



S.A.No.1559 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1559 of 2003

1.Raghavan (died)

2.Lakshmi Ammal (died)

3.Gangalakshmi

4.Shriram

... Appellants

-vs-

1.Rajesh

2.Sivakami

3.Kanagavelan

... Respondents

(Appellants 3 and 4 and Respondents 2 and 3
are brought on record as LR's of the deceased
1st Appellant and 2nd Appellant)

PRAYER: Appeal against the judgment and decree, dated 29.07.2003, passed in A.S.No.25 of 2000 on the file of I Additional Sub-Court, Madurai, reversing the judgment and decree, dated 14.06.1999, passed in O.S.No.129 of 1998 on the file of District Munsif Court, Madurai Taluk.



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For Appellants : Mr.M.Saravanan

For Respondent 1 : Mr.V.George Raja

For Respondent 2 & 3 : No appearance

JUDGMENT

The defendants in the suit are the appellants. The first respondent herein filed a suit for declaration of title and permanent injunction. The suit was dismissed by the trial Court. On appeal filed by the plaintiff, the first appellate Court reversed the findings of the trial Court and granted a decree for declaration and injunction, as prayed for. Aggrieved by the same, the defendants have come by way of this Second Appeal.

2. According to the first respondent/plaintiff, the suit property originally belonged to one Kamatchi Pillai and his sons. They entered into a registered partition deed on 27.10.1976, wherein each party was allotted a share and the E-Schedule properties to the original partition deed were kept as common properties. The said Kamatchi Pillai died during July,1993, and, after his death, there was an oral partition among his sons. The suit property, which is situated on the northern side, in Survey No.24/6B was allotted to the



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share of one of sons of Kamatchi Pillai, namely, Loganathan. The plaintiff purchased the said property from Loganathan under a sale deed, dated 08.08.1984, which is marked as Ex.A-2. The defendants tried to purchase the suit property from the vendor of the plaintiff for a lesser price, but he refused to sell the suit property to them. Aggrieved by the same, the defendants attempted to interfere with the possession of the plaintiff and hence the above said suit was filed for declaration of title and injunction.

3. The defendants resisted the suit, by denying the title as well as possession of the plaintiff over the suit property. It was their case that after the death of Kamatchi Pillai, the common property, described in E-Schedule to the original partition deed, was divided among his sons and the suit property was allotted to the share of another son of Kamatchi Pillai, namely, Shanmugavelu. The second defendant purchased the suit property from Shanmugavelu on 16.02.1991 under Ex.B-1 and from that date onwards, the second defendant had been in possession and enjoyment of the suit property. Thus, the defendants claimed title and possession over the suit property and sought for dismissal of the suit.

4. Before the trial Court, the plaintiff's mother and guardian was examined as P.W.1. The attester to the sale deed in favour of the plaintiff was



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examined as P.W.2. Yet another witness was examined as P.W.3. The defendants 1 and 2 were examined as D.Ws.1 and 2. On behalf of the plaintiff, 8 documents were marked as Exs.A-1 to A-8 and on behalf of the defendants, 6 documents were marked as Exs.B-1 to B-6.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff was not entitled for declaration of title and injunction. Hence, the suit was dismissed by the trial Court. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal in A.S.No.25 of 2000 on the file of I Additional Sub-Court, Madurai. The first appellate Court, on re-appreciation of the evidence available on record, came to the conclusion that the oral partition and allotment of the suit property to the share of the plaintiff's vendor - Loganathan was proved and consequently upheld the title of the plaintiff. Therefore, the first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the defendants have come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 26.09.2003 :



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(1) Whether in law, is the lower appellate Court right in accepting oral partition overlooking that the recitals in the registered partition can be changed only by another registered document and that under Section 92 of Evidence Act, no oral evidence can be let in against the recitals in the registered deed ?

(2) Whether in law, has not the lower appellate Court overlooked that non-examination of the vendor Loganathan is fatal as he alone is competent to speak about the oral partition ?"

7. The learned counsel for the appellants submitted that the plaintiff claimed that after the death of the original owner Kamatchi Pillai, there was partition in the family with regard to common properties described in E-Schedule to original partition deed and the suit property was allotted to the share of the plaintiff's vendor - Loganathan, however, absolutely, there was no evidence available on record to support the said plea of the plaintiff. The learned counsel further submitted that the finding reached by the first appellate Court as if the oral partition pleaded by the plaintiff and allotment of share to the plaintiff's vendor - Loganathan was proved is based on no evidence and, therefore, the same is liable to be set aside.



