



S.A. No. 1266 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal Nos.1266 of 2009

and

M.P.No.1 of 2009

1. Thulasiammal
2. Rajendran
3. Kaliyamoorthy
4. Thangadurai

.. Appellants

Versus

Palaniammal @ Kuppammal

.. Respondent

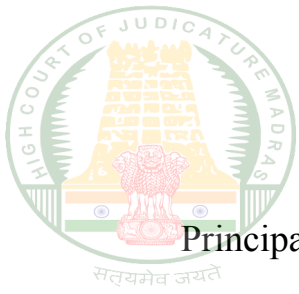
Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.07.2009 passed in A.S. No. 67 of 2008 by the learned Principal Sub Judge, Villupuram, reversing the judgment and decree dated 03.01.2008 passed in O.S.No. 114 of 2005 by the Principal District Munsif, Tirukoilur.

For Appellants	:	Ms. R. Meenal
For Respondent	:	Mr. D. Rajasekar

JUDGMENT

This Second Appeal had been filed against the judgment and decree dated 29.07.2009 passed in A.S. No. 67 of 2008 by the learned Principal Sub Judge, Villupuram, reversing the judgment and decree dated 03.01.2008 passed in O.S.No. 114 of 2005 by the Principal District Munsif, Tirukoilur.

2. The Defendants in O.S.No.114 of 2005 on the file of the learned



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Principal District Munsif, Tirukoilur, Villupuram District is the Appellant in this Second Appeal. The Respondent in the Second Appeal as Plaintiff filed the suit in O.S.No.114 of 2005 seeking partition.

3. The plaint averments briefly are as follows:-

The suit "A" schedule properties originally belonged to Natesa Gounder, father of the Plaintiff and the first Defendant. Defendants 2 to 4 are the sons of the first Defendant. Natesa Gounder died 25 years prior to suit. After his death, the properties were divided and were in separate possession, according to the convenient enjoyment of the Plaintiff and the Defendants. The suit "B" schedule properties were sold by the Plaintiff and her sons to one Mari, son of Duraisami Gounder as per sale Deed dated 17.05.2004. The first Defendant settled suit "A" schedule properties in favour of her sons viz, Defendants 2 to 4 as per registered settlement deed dated 17.12.1999. The Plaintiff came to know about the settlement Deed on 10.09.2004 and issued legal notice dated 05.01.2005. The Defendants issued reply notice dated 28.1.2005 with false allegations. Hence, present suit is filed for partition of ½ share.

4. The written statement filed by the Defendants are as follows:

4.1. The Defendants denied the entire allegation in the plaint. It is the contention of the Defendants that Item No.5 in "A" schedule and also the 1st

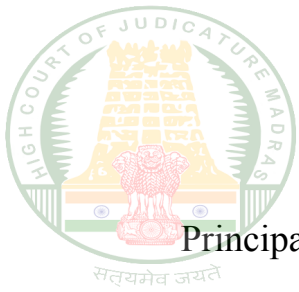


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item in "B" schedule and 2 other properties comprised in S.No.37/2 and 39/7 each admeasuring 6.5 Ares at Thirupalanthal village was allotted to the share of the Plaintiff. The further case of the Defendants is that item number 1 to 4 was allotted to the share of the 1st Defendant in the oral partition. In accordance with the oral partition, the first Defendant is entitled to the entire item number 1 to 4 described in the plaint "A" schedule property and therefore, the settlement deed executed by the first Defendant in favour of the Defendants 2 to 4 is legal, valid and binding on the Plaintiff.

4.2. It was further contended that on 10.01.1996 itself, the first Defendant dug a well in item 1 of the suit property by expending a sum of Rs. 3 lakhs and she had also obtained a service connection in the well in her name. The item number 2 and 3 of "B" schedule property comprised in S.Nos. 39/25 and 39/26 does not belong to Natesa Gounder. Further contended that the sale deed dated 17.05.2004 executed by the Plaintiff in favour of Mari contains recitals in accordance with the whims and fancies of the imagination of the Plaintiff as well as the said Mari. The Defendants also claimed that they have perfected the title by adverse possession. Therefore, the suit is not maintainable.

5. On perusal of the plaint and written statement, the learned



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Principal District Munsif, Tirukoilur, had framed the following issues:

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(1) Whether the Plaintiff is entitled to claim partition over the “A” schedule properties and if so, what share?

(2) Whether the Plaintiff and the first Defendant had already partitioned their properties as claimed by the Defendants?

(3) Whether the Defendants have perfected their title through adverse possession by ouster?

(4) Whether the Plaintiff is entitled to claim mesne profits?

(5) To what other relief the Plaintiff is entitled to?

