



S.A.No.51 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 51 of 2024

&

C.M.P. Nos. 1334 & 1335 of 2024

R.K.Angamuthu

...Appellant

Vs.

Annamalai (Died)

1.Thulasiammal

2.Palanisamy

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 26.04.2023 in A.S.No.40 of 2021 on the file of the III Additional District Judge, Coimbatore and confirming the Judgement and Decree dated 19.07.2021 made in O.S.No.356 of 2012 on the file of the III Additional Subordinate Court, Coimbatore.



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S.A.No.51 of 2027

For Appellant : Mr. A.K.Sriram
Senior Counsel
for Mr. M.Guruprasad.

JUDGMENT

The defendant is the appellant before this Court challenging the concurrent Judgement and Decree for partition passed against him. The facts are briefly set out herein below with the parties being referred to in the same litigative status as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.356 of 2012 on the file of the III Additional Sub Court, Coimbatore for partition and separate possession of his half share of the suit property. It is the case of the plaintiff that the defendant is none other than his brother-in-law, the two of them jointly purchased the suit property on 31.03.1975 and dug an open well from which they are irrigating the suit property. They had also constructed a farmhouse in the suit property. The two have mortgaged the property with the Thondamuthur Cooperative Land



Development Bank Ltd., and had availed a loan and have also jointly discharged the said loan.

3. The plaintiff who is in an advanced age has settled down in Athappagoundenpudur. Thereafter, the defendant's attitude has changed and he has started taking the entire revenue from the suit property and denying the plaintiff's share. Therefore, the plaintiff is constrained to file the above suit.

4. The defendant had filed a written statement inter alia contending that the property is not the joint property of the plaintiff and defendant and that it is the property of the defendant alone, as he has paid the entire sale consideration of Rs.10,000/-. The plaintiff is married to defendant's sister, Chinnammal @ Pappathi, who had given birth to a son Palanisamy. Thereafter, the said Chinnammal died in the year 1968 and the plaintiff had married the other sister of the defendant, namely, Thulasiammal.



S.A.No.51 of 2027

WEB COPY

5. The defendant would submit that the suit property is being cultivated by a tenant, Palanisamy Chettiar and he has refused to vacate the suit property. At this juncture, the plaintiff had assured that he would vacate the tenant from the property. Therefore, his name was included in the sale deed and a joint patta was issued in their names.

6. The defendant would submit that he had evicted the said Palanisamy Chettiar by paying him a sum of Rs.1000/-. Thereafter, he had developed the suit property by digging a well, obtaining electricity connection, leveling the land to make it suitable for cultivation. He would submit that from the date of his purchase, he has been cultivating the suit property. He had also obtained a crop loan from Nathegoundenpudur Co-operative Society, in the year 1980 and in short he has been enjoying the suit property as its absolute owner to



the knowledge of the plaintiff for over 39 years. Therefore, he has perfected title by ouster. The plaintiff has not taken any steps all these years to assert his right and what right he had the same has been lost by ouster. Therefore, he sought for dismissal of the suit.

7. The Trial Court had framed the following issues:

“1. 31.03.1975 தேதியிட்ட கிரைய ஆவணம்
மூலம் பிரதிவாதிதான், தாவா சொத்தை
வாங்கினார் என்று கூறவது சரியா? ஏற்றுக்
கொள்ளக்கூடியதா?

2. தாவா சொத்தில், 1/2 பாகம் பங்கு பெற
வாதி உரிமையுடையவரா?

3. தனித்த சுவாதீனம் மற்றும் எதிரிடை
அனுபவத்தின் அடிப்படையில், தாவா சொத்தின்
பாத்தியம் முபவதும் பிரதிவாதிக்கு
உரிமையுடையதா?

4. வாதிக்கு வழக்குரையில் கோரியுள்ள முதல்
நிலை தீர்ப்பாணை வாதிக்கு வழக்குரையில்



S.A.No.51 of 2021

கோரியுள்ளபடி கிடைக்கத்தக்கதா?

