
(2015) 09 MAD CK 0284

In the Madras High Court

Case No : S.A.(MD) No. 327 of 2013 and M.P.(MD) No. 1 of 2015

G. Selvaraj

APPELLANT

Vs

G. Shanmuganathan and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Evidence Act, 1872 — Section 61

Citation : (2015) 09 MAD CK 0284

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Advocate : R. Janakiramulu, for the Appellant; S. Natarajan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J—The above Second Appeal arises against the judgment and decree passed in A.S. No. 5 of 2008, on the file of the Principal District Court, Virudhunagar at Srivilliputtur, confirming the judgment and decree passed in O.S.NO.14 of 2004, on the file of the Subordinate Court, Aruppukkottai.

2. The defendant is the appellant and the respondents are the legal representatives of the deceased plaintiff. The plaintiff filed the suit in O.S. No. 14 of 2004 for partition.

3. The brief case of the plaintiff is as follows:

"According to the plaintiff, the suit property belonged jointly to him and the defendant. The plaintiff and the defendant are brothers. The suit property originally belonged to one Soundammal. The said Soundammal sold the property to the mother of the plaintiff and the defendant viz., Meenammal and her sister Mallammal on 23.10.1961. After 35 years, the said Meenammal and Mallammal partitioned the property and the portion on the eastern side was allotted to Mallammal and the portion on the western side was allotted to Meenammal the mother of the plaintiff and the defendant. Originally the property was a vacant

land.

(ii) On 19.05.1999, the plaintiff and the defendant purchased the suit property from Mallammal out of their own funds. Subsequently, the mother of the plaintiff and the defendant had died. The said Meenammal had five children and her husband had predeceased her. On 19.05.1999, the two sons and the daughter of Meenammal executed a release deed in favour of the plaintiff and the defendant. On 20.09.1999, the plaintiff and the defendant obtained planning permission for constructing a house in the suit property. It was agreed between them that the expenses for constructing a house should be shared equally between them. After completing the construction, they have also celebrated the house-warming ceremony. The property was in joint possession and enjoyment of the plaintiff and the defendant. The southern portion of the house property was in the possession of the plaintiff and the northern portion was in the possession of the defendant. The plaintiff also obtained ration card mentioning the said address. He also obtained telephone connection in the said address. The plaintiff is entitled to undivided 1/2 share in the suit property. The property was not partitioned between them.

(iii) On 24.12.2003, the plaintiff sent a lawyer's notice to the defendant. On 13.01.2004, the defendant sent a reply through his advocate. In the reply, the defendant averred that in the year 1999, the entire suit property was allotted in his favour. In these circumstances, the plaintiff filed the suit for partition."

4. The brief case of the defendant is as follows:

According to the defendant, the plaintiff is not entitled to a share in the suit property. In the month of June 1999, there was a oral partition between the plaintiff and the defendant and the suit property was allotted to him. The plaintiff had suppressed the oral partition. After the oral partition in the year 1999, the plaintiff had no right or title in the suit property. The plaintiff was not residing in the suit property. The defendant celebrated the house-warming ceremony on 21.11.1999. In order to give respect to the family members, the defendant had mentioned the names of all the family members in the invitation. The planning permission was not jointly obtained by the plaintiff and the defendant. The plaintiff did not pay any amount for the construction of the house. The plaintiff was not paying the house tax. The plaintiff is not entitled to 1/2 share in the suit property. In these circumstances, the defendant prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, two witnesses were examined and 8 documents EXs.A.1 to A.8 were marked. On the side of the defendant, four witnesses were examined and 21 documents Exs.B.1 to B.21 were marked. The Advocate Commissioner's report and the plan were marked as Exs.C.1 and C.2. The witness exhibit was marked as Ex.W.1. The trial Court, after taking into consideration the case of both parties, passed a preliminary decree for partition allotting 1/2 share to the plaintiff.

6. Aggrieved over the judgment and decree of the trial Court, the defendant

preferred an appeal in A.S. No. 5 of 2008, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur and the lower Appellate Court also confirmed the preliminary decree passed by the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the defendant has filed the above Second Appeal.