6. During the trial, the Plaintiff had examined herself as P.W-1, one

Rajamanickam was examined as P.W-2, one Radhakrishnan was examined as P.W-3 and one Singaravel was examined as P.W-4. The Plaintiff also marked documents as Ex.A-1 to Ex.A-8. Ex.A-1 is the patta in the name of the Plaintiff dated 11.10.2004. Ex.A-2 is the certified copy of the settlement deed executed by the first Defendant in favour of her sons and daughters Defendants 2 to 4 dated 17.12.1999. Ex.A-3 is the legal notice issued by the Plaintiff dated 10.01.2005 to the Defendants. Ex.A-4 is the reply notice dated 08.01.2005 by the Defendants. Ex.A-5 is the Adangal issued by the Revenue Authorities to the Plaintiff dated 20.04.2004. Ex.A-6 is the patta No.1025 issued by the Tahsildar, Tirukoilur in favour of Kannan, Pavadai, Pattedhar Rawthar dated 07.05.2005. Ex.A-7 is the patta No.542 for the suit properties issued by the Tahsildar, Tirukoilur. Ex.A-8 is the patta No.385 in the name of Plaintiff.

7. On the side of the Defendants, the first Defendant examined herself as D.W-1, one Egambaram was examined as D.W-2, one Godhandapani



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was examined as D.W-3 and the third Defendant Kaliyamoorthy was examined as D.W-4. The Defendants also marked 33 documents as Ex.B-1 to Ex.B-33.

Ex.B-1 is the receipt for payment of dues to the TANGEDCO. Ex.B-2 is the service connection issued to the first Defendant and the letter regarding the same. Ex.B-3 is the letter from the TANGEDCO to the first Defendant. Ex.B-4 to Ex.B-13 are the series of receipts as proof of payment of consumption charges by the Defendants. Ex.B-14 to Ex.B-22 are the series of receipts for payment of kist paid by the first Defendant for Patta Nos.119 and 231. Ex.B-23 is the settlement deed executed by the first Defendant in favour of her children Defendants 2 to 4, dated 17.12.1999. Ex.B-24 is the copy of legal notice issued on behalf of the Plaintiff to the Defendants dated 10.01.2000. Ex.B-25 is the reply notice sent on behalf of the Defendants to the Plaintiff dated 28-01-2005. Ex.B-26 is the certified copy of the sale deed dated 12.02.1954 executed in the name of Murugesu Goundar by Veeramal and Periyathambi. Ex.B-27 is the certified copy of the sale deed in the name of Murugesu Goundar by Rathinamal dated 16-03-1962. Ex.B-28 is the encumbrance certificate dated 07-04-2006 for the suit properties. Ex.B-29 is the encumbrance certificate dated 07.04.2006. Ex.B-30 is also the encumbrance certificate dated 06.04.2006. Ex.B-31 is the chitta extract for the lands in Thuringippattu Gramanatham. Ex.B-32 is the plaint plan. Ex.B-33 is the certified copy of the sale deed executed by Plaintiff dated 17-05-2004.



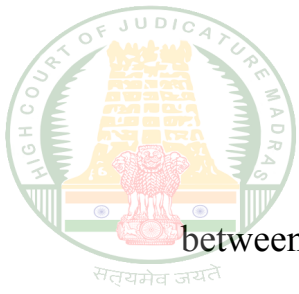
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WEB COPY8. On assessment of evidence, the learned Principal District Munsif, Tirukoilur, by judgment in O.S.No.114 of 2005, dated 03.01.2008 dismissed the suit of the Plaintiff.

9. Aggrieved, the Plaintiff had preferred the Appeal in A.S.No.67 of 2008 before the learned Principal Sub Judge, Villupuram. On re-appreciation of evidence and after hearing the arguments of the Appellant/Plaintiff and the Respondents/Defendants therein, the learned Principal Sub Judge, Villupuram by judgment in A.S.No.67 of 2008, dated 29.07.2009 allowed the Appeal of the Plaintiff thereby set aside the judgment of dismissal of the suit in O.S.No.114 of 2005 and granted preliminary decree for partition in favour of the Plaintiff.

10. Aggrieved, the Defendants in O.S.No.114 of 2005 on the file of the learned Principal District Munsif, Tirukoilur, filed this Second Appeal raising the following grounds raising the following grounds:

10.1. The judgment and decree of the lower Appellate Court are substantially erroneous in law and unsustainable. The lower Appellate Court grievously erred in reversing the well considered judgment of the trial Court. The lower Appellate Court ought to have seen that there had been a partition

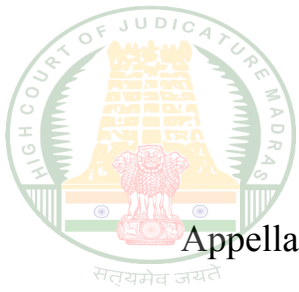


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between the first Appellant and the Respondent even in 1982 immediately after the death of their father. The lower Appellate Court omitted to see that the parties were in possession of their individual properties for well over 12 years and that the appellants had prescribed for title by adverse possession. The lower Appellate Court ought to have seen that the Appellants had sunk a well in their property and electricity connection had been given for the well. The lower Appellate Court failed to note that the first Appellant had settled some of the properties on her sons even in 1999 by way of a registered deed and that the Respondent knew about it even then. The lower Appellate Court have believed the case of the Appellants that there had been an oral partition dividing the properties by metes and bounds.