5. வாதிக்கு கிடைக்கக்கூடிய இதர

பரிகாரங்கள் யாது?

8. The plaintiff was examined as P.W.1 and Ex.A.1 to Ex.A.3 were marked on his side. On the side of the defendant, the defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.38.

9. The Trial Court on considering the evidence on record decreed the suit as prayed for. Aggrieved by which, the defendant had filed an appeal in A.S.No.40 of 2021 on the file of the III Additional District Court, Coimbatore.

10. The learned III Additional District Judge, Coimbatore had also confirmed the Judgement and Decree of the Trial Court and had dismissed the appeal. Aggrieved by which, the defendant is before this Court.



S.A.No.51 of 2027

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11. Heard the learned senior counsel appearing on behalf of the defendant.

12. The learned senior counsel would submit that the plaintiff has come to the Court stating that he has purchased the property from out of the sale proceeds received from the sale of his wife's jewels and that the property has been purchased in the name of himself and the defendant. This fact has not been proved by the plaintiff.

13. The learned senior counsel would submit that the plaintiff in his plaint had contended that he and the defendant are in joint possession from the date of the purchase but has however failed to prove the same. However, all the tax receipts, electricity connection stand in the name of the defendant, which would clearly disprove the contention of the plaintiff.



S.A.No.51 of 2027

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14. It is an admitted fact that the property has been purchased in the joint name of both the plaintiff and the defendant and Ex.A.1 = Ex.B.37, sale deed clearly prove the same. The defendant who has pleaded Benami purchase by stating that it is he who is the real owner and setting up a plea contrary to the document has not let in any evidence to prove the same. The defendant has come forward with the categorical case that he has purchased the property by paying a sum of Rs.10,000/- and the said plea has not been proved by evidence.

15. The Courts below have taken into account the age of the defendant and come to the conclusion that the possibility of the defendant paying the money for entire sale consideration is remote, as he was only aged about 25 years and it is his case that he had started working from the year 1968 and was engaged in a Jaggery production as a coolie. The Courts below had found that a huge sum of Rs.10,000/- could not have been earned within a span of 7 years.



S.A.No.51 of 2027

Therefore, taking note of the fact that the documents stand in the name of both the plaintiff and the defendant, the plaintiff is entitled to a share in the property.

16. Though the defendant has produced a document to show possession and has also produced the original title deeds, the fact that the property was mortgaged in the year 1997 jointly by plaintiff and the defendant to the Thondamuthur Land Development Bank and had obtained loan of Rs.74,000/- and the same had been redeemed on 26.06.2009 has been admitted by the defendant. This clearly shows that the plaintiff was exercising his right even three years prior to the institution of the suit over the suit property. Therefore, the defendant's plea that the plaintiff is only a name lender has to necessarily be rejected.

17. The defendant who had come forward with the case that the plaintiff has no right to the property has also pleaded ouster. By



S.A.No.51 of 2024

taking such a plea he has admitted the right of the plaintiff to the property. The plea of ouster cannot be raised by the defendant since even as late as in the year 2009, the plaintiff and the defendant have been jointly exercising their right over the suit property by mortgaging and discharging the same.

18. Therefore, the findings of the Courts below is perfectly in order and I see no reason to hold otherwise. In the result, the Second Appeal fails for want of substantial questions of law and on the ground that the defendant has failed to prove that the Judgement and Decree of the Courts below are erroneous. The Second Appeal is Dismissed. Consequently, the connected Civil Miscellaneous Petitions are closed. No costs.

23.01.2024

Index : Yes/No
Internet : Yes/No



S.A.No.51 of 2024

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To

1.The III Additional District Judge,
Coimbatore

2.The III Additional Subordinate Court,
Coimbatore.

P.T. ASHA, J,

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S.A.No. 51 of 2024



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S.A.No.51 of 2024

23.01.2024