



A.S.No. 545 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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and

C.M.P. No. 20372 of 2022

1 K.Saravanan,
S/o. P.Krishnan (late)

2 K.Malamani
W/o. P.Krishnan (late)

3 K.Tamilselvi
D/o. P.Krishnan (late)

4 K.Anitha
D/o. P.Krishnan (late)

5 K.Lathadevi
D/o. P.Krishnan (late)

.. Appellants

Vs

T.Manjula (died)

Raja Selvam (died)

1. T.Porselvi
D/o. Thiruvenkadam (late)



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2 T.Ranjan Kumar
S/o. Thiruvankadam (late)

3 Sweety,
W/o. T.Rajaselvam (late)

4 Sophiya
D/o. T.Rajaselvam (late)

5 Sinthiya
D/o. T.Rajaselvam (late)

6 Master Sachin
D/o. T.Rajaselvam (late)

Respondents 4 to 6 are rep. by their
mother and natural guardian Mrs. Sweety

... Respondents

PRAYER : Appeal Suit filed under Sec. 96 of Civil Procedure Code,
praying to set aside the judgment and decree in O.S.No.2439 of 2019
dated 01.07.2022 on the file of VII Addl. City Civil Judge, Chennai.

For Appellant : Mr.R.Singaravelan,
Senior Advocate for
Mr. S.Kamadevan

For Respondents : Mr.G.Vijayakumar



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JUDGEMENT

The appellants herein are the defendants in the suit in O.S.No.2439 of 2019, on the file of VII Addl. City Civil Court, Chennai. Originally, the said suit was filed in C.S.No. 634 of 2011 on the file of this court by the deceased Manjula, as a plaintiff claiming her half share in the suit property.

2. For the sake of convenience, parties are referred as per the ranking in the suit.

3. The said suit was filed by deceased Manjula against defendants 1 to 5 claiming half share in the suit property stating that it is an ancestral property of her family along with defendants. The defendants denied the plaintiff's right stating that father of plaintiff viz., Raj was allotted with some other property by way of oral partition and the same was sold by him during his life time. The suit property was allotted to plaintiff father's brother Krishnan. After his demise, as legal heirs of Krishnan, the



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defendants are enjoying the property, so the plaintiff has no right over the suit property, besides she has also relinquished her share in the property by receiving valid consideration, thereby they prayed to dismiss the suit.

4. Before the trial court, seven issues were framed. On the side of plaintiff, she was examined as P.W.1 and the documents Ex.P1 to P6 were marked. On the side of defendants, 1st defendant was examined as D.W.1 and other witnesses were examined as D.W.2 and D.W.3 and the documents Ex.B1 to B9 were marked. On considering oral as well as documentary evidence, the trial judge finally held that the alleged oral partition pleaded by the defendants was neither proved nor they have established that the plaintiff was ousted from the suit property, thereby they failed to establish their defence. On the other hand, the plaintiff able to prove that the suit property was enjoyed along with the defendants as a joint family property without any division by metes and bounds. After the demise of her father, she is claiming her father's share in the suit property as his legal heir. Accordingly, she is entitled for half share in the property and also the Release Deed dated 22.10.2020 declared as null and void as



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she prayed for along with other consequential reliefs, thereby the suit was decreed, however, in respect of measne profit, no relief claimed by the plaintiff. Aggrieved over the same, the defendants filed the present appeal.

5. The learned counsel for defendants argue that the trial judge failed to take note of the fact that already a oral partition was effected between father of plaintiff and father of defendants and the same acted upon and the property allotted to plaintiff's father was sold and sale proceeds was utilised by himself alone. Therefore, there is no question of joint family property available for partition and inspite of evidence to that effect, the trial judge erroneously decreed the suit by allotting half share in the suit property as such is totally erroneous one and liable to be set aside. He would further argues that trial judge failed to take note of the fact that after the death of her father, the plaintiff also sold some of the property, which she inherited from her father vide sale deed dated 11.08.2008 and the same would probabilise the fact that already there was a partition between her father and defendants' father. So, there is no



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ground for division of property. But, without appreciating the same, the suit was decreed in favour of plaintiff as such is totally unfair and liable to be set aside. The learned counsel would also submit that the plaintiff got married in the year of 1972 and living with her family without making any claim till the year of 2011. Therefore, the doctrine of ouster would clearly applicable to the facts of the case, thereby, she is not entitled to claim that she is in joint possession of the property, but the trial judge erroneously disagreed with that view and decreed the suit in favour of plaintiff, who was away from the property nearly for four decades. Based upon all these grounds, the learned counsel for defendants prays to set aside the findings of trial judge.