10.2. The lower Appellate Court erred in misconstruing the oral and documentary evidence adduced by the parties and in coming to a perverse conclusion. The lower Appellate Court failed to see that the Respondents has sold some items of the property and that she had not said that she had sold her undivided half share was stopped. In this connection the lower Appellate Court omitted to see that the purchaser was a necessary and proper party and that his omission in fatal to the case. The lower Appellate Court erred in repeating the arguments of the parties without going to crux of the matter. The lower Appellate Court erred in making much of the joint patta. The lower



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Appellate Court ought to have held that the appellants had ousted the Respondent from the suit properties.

10.3. The lower Appellate Court failed to see that it was for the Plaintiff to prove her case and that the Defendants are entitled to take contradictory stands. The lower Appellate Court ought to have seen that there was absolutely no evidence to show that there was joint possession. The lower Appellate Court failed to take note of the admissions made by the Respondent in her oral evidence regarding separate enjoyment of the properties.

10.4. The lower Appellate Court erred in believing the story cooked up by the Respondent that she came to know of the gift settlement executed by the first appellant only in the year 2004. The lower Appellate Court ought to have noted that Hindus can have oral partition and that there was no necessity to support partition. The lower Appellate Court erred in granting mesne profits to the Respondent.

11. On 15.12.2009 while admitting this Second Appeal, this Court had framed the following substantial questions of law:-

Whether the judgment of the Lower Appellate Court is vitiated by failure to appreciate the evidence on record in proper



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perspective and non-application of the correct principles of law?

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12. The learned Counsel for the Appellants submitted that as per the Hindu Law, oral partition is permissible between the sharers and it is not mandatory to have Muchalika or written family arrangement. In the pleadings as well as in the oral evidence, the Plaintiff had admitted that a month after the death of their father Natesa Gounder in 1982, the family properties were divided between the Plaintiff and the first Defendant and the suit was filed after 23 years. Admitted facts need not be proved. In the family partition, suit Items 1 to 4 of “A” schedule properties were allotted to the first Defendant and Item 5 of “A” schedule, Item 1 of “B” schedule and two properties, each measuring 0.06.5 ares in S.No. 37/2 and 39/7 of Thirupalandal Village were allotted to the Plaintiff. The Plaintiff as P.W-1 admitted the separate possession of their respective shares allotted to them in the family partition. P.W-3 and P.W-4 also confirmed the separate enjoyment and possession of the Plaintiff and the first Defendant. The Plaintiff had sold the entire extent of properties allotted to her in Thirupalandal Village to one Mari son of Duraisami Gounder under Ex.B-33 dated 17.05.2005. The sale of “B” schedule properties is admitted in para 8 of the plaint. She could have sold the property only because it was allotted to her in partition. But "B" schedule properties are not included in the suit for partition. The purchaser was also not made a party to the suit. In a suit for



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partition all the properties ought to be included. Non-joinder of necessary parties and properties would hit the suit. The Defendant had also executed a registered settlement deed dated 17.12.99 (Ex.B-23) for the properties allotted to her in the family partition in favour of her sons viz, Defendants 2 to 4. Those properties are shown as suit items 1 to 4 of “A” schedule. The Defendants 2 to 4 are in lawful possession of items 1 to 4 of suit “A” schedule properties as grand sons of Natesa Gounder and also as settles under Ex.B-23 registered Settlement deed. They did not trespass on 05.01.2005 as stated in the Plaintiff.

13. The learned Counsel for the Appellants further submitted that the long and uninterrupted continuous possession of the first Defendant's family is proved by Ex.B-1 to Ex.B-21, EB payments and kist payments, for more than the required statutory period. The Defendants have perfected title by adverse possession by ouster. The Defendants had spent Rs.3 lakhs for digging a well and Rs.50,000/- for getting Electricity connection for 7.5 HP motor in item 1 of suit “A” schedule property. They have ousted the Plaintiff by their long, open and continuous possession. The suit for second partition of the same properties between same parties is not maintainable and is liable to be dismissed.

