

Ganesan Vs. 1.Ilango

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Court : Chennai

Decided On : Apr-16-2015

Judge : P.R.Shivakumar

Appellant : Ganesan

Respondent : 1.Ilango

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

16. 04.2015 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR S.A(MD)No.307 of 2015 and M.P(MD)No.1 of 2015 Ganesan S/o Ramasubbiah Nadar ... Appellant/ Appellant/Plaintiff Vs. 1.Ilango 2.Rajalakshmi 3.Leela Alagusundaram 4.Thirumalaiyandi 5.Krishnammal 6.Sankaralingam 7.Shamugathai 8.Pitchaimani @ Durai 9.Ramasubbiah 10.Selvaraj 11.Kamaraj 12.Mariselvam 13.Sendu @ Malathi 14.Senthil 15.Sankarlal 16.Padmavathi ...Respondents/Respondents /Defendants PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the decree and judgment passed in A.S.NO.45 of 2012 by the Principal Sub Court, Sankarankoil on 30.09.2013 confirming the decree and judgment passed in O.S.No.96 of 2008 dated 26.09.2011 by the District Munsif Court, Shencottah. !For Appellant : Mr.Ramesh Alias Ramiah :

JUDGMENT

The plaintiff, who lost the legal battle in both the courts below, is the appellant before this Court in the present Second Appeal. He filed the suit O.S.No.96 of 2008 in the court of District Munsif, Shengottah, for the relief of partition and separate possession, claiming that he was entitled to an undivided half share in items 1 and 3 of the plaint schedule properties. The claim was resisted by the respondents 1 and 2, who alone were originally arrayed as the defendants. Among other things, they took a plea that the suit was bad for non joinder of necessary parties, pursuant to which, the appellant herein/plaintiff filed an application, got an order and impleaded the respondents 3 to 17 as the defendants 3 to 17 in the original suit.

2. The learned District Munsif, after trial, on an appreciation of evidence, came to the conclusion that the contesting defendants were able to prove that there was partition in the year 1963 and a further partition in the year 1979 in which re-adjustment of the shares allotted in 1963 partition was made and that therefore, there was no property left common to be enjoyed by the plaintiffs and the contesting defendants. As a result of the said finding, the learned District Munsif, by judgment and decree dated 26.09.2011, dismissed the suit filed by the appellant herein/plaintiff holding him not entitled to the relief of partition and separate possession as prayed for.

3. Aggrieved by and challenging the decree of the trial court, the appellant herein preferred an appeal before the lower Appellate Court in A.S.No.45 of 2012. The learned Principal Subordinate Judge, Tenkasi, dismissed the appeal and confirmed the decree of the trial court by judgment and decree dated 30.09.2013 made in A.S.No.45 of 2012. As against the said decree of the lower Appellate Court, the appellant has preferred the present Second Appeal on various grounds set out in the memorandum of grounds to Second Appeal.

4. Heard the learned counsel appearing for the appellant and perused the materials available on record.

5. For the sake of convenience, the parties are referred to in accordance with their ranks in the suit and at appropriate places their ranks in the second appeal also are indicated.

6. The following are the admitted facts: Ramasubbaiah Nadar, the father of the appellant herein/plaintiff and Ilango the first respondent herein/ first defendant are brothers. The suit properties were their family properties and in respect of such family properties, a partition was effected by a registered deed of partition dated 11.07.1963. Under the said partition, separate items were allotted to the shares of Ramasubbaiah Nadar and Ilango. However, their enjoyment of their respective shares was postponed till the death of their mother Thirumalaiyachiammal, who was given a life interest in respect of the entire property. Thirumalaiyachiammal died in the year 1974. Ramasubbaiah Nadar, the father of the plaintiff also, died in the year 2002.

7. The appellant/plaintiff filed the suit for partition based on his contention that though specific items of properties were allotted under the 1963 partition deed to his father and his paternal uncle namely, the first defendant, as they were prevented from enjoying their respective shares till the death of their mother, even after the death of their mother and the properties remained undivided and that hence he had approached the court on the premise that the division made under the registered partition deed of the year 1963 was not given effect to.

