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S.A. No. 1164 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1164 of 2013

Sammannan

...Appellant

Vs.

VA.Natarajan

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 06.09.2012 made in A.S. No. 19 of 2011 on the file of the Subordinate, Thirupathur, confirming the judgment and decree dated 18.04.2011 made in O.S. No. 23 of 2007 on the file of the District Munsif, Thirupathur, Vellore District.

For Appellant : Mr.S.V.Karthikeyan

For Respondent : Mr.S.Shanmugasundaram
for Mr.S.Senthilnathan

JUDGMENT

The appellant is the defendant, against whom the plaintiff has filed a suit for declaration and permanent injunction. The trial Court has decreed the suit as prayed and the first appeal preferred by the defendant also dismissed by confirming the judgment of the trial Court. Now the defendant has

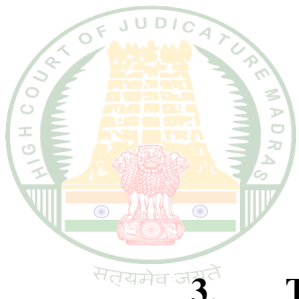


preferred this second appeal.

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2. The short facts pleaded in the plaint filed by the plaintiff in brief:-

The suit property originally belonged to one Arunachala Chettiyar, who had executed a registered Will dated 11.11.1953 and bequeathed the suit properties in favour of the two daughters and three grand children. The Will came into effect after the death of Arunachala Chettiyar and the beneficiaries had acquired the property as per the Will and that they were in joint enjoyment of the suit property as per the Will. Later, they entered into a registered partition on 10.04.1971 and the said partition of 'A' schedule property has been allotted to the share of the plaintiff and the plaintiff has taken possession and enjoyment of the 'A' schedule property. The revenue records in respect of 'A' schedule property has also been changed in the plaintiff. No one has got any right or interest in the 'A' schedule property. When the defendant tried to purchase the suit property, he failed and hence, he started to disturb the possession of the plaintiff in the suit property. Hence, the plaintiff has filed the suit for declaration and permanent injunction.



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3. The defendant has resisted the suit by raising the following averments in the written statement:-

The suit properties did not belong to Arunachala Chettiar and it is false to state that he had executed a Will under which the respondent has no knowledge. The suit property absolutely belonged to one Sampoorname and Thanjammal. The plaintiff and her children have got no right in the suit property. If there is any partition deed in existence that will not bind the interest of the defendant and it is a concocted one. The suit properties are in possession and enjoyment of the defendant for more than 30 years to the knowledge of the plaintiff, but without any objection. Prior to that the suit property was in enjoyment of the defendant's father and his grand father. The defendants and his predecessor are in enjoyment of the same and cultivating those properties on lease. The original owners, Thanjammal and Sampoorname, had leased out the property to the defendant's predecessor. They continued to be in enjoyment of the same by doing cultivation. The father of the defendant, Rangasamy Gounder and the defendant were living in the joint family and hence, the lease receipts have been given in the name of his father, Rangasamy by the original owners, Thanjammal and



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Sampoornammal. After the demise of the Sampoornammal, the defendant has paid lease to the Thanjammal for which the Thanjammal did not pass any receipts. The defendants properties are situated on the southern side of the suit property and the properties belonging to Arunachala Chettiyar is situated on the northern side of the suit property. There is no cause of action for the suit. As the defendant has got properties on the southern side of the suit property they continued to enjoy the suit property on lease from the time of their ancestors. Hence, the suit should be dismissed.

4. On the basis of the above pleadings, the trial Court has framed the following issues:-

- “1. Whether the plaintiff is entitled to the suit property through the partition dated 10.04.1971?*
- 2. Whether the defendant is in possession proper as a tenant through Samboornammal is true and correct as alleged by him?*
- 3. To what relief to plaintiff is entitled to?”*

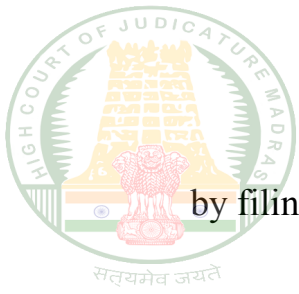
5. During the course of trial, on the side of the plaintiff, one witness was examined as P.W.1 to P.W.3 and Exs.A1 to A11 were marked. On the side of



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the defendants two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B3 were marked. At the conclusion of the trial and considering the evidence available on record, the trial Court allowed the suit and the first appeal preferred by the defendant challenging the judgment of the trial Court also dismissed by confirming the judgment of the trial Court. Now the defendant has filed this second appeal.