14. The learned Counsel for the Appellants invited the attention of



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this Court to the observation made by the learned Appellate Judge that oral partition is not maintainable which is against the provisions of the Hindu Law regarding partition. The learned Counsel for the Appellants also invited the attention of this Court to the discussion of evidence by the learned first Appellate Court Judge having found that the oral partition had been admitted by the Plaintiff as well as the Defendant. The learned Judge erred in his judgment by concluding that the finding arrived by the trial Judge is erroneous therefore, the judgment of trial Judge had been reversed in Appeal. The learned Counsel for the Appellants invited the attention of this Court to the documents relied by the learned Counsel for the Defendant before the learned District Munsif under Ex.B-1 to Ex.B-4. In the written statement, the Defendant had clearly stated that the property was alienated by the Plaintiff earlier and the purchaser of the property also to be included.

15. It is the contention of the learned Counsel for the Appellants that the Plaintiff had filed the suit for partition, without including the property that she already sold without impleading the purchaser. Therefore, the suit for partial partition is not maintainable which was clearly stated in the written statement.

16. It is the contention of the learned Counsel for the Appellants that



the suit for partition was instituted after 23 years after the death of the father of the Plaintiff and the Defendants. In the course of evidence, it had been admitted that the respective parties had been enjoying the properties based on oral partition which was considered by the learned District Munsif and had observed that it is not maintainable, which is an erroneous finding.

17. The learned Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the Appellate Judge in paragraph 9 and 10. The relevant portion is extracted as under:

“9. இரு தரப்பிலும் தாவா சொத்துக்களை குறித்து வாய்மொழியாகத்தான் பாகம் பிரிக்கப்பட்டது என்று ஒப்புக்கொள்ளப்பட்டுள்ளது. தாவா சொத்துக்களை குறித்து பாகம் பிரித்துக் கொண்டதற்கான பாகப்பிரிவினை பத்திரம் எதுவும் ஏற்படவில்லை. வாய்மொழியாக பாகம் பிரித்துக் கொண்டதை வைத்து சொத்துக்கள் பாகம் பிரிக்கப்பட்டு விட்டது என்று எடுத்துக் கொள்ள இயலாது.”

“10. இதிலிருந்து பார்க்கும்போது ஏ-அயிட்டச் சொத்துக்கள் வாதிக்கும் 1-ம் பிரதிவாதிக்கும் இடையே பாகப்பிரிவினை ஏற்பட்டு பாகப் பத்திரம் ஏற்பட்டதாக தெரியவில்லை. பிரதிவாதிகள் தரப்பில் பஞ்சாயத்தார் முன்னிலையில் ஏ-அட்டவணைச் சொத்துக்களை பாகம் பிரித்து விடப்பட்டதாக கூறப்பட்டுள்ளது. அவ்வாறு பஞ்சாயத்தார்கள் முன்னிலையில் பாகம் ஏற்பட்டிருந்தால் முச்சலிக்காவோ அல்லது பாகப்பிரிவினை பத்திரமோ ஏற்பட்டிருக்க வேண்டும் அவ்வாறு எவ்வித ஆவணமும் ஏற்படவில்லை.”

18. In support of her submissions, the learned Counsel for the Appellants relied on the decisions of the Hon'ble Supreme Court in the case of *Kenchegowda (since deceased) by Legal Representatives v. Siddegowda alias Motegowda* reported in (1994) 4 Supreme Court Cases 294 in which it is held



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as follows:

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“15. Equally incorrect is the assumption made by the High Court that the Court of first appeal had not accepted the case of partition. On the contrary, what the Appellate Court has found is as follows:

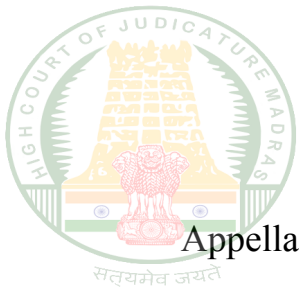
“With regard to the partition alleged by the Defendants even though the Plaintiff's own witness P.W-1 has admitted that there was a partition amongst the Plaintiff's mother Ningamma, himself and the 1st Defendant in the two suits. There is no satisfactory evidence to prove that in that partition the suit property was allotted to the share of the 1 st Defendant in the two suits jointly.”

19. Also relied on the decision of the Hon'ble Supreme Court in the case of ***Kanakarathanammal .V v. S.Loganatha Mudaliar and another*** reported in ***AIR 1965 Supreme Court 271*** in which it is held as follows:

“It is true that under O.1 R.9 of the Code of Civil Procedure no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal. Once it is held that the two brothers are co-heirs in respect of the properties left intestate by their mother, the suit partakes of the character of a suit for partition add in such a suit clearly the Plaintiff alone would not be entitled to claim arty relief against the Defendants.”

20. Therefore, she prays this Court to allow this Second Appeal and to set aside the judgment and decree dated 29.07.2009 passed in A.S. No. 67 of 2008 by the learned Principal Sub Judge, Villupuram and to restore the judgment and decree dated 03.01.2008 passed in O.S.No. 114 of 2005 by the Principal District Munsif, Tirukoilur.