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8. The learned counsel appearing for the first respondent submitted that the oral partition pleaded by the plaintiff was admitted by the defendants in their written statement itself and the defendants claimed that under the oral partition the suit property was allotted to the share of Shanmugavelu, the vendor of the second defendant, however, the defendants failed to prove the allotment of share to the second defendant's vendor – Shanmugavelu and therefore, in the light of the admission of the defendants with regard to the oral partition, the first appellate Court rightly came to the conclusion that the plaintiff's vendor – Loganathan's title was proved.

9. It is a settled law that in a suit for declaration of title, the plaintiff has to win his case based on his own strength and he cannot win the case by taking the loopholes in the defence. As per the case of the plaintiff, the suit property originally belonged to Kamatchi Pillai and his sons. There was a registered partition in the family of Kamatchi Pillai under Ex.A-1, dated 27.10.1976. Under Ex.A-1, certain properties of the family were treated as common properties under E-Schedule to Ex.A-1. Therefore, there is no doubt that the suit property was treated as common property of family till the death of Kamatchi Pillai. It is the specific case of the plaintiff that after the death of



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Kamatchi Pillai, there was an oral partition among his sons and the suit property, which lies on the northern side, was allotted to the share of the plaintiff's vendor – Loganathan. In order to prove the oral partition and allotment of share to Loganathan, the plaintiff examined P.Ws.1 and 2. The learned counsel for the plaintiff also, by relying on the reference about the oral partition in the written statement, submitted that the plea raised by the plaintiff with regard to the oral partition and allotment of share to Loganathan was proved. Though the pleadings in the written statement and the recital in Ex.B-1 refer about the oral partition in the family of Kamatchi Pillai, the same is not sufficient to prove the manner of allotment of shares. Mere admission of oral partition will not automatically prove the case of the plaintiff that under oral partition, the suit property was allotted to the share of Loganathan. The first appellate Court found that the oral partition and allotment of suit property to the share of Loganathan was proved by the evidence of the plaintiff's side witnesses.

10. I have gone through the evidence of P.Ws.2 and 3. Though P.Ws. 2 and 3 talk about allotment of the suit property to Loganathan's share in the oral partition in their chief-examination, during cross-examination, both of them categorically admitted that they were not present at the time of oral



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partition and they had no first hand knowledge about the oral partition. They had gone to the extent of saying that the fact of oral partition and allotment of share to Loganathan came to their knowledge only from the sons of Kamatchi Pillai. Therefore, the evidence of P.Ws.2 and 3 with regard to allotment of the suit property is only a hearsay evidence and the same is not sufficient and useful to prove the allotment of share to the plaintiff's vendor – Loganathan. The first appellate Court committed a serious error in not considering the evidence of P.Ws.2 and 3 in cross-examination, admitting their absence at the time of oral partition. If the evidence of P.Ws.2 and 3 is excluded, then the only evidence available on record to support the case of the plaintiff is the own interested testimony of P.W.1. Therefore, the finding rendered by the first appellate Court as if the allotment of share in favour of plaintiff's vendor – Loganathan was proved is vitiated by misreading of evidence of P.Ws.2 and 3 and hence it requires interference by this Court.

11. When the plaintiff failed to prove the allotment of the suit property to the share of his vendor – Loganathan, Ex.A-2, sale deed, will not confer any absolute title to the plaintiff in respect of the suit property. If at all, Ex.A-1 would be useful only to the extent of conveying 1/3rd share of Loganathan to the plaintiff. The second defendant also claimed that he



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purchased undivided 1/3rd share in the suit survey number from the plaintiff's vendor's brother – Shanmugavelu. In such circumstances, the plaintiff is not entitled to declaration of his absolute title over the suit property and, as a necessary consequence, the suit must fail.

12. In view of the discussion made earlier, both the questions of law, framed at the time of admission, are answered in favour of the appellants and against the respondents.

13. The Second Appeal stands allowed, by setting aside the judgment and the decree of the first appellate Court. The judgment and the decree passed by the trial Court, dismissing the suit, are restored. However, the dismissal of the suit will not come in the way of the plaintiff filing a suit for partition and working out his remedy with regard to the share of Loganathan. No costs.

21.06.2024

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

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To:

- 1.I Additional Sub-Court,
Madurai.
- 2.District Munsif Court,
Madurai Taluk.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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