6. The only point that has been made by the learned counsel for the appellant is that the suit is bad for non-joinder of parties and hence, the substantial question of law would arise on the above basis. Admittedly, the partition deed marked as Ex.A1 dated 10.04.1971. The properties allotted under the 'A' schedule has been given to the share of the plaintiff and his mother Thanjammal. Though the mother of the plaintiff was alive at the time when the suit was filed, she died subsequently and the plaintiff who is the son of Thanjammal became entitled to the suit property as her legal heir. It is not known whether the deceased Thanjammal had any other legal heirs other than the plaintiff. However, the defendant who is a third party, who himself has accepted that he was only a tenant and not even a co-owner. None of the other sharers, who are parties to the partition deed Ex.A1 has raised any objection



by filing any petition to implead themselves in the suit filed by the plaintiff.

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7. It is submitted by the learned counsel for the respondents that the defendant has not raised the contention of the non-joinder of necessary parties in his written-statement and he has chosen to raise the above contention only at the time of the second appeal.

8. The learned counsel for the appellant submitted that the appellant being a third party was not aware whether the property has been allotted in the partition deed jointly to the shares of the plaintiff and his mother Thanjammal. Only after Ex.A1 partition deed was marked, he came to know that the suit property has been allotted to the plaintiff and his mother. But even then the defendant did not choose to file any additional written-statement to make his pleadings as to the non-joinder of necessary parties as an essential plea. The appellant has raised the above plea during the first appeal and at that stage, the plaintiff's mother was no more and the plaintiff has become the absolute owner of the property as the legal heir of his mother.

9. As stated already even if there are other legal heirs of the deceased



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Thanjammal, they alone can raise any objection to the claim of title by the plaintiff over the suit property and not the third party like the defendant. So far the defendant is concerned, the plaintiff limited cause of action he is denying the entitlement of the title over the suit property and causing disturbance over his enjoyment. Admittedly the defendant is not a sharer neither subsequent purchaser of any of the sharers of partition deed Ex.A1. As the defendant does not have any document or title and he had failed to prove the better interest over the suit property than the plaintiff.

10. The trial Court and the first appellate Court has placed reliance on the Ex.A1 partition deed with regard to the relief of declaration in favour of the plaintiff. Insofar as the possession is concerned, it is claimed by the appellant that he continues to be in possession of the suit property but he has stated that the owner Thanjammal was not in the habit of granting receipts for the lease amount paid to her while she was alive. Hence, without any evidence to show the alleged possession of the defendant over the suit property, the defendant cannot expect the Court to record a positive finding regarding his possession. On the other hand, the revenue records have been mutated in the name of the plaintiff and that would show his possession over the suit property.



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11. In view of the above stated reasons and the rightful manner in which the trial Court and the first appellate Court had appreciated the materials available on record for granting the relief to the plaintiff, I do not find any question of law or much less a substantial question of law arises for consideration in this second appeal and it is not a fit case for admission.

12. Hence, this second appeal stands rejected by confirming the judgment made in A.S. No. 19 of 2011 dated 06.09.2012 on the file of the Subordinate Judge, Thirupathur. No costs.

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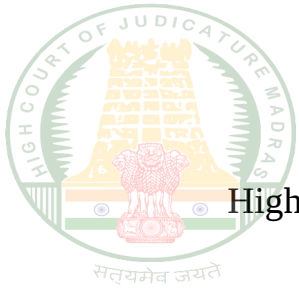
Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Maya

To

- 1.The Subordinate Judge, Thirupathur.
2. The District Munsif, Thirupathur, Vellore District.
3. The Section Officer,
V.R. Section,

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High Court, Madras.

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R.N.MANJULA, J.

Maya

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