21. The learned Counsel for the Respondents submitted that the first



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Appellate Court upon careful consideration of facts, found that the oral partition was not proved by the Defendants. None of the witnesses that were examined on the side of the Defendants to corroborate the manner of partition by metes and bounds as claimed by the Defendants. Therefore, upon consideration of evidence, the first Appellate Court gave a categorical finding of fact that the oral partition as pleaded by the first Defendant is not proved. The said finding of fact cannot be interfered unless and otherwise it is apparently erroneous or totally misconceived and divorced from the facts and evidence presented before the first Appellate Court. Whereas, the said finding of fact is based on the appreciation of the oral evidence given by the Plaintiff and the Defendants. Further, the first Appellate Court had found that the patta for the “A” schedule property continues to stand jointly in the name of the Plaintiff and first Defendant. Considering the aforesaid materials and records, the first Appellate Court rendered categorical finding that the oral partition as pleaded by the first Defendant is not proved and therefore, the Plaintiff is entitled for the relief of partition.

22. The learned Counsel for the Respondents further submitted that the first Appellate Court appreciated the recitals found in the settlement deed marked as Exhibit A-2 dated 17.11.1999. In the recitals found in Exhibit A-2 settlement deed, it was mentioned that the “A” schedule property was inherited



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by the first Defendant from her mother, which is totally contrary to her pleadings that the “A” schedule properties and various other properties belong to Natesa Gounder, namely, her father and after his demise, the “A” schedule property and the 1 item of the “B” schedule property and some other properties was orally partitioned between the Plaintiff and the Defendants and item number 1 to 4 of “A” schedule properties was allotted to the share of the 1st Defendant. The first Appellate Court carefully considered the discrepancy between the pleadings and evidence given by the first Defendant regarding the oral partition and the recitals found in the settlement deed and accordingly, disbelieved the case of the first Defendant. The first Appellate Court had also found that Item No. 2 and 3 of the “B” schedule mentioned property does not belong to Natesa Gounder. As per Ex.B-26 and Ex.B-27, namely, the sale deeds are standing in the name of one Murugesu Gounder. Item No.2 and 3 of the B schedule properties are standing in the name of the Murugesu Gounder. Item No. 1 of “B” schedule mentioned property is admeasuring only 8.5 cents. Therefore, there is no substantial loss suffered by the first Defendant on account of selling only one item of the “B” schedule mentioned property by the Plaintiff. Admittedly, the other two items does not belongs to Natesa Gounder and therefore, the same is not available for partition.

23. The learned Counsel for the Respondents submitted that the



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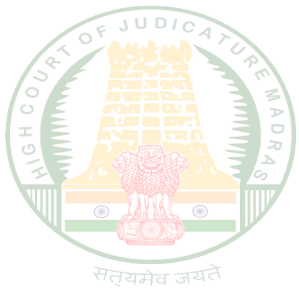
Defendants should not be permitted to claim larger extent of share comprised in item number 1 to 5 of the “A” schedule mentioned property only because the first Defendant has sold half share in the first item of the “B” schedule mentioned property. Therefore, even on equity, the first Appellate Court found that the Defendants cannot deny the relief for partition as claimed by the Plaintiff. The first Appellate Court had also discountenanced the plea of ouster and adverse possession. After careful perusal of all the documentary evidence including the possessory documents filed on either side, the first Appellate Court came to the conclusion that the revenue records are still standing jointly in the name of both the Plaintiff and the first Defendant. Except few electricity bill receipts and few other documents with irregular intervals of time period will not prove the claim of the Defendants that they have perfected the title by, adverse possession. The first Appellate Court had also considered the evidence of D.W-1 wherein she had admitted that she did not even apply for mutation of revenue records in her individual name after the alleged oral partition. The first Defendant has also admitted that even after the execution of settlement deed, no application was filed by the Defendants 2 to 4 to mutate the revenue records in their name. Considering the aforementioned facts and circumstances, the first Appellate Court had held that on appreciation of evidence, the Defendants miserably failed to prove and establish the plea of ouster. The first Appellate Court had carefully perused the depositions given by the witnesses. According



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to the finding of the first Appellate Court, there is no admission made by the Plaintiff regarding the oral partition. It is the specific stand of the Plaintiff that though oral partition was attempted between the Plaintiff and the first Defendant, the same did not fructify in view of non-cooperation of the 1st Defendant. To disprove the said contention, the 1st Defendant failed to examine any independent witness to show, on which day the oral partition was taken place and the manner in which the oral partition was taken place between the Plaintiff and the 1st Defendant. In the absence of any independent evidence to prove the alleged plea of oral partition, the first Appellate Court had rightly rejected the contention of the 1st Defendant that suit “A” schedule property was allotted to the 1st Defendant in the alleged oral partitioned between the Plaintiff and the 1st Defendant. The first Appellate Court stoutly refused to believe the oral partition on the appreciation of oral and documentary evidence and the same need not be interfered at the stage of Second Appeal without any substantial question of law. The plea of oral partition and the plea of ouster has to be proved and established on the basis of oral and documentary evidence which the 1st Defendant is miserably failed to prove. Therefore, the finding of fact by the first Appellate Court rejecting the plea of oral partition as well as ouster need not be interfered. There is no substantial question of law arises in the Second Appeal and hence, the Second Appeal is liable to be dismissed.