7. Heard Mr. R. Janakiramulu, learned Counsel appearing for the appellant and Mr. S. Natarajan, learned Counsel appearing for the respondent.

8. At the time of admission of the Second Appeal, the following Substantial Questions of Law arose for consideration:

"1. Whether the Courts below failed to consider Ex.B.15 as per Section 61 of the Indian Evidence Act?

2. Whether the Courts below failed to consider Ex.B.16 as per Indian Evidence Act"

9. On a careful consideration of the materials available on record and the submissions made by the learned Counsel appearing on either side, it could be seen that the suit property was originally belonged to one Soundammal. The plaintiff and the defendant are brothers. On 23.10.1961, the mother of the plaintiff and the defendant viz., Meenammal and her sister Mallammal purchased the property from Soundammal. About 35 years thereafter, Mennammal and Mallammal orally partitioned the property and in the oral partition, the western portion was allotted to Mallammal and eastern portion was allotted to Meenammal. Subsequently, under Ex.A.1 sale deed dated 19.05.1999, the plaintiff and the defendant purchased the property on the western side from Mallammal. Subsequently, the mother of the plaintiff and the defendant, Meenammal had died. After the death of Mennammal, her five children including the plaintiff and the defendant have become joint owners of the property belonging to Meenammal.

10. Under Ex.A.2 release deed dated 19.05.1999, the two sons and the daughter of Meenammal viz., Veeramani, Natarajan, Pandiselvi released their 3/5th share in favour of the plaintiff and the defendant. Thereafter the plaintiff and the defendant have become the absolute owners of the suit property. Thereafter under Ex.A.3-planning permission, the plaintiff and the defendant were jointly given planning permission to construct a house in the suit property. Ex.A.4 is the telephone bill standing in the name of the plaintiff.

11. The defendant contended that in the month of June 1999, there was a oral partition between the plaintiff and the defendant and that the entire property was allotted in his favour in the said oral partition. The defendant also contended that the house was constructed by him and that the plaintiff is not entitled to a share in the suit property. In order to establish that the building was constructed by the defendant, he produced Ex.B.15, the invitation for the house warming ceremony and Ex.B.16, a letter written by a labour contractor viz., Boominathan

to the defendant. In the evidence of P.W.1, he has stated that one Natarajan, had constructed the house and that the plaintiff and the defendant jointly paid the construction costs to the said Natarajan. On the contrary, D.W.1.-defendant had stated that the house was constructed solely by the funds provided by him by employing the labour contractor by name Boominathan. In Ex.B.16 letter, the said Boominathan had stated that he would provide the labourers for constructing the house at the costs of Rs. 52/sqft. Merely because the letter was written to the defendant by the labour contractor, the same shall not confer title in favour of the defendant. Apart from this letter, the defendant has not established his case with regard to the construction of the building by producing any other documentary evidence. The oral partition pleaded by the defendant was also not proved by him by adducing any acceptable evidence. In the absence of any evidence with regard to the alleged oral partition, the Courts below have rightly rejected the said contention. Therefore, it is clear that the property belonged to the plaintiff and the defendant.

12. So far as the construction is concerned, both parties have not produced any documentary evidence with regard to the construction put up by them. Undoubtedly when the land belongs to the plaintiff and the defendant jointly, one cannot expect that the defendant put up construction in the land belonging to the plaintiff. Even in Ex.B.15-invitation, the names of the plaintiff and the defendant along with other brothers and sisters are mentioned. On a perusal of Ex.B.15-invitation, it is clear that it does not support the case of the defendant in any manner. The planning permission was also obtained jointly in the names of the plaintiff and the defendant. Having obtained the planning permission jointly, the defendant is contending that the construction was put up only by him. But the said contention is not supported by any evidence. Ex.A.4 - telephone bill and the receipt also stand in the name of the plaintiff. Even the property tax receipt does not stand in the name of the defendant. In the absence of any evidence with regard to the alleged oral partition and with regard to the construction alleged to have been put up by the defendant, the Courts below have rightly came to the conclusion that the suit property is the joint property of the plaintiff and the defendant and rightly passed a preliminary decree for partition allotting 1/2 share to the plaintiff.

13. In these circumstances I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly the same is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.