6. By way of reply, the learned counsel for plaintiff would submit that there was no oral partition between plaintiff's father and defendants' father as claimed by the defendants. On the other hand, both of them enjoyed the property without any division by meats and bounds and after the demise of plaintiff's father, as a legal heir, plaintiff name was entered into mutation of revenue records, but without her knowledge, her name



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was deleted and the defendants themselves colluded together and created a release deed executed by defendants 2 to 5 in favour of 1st defendant, as such in order to defeat the plaintiff's right over the property and the same was not accepted by trial court. By considering the evidence on record, the trial judge held that properties are joint family property, in which the plaintiff is having half share, as such is sustainable under law. Hence, they prayed to dismiss the appeal as no merits.

7. Heard and considered rival submissions made by learned counsel for appellants as well as respondents and perused the records.

8. The point is to be decided whether the plaintiff has proved that it is a joint family property, in which she is having half share? thereby the settlement deed dated 22.10.2010 is not binding. Secondly, whether the defendants established that the entire property belong to them as per oral partition held in the family, thereby the plaintiff has no share in the suit property.



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9. Originally, deceased plaintiff Manjula, who is daughter of Raj and defendants are the legal heirs of one Krishnan, both Raj and Krishnan are brothers and they are sons of one Perumal and the suit property is an ancestral property of the said Perumal, are the admitted facts. As a legal heir of Perumal, plaintiff submits that her father Raj and her father's brother Krishnan were in joint possession of ancestral property and they have invested their earnings and developed the property. While so, on 08.12.1979, her father Raj died leaving behind her as his only legal heir, since her mother Santhanam was already passed away. So also, her father's brother died intestate in the year of 1992 leaving behind the defendants as his legal heirs. After the said demise of both sharers, the revenue records were mutated in the name of plaintiff and wife of the said Krishnan and they were in joint possession and enjoyment of the suit property. But, in the month of October 2010, the plaintiff came to now that there was a sham and nominal release deed executed by the defendants 2 to 5 in favour of 1st defendant in respect of entire suit property as such is absolutely belong to them. Without her knowledge,



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the revenue records also mutated illegally as it stands in the name of 1st defendant. Hence, the necessity arose for them for filing a suit for partition claiming half share in the suit property as it is a joint family property. But, the defendants denied the plaintiff's claim that already oral partition was effected between their father Krishnan and the plaintiff's father Raj and the property allotted to Raj was sold during his life time and this suit property was allotted to the share of Krishnan. After his demise, they are enjoying the property absolutely. When the defendants raised plea of oral partition, the burden is casted upon them to establish that already properties were divided by way of oral partition.

10. Admittedly, in the written statement, the defendants have not stated that the date on which, oral partition was effected in their family nor they mentioned who are the panchayatars with whom the properties were orally divided. Even before the trial court, the defendants not examined any panchayatar to establish that oral partition was already effected in the family, on the other hand, as rightly pointed out by learned counsel for plaintiff, Ex.D1 Sale deed dated 04.02.1964 exhibited by

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Perumal's sons viz., Raj and Krishnan in favour of one Kaliannan,
wherein the recitals reads as follows :-

“அடியில் கண்ட சொத்து காலம் சென்ற எங்கள் தகப்பனார் வெருமாள் என்பவர் பேருக்கு சர்க்காரில் ஜாரி செய்து பட்டா கொடுத்து நாளது வரையில் தங்களுடைய சுவாதீன அனுபவத்திலிருக்கும் அடியில் கண்ட சொத்தை எங்கள் குடும்ப செலவிற்காக நாளது தேதியில் நிச்சயித்த ரூ.700/- (எழுத்தால் ரூபாய் எழுநூறு மட்டும்) நாங்கள் தங்களிடத்தில் ரொக்கமாக பெற்றுக் கொண்டு அடியில் கண்ட சொத்தை இன்று தேதியில் நாங்கள் தங்கள் சுவாதீனம் செய்துவிட்டோம். ஆகையால், இன்று தேதி முதல் அடியில் கண்ட சொத்தை நாங்களே கைப்பற்றிக் கொண்டு வித்தொத் தாவாதி விக்கிரையங்களுக்கு உரித்தாய் அதிலுள்ள மரவடை ஜல பாஜாணம் புத்திர பௌத்திர பாரம்பரியமாய் சகல சுதந்திரங்களுடன் ஆண்டு அனுபவித்துக் கொள்ள கடவீராகவும், அனுபவிக்கும் இடம் கலன் இல்லை கலன் உண்டானால் நாங்களே முன்னின்று எங்கள் சொந்த பொருளால் கலன் தீர்த்துக்கொடுக்க கடவோனாகவும்.