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WEB COPY 24. Heard the learned Counsel for the Appellants Ms.Meenal and the learned Counsel for the Respondent Mr.D.Rajasekar.

25. Perused the records, the judgment and decree dated 29.07.2009 passed in A.S. No. 67 of 2008 by the learned Principal Sub Judge, Villupuram, and the judgment and decree dated 03.01.2008 passed in O.S.No. 114 of 2005 by the learned Principal District Munsif, Tirukoilur.

26. On consideration of the rival submissions and on perusal of the judgment of the learned District Munsif, it is found that the judgment by the learned Principal District Munisif, Tirukoillur is erroneous on the ground that the Plaintiff had approached the court and stating clearly that the oral partition arrived between the sisters, the Plaintiff and the Defendants was not followed strictly by the Defendants. The Defendants denied the share of the Plaintiff in the suit property and created documents. Therefore, she had approached the court for partition. She had fairly in the plaint stated that she had encumbered a portion of the allotted property to third party, which she had stated as “B” schedule property. The property that was allotted and for which her claim was denied by the Defendants, who is none other than her sister, by creating settlement deed in favour of her children, ignoring her right to the property.

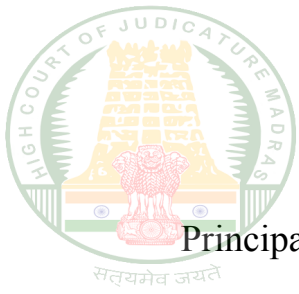


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Therefore, she had come forward by filing this suit. The Defendants in the earliest stage, when notice was received from the Plaintiff, denied the claim of the Plaintiff stating that she had executed settlement deed only for the properties that was allotted to her in oral partition and even if the Plaintiff's claim is to be accepted, the claim of the Plaintiff had become adverse to the Plaintiff as the Defendants had perfected the Defendants title over the statutory period thereby the Plaintiff's claim is ousted. In the light of the evidence of the Plaintiff and the Defendants as P.W-1 and D.W-1, the learned Principal District Munsif had dismissed the suit. The absence of proof regarding the claim of exclusive possession, excluding the possession of the Plaintiff by the Defendants, the claim of ouster had not been proved before the trial Court.

27. In appeal, the learned Principal Sub Judge, Tirukoilur, had rightly accepted the Appeal of the Plaintiff that the Defendants had not proved exclusion of the Plaintiff through documents. What had been marked on the side of the Plaintiff is the joint patta in the name of the Plaintiff and Defendants. The Defendants even though admitted in cross examination that she had exclusively excluded the Plaintiff over a statutory period and therefore, through the principle of ouster, the Defendants had perfected her title against the Plaintiff and therefore, she had executed a settlement deed in favour of Defendants 2 to 4. Therefore, the suit has to be dismissed. The learned



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Principal Sub Judge, on appreciation of evidence, observed that even though the Defendants were aware of the claim made by the Defendant, Defendant did not prove her claim of ouster to prove exclusive ownership, exclusive possession of the Defendant to the exclusion of the Plaintiff. At the end of the trial, the learned Principal Sub Judge has drawn adverse inference against the first Defendant as D.W-1 thereby, arrived at a conclusion that the Defendant had failed to prove the claim of exclusion of the Plaintiff, ouster of the Plaintiff.

28. In cases of partition, the burden of proof is equally on the Defendant. The Defendant is also treated as a Plaintiff in suit for partition. Therefore, the burden is upon the Defendant also to prove the contention in the written statement unlike other cases where the Plaintiff has to prove her claim through cogent evidence. In this case, the Defendant having marked 33 documents had failed to file adangal for the suit property, which is considered by the learned Principal Sub Judge as Appellate Judge when the Defendant had withheld marking of adangal based on which the Court can draw adverse inference against the claim of the Defendant. The Court arrived at a conclusion that the claim made by the Defendant ousting the Plaintiff is not proved thereby, granted the decree to the Plaintiff, thereby, set aside the judgment of dismissal of the learned Principal District Munsif. It is true that the Plaintiff



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had alienated “A” property that she was not in enjoyment. She also admitted in the cross examination that she had alienated the property. She had denied in the cross examination the suggestion that she is not entitled to claim partition as she had sold her property and she cannot claim partition from the share of the Defendant.

