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Periannan Vs. Natesan and Others

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Court : Chennai

Decided On : Nov-22-2016

Judge : T. Ravindran

Appeal No. : S. A.No. 381 of 2016

Appellant : Periannan

Respondent : Natesan and Others

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge of Erode District at Erode in A.S.No.10 of 2010 dated 30.09.2010 reversing the judgment and decree of the learned II Additional Subordinate Judge, Gobichettipalayam in O.S.No.19 of 2002 dated 24.07.2009.)

1. The plaintiff in this second appeal has impugned the judgment and decree dated 30.09.2010 passed in A.S.No.10 of 2010 by the Principal District Judge, Erode, reversing the judgment and decree dated 24.07.2009 passed in O.S.No.19 of 2002 on the file of the learned Second Additional Subordinate Court, Gobichettipalayam.

2. The suit has been laid for partition.

3. The plaintiff and the defendants 2 to 4 are the sons, the 5th defendant is the daughter and the first defendant is the wife of Ayyavu Nadar. Claiming that the first item of the suit properties is the ancestral property of Ayyavu Nadar, the second item of the suit properties are his self acquired properties, the plaintiff has laid the suit seeking for partition of his share inasmuch as the defendants have not come forward with his request to amicably partition the suit properties. Thus, according to the plaintiff, he is entitled to 149/600 shares in the first item of the suit properties and entitled to 29/120 shares in the second item of the suit properties.

4. The main defence projected by the defendants is that the plaintiff and the defendants had already orally partitioned their properties and further, the defendants 1 to 5 had sold their share to the 6th defendant on 21.11.2001 and therefore, according to the defendants, the plaintiff is not entitled to seek the relief sought for.

5. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. The defendants 2 to 6 preferred the first appeal and the first appellate court also in all aspects confirmed the judgment and decree of the trial Court, as regards the entitlement of the plaintiffs in seeking 149/600 share in the first item of the suit properties.

6. During the course of the first appeal, it appears that on the application made by the defendants, an additional document viz., the certified copy of the sale deed dated 21.11.2001 executed in favour of the 6th defendant by the first defendant and others has been admitted and marked as Ex.B2. It is found that inasmuch as the appellant has not put forth any objection to the above request of the defendants to mark the additional document, the lower appellate court has entertained the plea of marking the additional document.

7. In this second appeal, the main point, that is argued by the counsel for the appellant, is that the lower appellate court did not provide an opportunity to the plaintiff to adduce oral evidence as regards the reception of the additional document marked as Ex.B2. However, as adverted to earlier, inasmuch as no resistance has been put forth by the appellant in marking the document by way of

filing a counter, it could be seen that the lower appellate court has rightly entertained the reception of the additional document and marked it as Ex.B2. Therefore, the plea now put forth by the appellant that the acceptance of the additional evidence Ex.B2 without providing an opportunity to the appellant to lead the evidence on the said document as such cannot be acceded to. Inasmuch as the genuineness of the document is not in controversy, it could be seen that the lower appellate court thought it fit to admit the document straightaway as it was found that there is no need for the parties to adduce evidence on that document. 8. That apart, a perusal of the judgment of the lower appellate court would also go to show that it has even not entertained the plea of oral partition projected by the defendants, despite the marking the additional evidence Ex.B2. It has found, no reference about the plea of oral partition in the additional evidence Ex.B2 and on that aspect, rightly rejected the plea of the defendants and accordingly held that the plaintiff is entitled to seek the partition in respect of the second item of the suit properties also.

9. However, the lower appellate court in culmination has found that inasmuch as the defendants 1 to 5 including the first defendant had already alienated their shares in favour of the 6th defendant, the findings of the trial Court that the first defendant had died intestate and therefore, her legal heirs would be entitled to get partition in her due share is incorrect and accordingly, found that the plaintiff as such would be entitled to seek only 5/24th share in the second item of the suit properties. Only with reference to the quantum of share in respect of the second item of the suit properties, the lower appellate court has set aside the judgment and decree of the trial Court. The determination of the first appellate court as regards the entitlement of the plaintiff to only 5/24 share in the second item of the suit properties cannot be faulted, as it is clearly made out that the first defendant has already alienated her share in the second item of the properties in favour of the 6th defendant. Therefore, it could be seen that the trial Court has erred in holding that the plaintiff is entitled to obtain 29/120 shares in the second item of the suit properties as that share has been fixed by taking into account, the share to which the first defendant is entitled to. However, as the first defendant had already sold her due share to the 6th defendant, the question of further dividing her share to her legal heirs does not arise.

10. The counsel for the appellant has not made out any ground to interfere with the findings of the lower appellate court with reference to the fixation of quantum of share, to which the plaintiff is entitled to in respect of the second item of the suit properties.

11. The counsel for the appellant has not projected any substantial question of law to be involved in this second appeal.

Resultantly, the second appeal is found to be not based on any substantial question of law. Hence, the second appeal is dismissed. No Costs.

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