இந்தப்படிக்கு நாங்கள் ஏகோபித்து சம்மதித்து எழுதிக் கொடுத்த விக்கிரையப் பத்திரம்”

So, the recitals of Ex.B1 document would clearly establish that in the year of 1964, both plaintiff and defendants' father enjoyed the property jointly and sold the same to third party for a valid consideration. Even during the evidence, D.W.1 deposed that he was not aware whether any witness to the oral partition took place between his father and plaintiff's father. So, the evidence of D.W.1 as well as Ex.B1 not established that



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there was a oral partition effected among the family members of plaintiff and defendants. Therefore, the defendants failed to establish the oral partition, which was already effected in the family and the same was rightly concluded by the trial judge while deciding the issue No.4, which needs no interference by this court. Therefore, the defendants have not proved that already there was a oral partition effected in the family.

11. The defendants have denied the plaintiff's claim stating that the plaintiff was ousted from the property, as she got married in the year of 1972 and thereafter, she has not made any claim over the property till filing of the suit, thereby she was not in joint possession of the property. According to plaintiff, after the death of her father, in the revenue records, her name along with 2nd defendant was incorporated. But, without her knowledge, her name was deleted from the revenue records in the year of 2000 by the defendants and then they have created a release deed among themselves. Before the trial court, the plaintiff marked the GRS Book dated 05.07.2013 issued under RTI Act as Ex.A5 and as per the records, the property was jointly in the name of both plaintiff and 1st



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defendant's mother, through which, the plaintiff able to establish that after demise of her father, her name was mutated in the revenue records pertaining to the suit property. The tax certificate Ex.A7 also reveal that the property was assessed in the name of plaintiff and the 1st defendant. With the help of these documents, the plaintiff able to establish that she was in joint possession along with 1st defendant's mother. Therefore, though she got married, after the demise of her father, the plaintiff, as a co-sharer deemed to be joint possession of property and the same was established through these documents by the plaintiff. Hence, the plea of ouster claimed by the defendants is unsustainable and the same was rightly observed by the trial judge, besides the defendants also claimed right over the property based on adverse possession, but the defendants not proved the fact that when his possession became adverse to the plaintiff. It is a settled preposition that mere long possession is not enough to constitute adverse possession and the possession must be coupled with animus possidends. For that, the following ratio laid down in the referred cases relied on by the plaintiff is squarely applicable to the facts of the present case, which reads as follows :-

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***“In the case of Annakili vs. A. Vedanayagam and others
reported in 2008 (1) CTC P 329 at P.336 para 22***

Claim by adverse possession has to elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus Possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possession must have animus possidendi must be shown to exist, but the same must be shown to exist at the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title”

***In the case of Veerasekaran and another vs. Devarasu
reported in 2008 (7) MLJ 275***

“Adverse possession – claim of – Ingredients to be satisfied – A person who claims adverse possession must definitely allege and prove

- (a) how and when adverse possession commenced*
- (b) what was the nature of his possession and*



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(c) Whether the fact of his adverse possession was known to the real owner.

Question of Adverse possession is one of fact – A person claiming adverse possession must establish the same by unequivocal evidence – long possession is not adverse possession - No evidence to prove adverse possession in the present case – Plaintiff cannot succeed in the plea of adverse possession.”

So also, the plea of limitation claimed by the defendants also unsustainable for the reason that the plaintiff herein proved that she is in joint constructive possession of property along with defendants. When she felt inconvenience, she filed a suit. So, the plea of adverse possession would not arise as rightly held by the trial judge. According to the plaintiff, the defendants failed to establish that the properties are orally divided nor they proved that by other means of share and adverse possession, they are entitled for the entire suit property. Accordingly, the second issue is answered.



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12. Moreover, when the defendants failed to prove that the suit property was allotted to their share by way of oral partition, on the other hand, the plaintiff able to establish that it is a ancestral joint family property, which was enjoyed in common by her father and after his demise, she enjoyed along with other co-sharers and other legal heirs of her father's brother Krishnan, she is entitled for half share in the suit property, thereby the findings of trial judge is sustainable one. Accordingly, the first issue is answered. The plaintiff also proved that it is a joint family property, thereby the release deed executed by defendants 2 to 5 in favour of 1st defendant on 22.10.2010 as such is absolute property of them and the same is liable to be declared as null and void and not binding the plaintiff. Accordingly, this appeal suit is dismissed as no merits and the findings of trial judge in O.S.No. 2439 of 2019 is confirmed. Thus, the plaintiff is entitled for half share in the suit property, thereby preliminary decree is passed. Secondly, Release deed dated 22.10.2010 is declared as null and void and the same is not binding



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the plaintiff. The Sub-Registrar is directed to take steps to record the cancellation of Release Deed dated 22.10.2010. Furthermore, the plaintiff is directed to work out for her measne by filing separate proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

VII Addl. City Civil Court,,
Chennai.



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T.V.THAMILSELVI, J.

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