29. From the evidence of the Plaintiff, she had clearly admitted that “B” schedule property had been alienated by her to one Mari Gounder. Even though she had sold undivided share, the purchaser had given full extent in the property that was sold by the Plaintiff. It is the clear case of the Plaintiff that the first Defendant is attempting to alienate “A” schedule property in which the Plaintiff also has a share.

30. As on today, the Plaintiff had not filed any suit to declare the sale deed in favour of the Mari Gounder. The Plaintiff had in the cross-examination denied the claim of the Defendants that the suit “A” schedule property is in exclusive possession and enjoyment of the first Defendant. Therefore, first Defendant had executed settlement deed in favour of her children. The Plaintiff having sold her share of the property in “B” schedule at Thirupalanthal Village in favour of Mari Gounder. She had included the property sold to Mari Gounder as "B" schedule property. On comparison of



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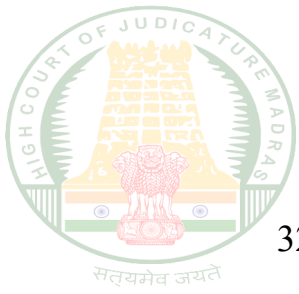
"A" and "B" schedule, it is found that "A" schedule is having 83 cents and "B" schedule is having 51 cents. Apart from that, "A" schedule has 5 items in which item 1 and 4 are agricultural lands and total extent of 83 cents. In the cross-examination of the Plaintiff, she claims that in the 72 cents of property in the first item, she has a share along with the Defendants. Similarly, the fourth item in "A" schedule property having extent of 11 cents, the Plaintiff and Defendants are enjoying it in common. The patta is a joint patta. The Plaintiff had clearly admitted that she is not claiming right over item 5 in "A" schedule property. She had denied the suggestion that she had been issued with patta for item 5 of the house site property.

31. On perusal of the deposition, it is found that the Plaintiff, Palaniammal is an illiterate woman. She had only affixed her thumb impression in the deposition as well as in her plaint and the affidavit. In a suit for partition, the burden is on the Defendants also equal to that of the Plaintiff. The Defendant is also treated as Plaintiff to the claim of the properties. Therefore, the burden is on both of them equally. The Defendants having denied the claim of the Plaintiff and asserted her right that she is in possession of "A" schedule property as "A" schedule properties were allotted to her in the family partition after the death of her parents between mediators and elders in the village. Therefore, she had executed settlement deed in favour of her



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children - Defendants 2 to 4 and the Plaintiff had been ousted from the property. She was unable to prove ouster. The burden is upon her equal to that of the Plaintiff to assert her claim in the written statement. She had marked documents as Ex.B-1 to Ex.B-33. The witnesses who were examined as Plaintiff side witnesses 2 to 4 were found to be unreliable witnesses. From the cross examination, they are unable to state clearly the enjoyment of the Plaintiff and the Defendants. The same is the case with the Defendants witness 2 to 4. The Plaintiff having sold 51 cents in "B" schedule property, the remaining 83 cents is in enjoyment of the first Defendant. The first Defendant had executed settlement deed in favour of her children Defendants 2 to 4 in S.No. 44/1A2, 72 cents in S.No.4/1, 800 sq. ft., is found unfair, particularly, when patta stands in the name of Plaintiff and Defendants. When confronted in cross-examination by the learned Counsel for the Plaintiff, the first Defendant as D.W-1 admitted, even though she had executed settlement deed in favour of her children on 17.12.1999, till the date of the trial in the suit, she had not preferred any petition for separate patta in favour of her children. The suggestion by the learned Counsel for the Plaintiff that she had only marked documents which are EB receipts and she had not filed patta in support of her claim that the property is the exclusive property of the Defendant, she had denied the suggestion.



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32. On perusal of the documents, it is found that the documents under

Ex.B-1 to Ex.B-13 are electricity receipts, Ex.B-14 to Ex.B-19 are kist receipts for payment under Patta No.119. Whereas the Plaintiff even though illiterate, she had marked patta as No.542 under Ex.A-7 and Adangal under Ex.A-5 which reflects the name of the Plaintiff in patta as well as in Adangal for the Survey No.44/1A2. Patta No.44/1A2 in the name of the Sudhakar. Ex.A-7 is not related to suit property. Ex.A-1 stands in the name of Kasiammal and Palaniammal wherein the land in S.No.44/1A2 is found. Therefore, the Plaintiff even though illiterate, she was able to prove her case through valid documents. The Defendants had cleverly withheld marking of Adangal regarding the claim of ouster. The Plaintiff had approached the Court seeking partition on the ground that the Defendants denying the share of the Plaintiff had created documents. Therefore, the Plaintiff is entitled to relief of partition. At the same time, as per the plaint, she had sold totally 51 cents of the property in “B” schedule in three survey numbers. Therefore, out of 83 cents, only 32 cents she can claim partition. Out of 32 cents, 16 cents is to be allotted to her in Item 1 and 4 and in Item 5, 800 sq. ft. she is entitled to 400 sq. ft.

