordingly, the substantial question of law, framed at the time of admission, is answered in favour of the appellant and against the respondents.

13. Therefore, this Second Appeal stands allowed, granting a preliminary decree for partition of one-third share in favour of the appellant/plaintiff. It is needless to say that parties are at liberty to work out equities in final decree proceedings. No costs.

07.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Subordinate Judge,
Kuzhithurai.
- 2.Principal District Munsif,
Kuzhithurai.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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