8. The contesting respondents had admitted that though the division was effected in 1963 under a registered partition deed after the death of life estate holder namely, the mother of the first defendant (grand mother of the plaintiff), the father of the plaintiff and the first defendant chose to give a go-by to the division made under the 1963 partition deed. In addition they contended that the father of the plaintiff and the first defendant pooled their shares into a single lot and finally divided by metes and bounds on 21.04.1979. On the basis of the said plea, the contesting defendants contended that the suit for partition filed by the appellant herein/plaintiff was not maintainable. In support of their contention, besides oral evidence adduced through D.W.1, the first defendant himself, they have produced the following documents: i) A registration copy of the partition deed to which the first defendant and the father of the plaintiff were parties. It was dated 21.04.1979 and the same was marked as Ex.P.2. ii) Based on the said partition, the first and third items of suit properties had been mortgaged with one Ramasubramanian by the first defendant. The original mortgage deed dated 23.04.1979 has been

produced and marked as Ex.P.3. iii) The discharge receipt executed by the mortgagee Ramasubramanian dated 31.01.1994 has been produced as Ex.P.4. iv) A certified copy of settlement deed dated 02.02.1994 executed by the first defendant in favour of the second defendant in respect of 64 cents of the plaintiff's first item, which has been marked as Ex.P.5. and v) Revenue records marked as Ex.P.6 to P.8.

9. The defendants had claimed that the father of the plaintiff and the first defendant, after agreeing to give a go-by to the division made under the 1963 partition deed after the death of their mother, who had been granted life interest in respect of the entire property, they decided to effect a partition afresh and accomplished such decision by the execution of the original of Ex.P.2 partition deed. When such a clear stand was taken by the first defendant that nothing was left in common between the father of the plaintiff and the first defendant to enable the plaintiff to seek partition, the plaintiff has taken a stand that his father Ramasubbaiah Nadar was not a party to the partition deed dated 21.04.1979, a certified copy of which has been marked as Ex.P.2.

10. On the said of the plaintiff, he(plaintiff) figured as the sole witness and produced the pre-suit notice and reply notice as Ex.A1 and A2.

11. However, the oral evidence adduced through D.W.1(first defendant) and the documentary evidence namely Ex.P.2 the certified copy of the partition deed dated 21.04.1979 make it clear that Ramasubbaiah Nadar, the father of the plaintiff, was a party to the said partition. As against the said contents of the document showing Ramasubbaiah Nadar to be a party to the said document, the plaintiff, who has taken a stand that his father was not actually a party to the said document, ought to have taken steps to prove that his father did not subscribe his signature for the execution of the said document and registration of the said document.

12. Though not in clear terms, but by necessary implication, the appellant/plaintiff has taken a stand that the original of Ex.P.1 could have been forged by impersonation. When such a plea of forgery challenging the document is taken by the plaintiff, the burden shall be cast heavily upon him to prove such forgery. The plaintiff could have very well given notice to the opposite party or any person

having the custody of the original partition deed dated 21.04.1979 to produce the same into the court for verification. The other alternate choice available to him is to send for the certified xerox copy of the entry in the register kept in the office of the concerned Sub Registrar or Registrar. If it becomes necessary, he can also seek the production of the original into the court for the purpose of comparison. No such steps came to be taken by the appellant herein/plaintiff. Hence, there can be no other inference than the one that the plaintiff has miserably failed to prove his contention that his father was not a party to the partition deed dated 21.04.1979.

13. On the other hand, the said partition deed having been acted upon has been proved by the respondents/defendants by the production of the documents showing subsequent transactions in line and in recognition of the partition effected under Ex.P.2. They are Exs.P3 to P5. In addition to the said transactions made by the first respondent/first defendant, there is also an admission in the form of a document marked as Ex.P.1. Ex.P.1 is dated 28.07.1983 i.e. subsequent to the date of Ex.P.2 partition deed. Under Ex.P.1 the appellant herein/plaintiff and his brother effected a division of the property allotted to the father of the plaintiff under Ex.P.2 partition deed and the suit properties were not sought to be divided between the plaintiff and his brother under Ex.P.1.

14. On preponderance of probabilities both the courts below rendered a clear and concurrent finding that the family properties of the plaintiff's father and the first defendant had already been divided and that therefore, the appellant herein/plaintiff did have no cause of action for filing the suit for partition. The said finding cannot be termed either defective or infirm, much less perverse.

15. No substantial question of law is proved to have arisen for decision in this Second Appeal. The projected substantial questions of law incorporated in the memorandum of grounds of Second Appeal, are not really the substantial questions of law that have arisen for decision in this Second Appeal. There is no merit in the Second Appeal and the same deserves dismissal at the threshold. P.R.SHIVAKUMAR,J ses 16. In the result, the Second Appeal is dismissed. No costs. Consequently, the connected M.P.(MD) No.1 of 2015 is also dismissed. 16.04.2015 Index :Yes/No Internet :Yes/No ses To, 1.The Court of the District

Munsif,Shencottah. 2.The Court of Principal Sub Court, Sankarankoil.

JUDGMENT

MADE IN S.A(MD)No.307 of 2015 and M.P(MD)No.1 of 2015 16.04.2015

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