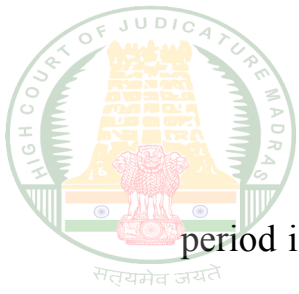
33. In Item-1, 72 cents and in Item-4, 11 cents of agricultural lands. Out of 83 cents, the Plaintiff has no claim over 51 cents which she had already



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WEB COPY sold in another “B” schedule property. Therefore, for the equal of that measurement, she cannot claim share in Item 1 and 4 agricultural lands. The remaining (72 + 11 = 83 cents – 51) extents is 32 cents. Out of 32 cents, she is entitled to 16 cents either in “A” schedule in Item-1 or in Item-4, after deducting 51 cents. Also in item-5 the grama natham house site, she has a half share out of 800 sq. ft. ie., 400 sq. ft. The suit is decreed in favour of the Plaintiff. The judgment of the first Appellate Court is vitiated by failure to appreciate the evidence on record in proper perspective and non-application of law regarding partition.

34. The answers in cross-examination by the first Defendant as D.W-1 that she had not applied for separate patta in favour of her children – Defendants 2 to 4 even after execution of a settlement deed under Ex.A-2 shows that she was apprehending the claim asserted by the Plaintiff. Therefore, the claim of ouster by the Defendants has to be rejected. There is no proof that the Defendants had perfected title over the suit properties excluding the claim of the Plaintiff. Ex.A-2 was executed in the year 1999. The suit was instituted by the Plaintiff for partition. She can straight away ignore the documents created by the Defendants. Therefore, the claim is barred by limitation also will not apply. The suit is of the year 2005. Therefore, the claim of the Defendants that they had perfected the title either over a statutory



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period is unacceptable when considering the documents marked on the side of the Plaintiff and Defendant, particularly, Ex.A-1 patta, Ex.A-5 Adangal which supports the claim of the Plaintiff. The first Defendant had not marked patta or Adangal to prove her claim that she is in exclusive possession excluding the right of the Plaintiff from the suit “A” schedule properties.

35. In the light of the above discussion from paragraphs 25 to 34, the judgment of the First Appellate Court is on strong reasoning on proper appreciation of evidence before the learned trial Judge in proper perspective and on proper application of principles of law. **The substantial question of law is answered in favour of the Plaintiff and against the Defendants 1 to 4 in O.S.No. 114 of 2008 on the file of the learned Principal District Munsif, Tirukkivilur.** The execution of the settlement deed by the first Defendant in favour of her children – Defendants 2 to 4 is set aside.

In the result, **this Second Appeal is dismissed.** The judgment and decree dated 29.07.2009 passed in A.S. No. 67 of 2008 by the learned Principal Sub Judge, Villupuram is confirmed. The suit in O.S.No. 114 of 2005 by the Principal District Munsif, Tirukoilur is decreed. Accordingly, preliminary decree is granted to the Plaintiff. Since the Plaintiff had already alienated 51



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cents in “B” schedule property, she cannot claim half share in 83 cents in Item 1 and 4 of agricultural property. After excluding 51 cents from 83 cents, in the remaining 32 cents, she is entitled to half share i.e., 16 cents either under Item 1 or under Item-4. It is left to the convenient of both parties – Plaintiff and Defendants. In item 5, out of 800 sq. ft., of grama natham, the Plaintiff is entitled to 400 sq. ft. Consequently, the connected miscellaneous petition is closed.

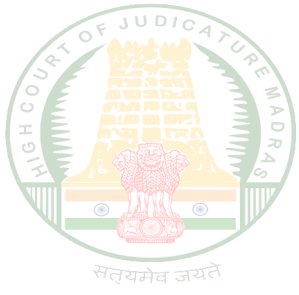
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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

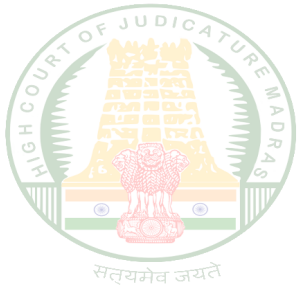


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To

1. The Principal Sub Judge,
Villupuram.
2. The Principal District Munsif,
Tirukoilur.
3. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment in
S.A.Nos.1266 of 2009

10.07.2025