

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.391 of 2015
and M.P.No.1 of 2015

Gurusamy

.. Appellant/4th defendant

Vs

1.Jamila Devi @ Shyamal Devi .. 1st Respondent/Plaintiff
2.Ambigai
3.Rajendran
4.Natarajan
5.Rajamanickam .. Respondents 2 to 5/
Defendants 1 to 3 and 5

Prayer: Second Appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 06.08.2014 made in A.S.No.1 of 2013 on the file of the Principal Sub-Court, Mayiladuthurai, confirming the judgment and decree dated 29.06.2012 made in O.S.No.289 of 2010 on the file of the Principal District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

JUDGMENT

This Second Appeal arises out of the Judgment and decree dated 06.08.2014 made in A.S.No.1 of 2013 on the file of the Principal Sub-Court, Mayiladuthurai, confirming the judgment and decree dated 29.06.2012 made in O.S.No.289 of 2010 on the file of the Principal District Munsif Court, Mayiladuthurai.

2.The first respondent herein as a plaintiff filed a suit for partition and separate possession of 1/4th share in the joint family property against her junior paternal uncle and legal heirs of the deceased senior paternal uncle. The appellant herein as a fourth defendant raised a plea of adverse possession by ouster and the same has been negatived by the trial Court and the suit was decreed. Aggrieved against the same, the appellant/fourth defendant has preferred an appeal before the first appellate Court, which has also confirmed the decree and judgment passed by the trial Court, against the same, the present second appeal has been preferred by the fourth defendant/appellant.

3.Learned counsel for the appellant/fourth defendant submits that the appellant as a paternal uncle of the plaintiff/first respondent performed her marriage by spending huge amount and her marriage expenses exceeded her share in the suit property and hence, she has not claimed any right over the suit property. Therefore, he prayed for admission of this second appeal.

4.At the time of admission, argument of the learned counsel for the appellant is heard in length.

5.It is seen from the records that the first appellate Court, which is a last fact finding Court, confirmed the judgment and decree passed by the trial Court by holding that the adverse possession by ouster has been only a question of fact and therefore, the appellant has not prescribed title by adverse possession using co-owners share. Both the Courts below after considering all the aspects in proper perspective and rightly decreed the suit. In such circumstances, no substantial question of law will arise in the second appeal. Therefore, the second appeal deserves to be dismissed and it is hereby dismissed.

6.In the result, the second appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

kj

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Judge, Mayiladuthurai.

2.The Principal District Munsif, Mayiladuthurai.

+ 1 cc to Mr.S.Sounthar, Advocate SR 28722

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