

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.1042 of 2013
and
M.P.No.1 of 2013

Kannappan ...Appellant/Appellant/Defendant

Vs.

1.Krishnaveni Ammal
2.Velu

...Respondents/Respondents/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 17.06.2013 and made in the appeal in A.S.No.30 of 2010 on the file of the learned Subordinate Judge, Vellore, confirming the judgment and decree dated 18.12.2009 and made in the suit in O.S.No.361 of 2004 on the file of the Principal District Munsif Court at Vellore.

For Appellant : M/s.P.Veena

For Respondents : Mr.R.Margabandhu

J U D G M E N T

The decree and judgment dated 17.06.2013 and made in the appeal in A.S.No.30 of 2010 on the file of the learned Subordinate Judge, Vellore, confirming the judgment and decree dated 18.12.2009 and made in the suit in O.S.No.361 of 2004 on the file of the learned District Munsif, Vellore have been challenged in this memorandum of Second Appeal.

2. The first defendant in the suit in O.S.No.361 of 2004 is the appellant herein. The second defendant Ayi Ammal being the mother of the first defendant(appellant) had died on 14.12.2000. The respondents 1 & 2 herein are the plaintiffs in the suit in O.S.No.299 of 1992.

3. Heard M/s. P.Veena, learned counsel appearing for the appellant/D1 and Mr.R.Margabandhu, learned counsel appearing for the respondents 1 & 2.

4. For easy reference the appellant may herein after be referred to as the first defendant, where as the respondents 1 & 2 be referred to as the plaintiffs 1 & 2, where ever the context so require.

5. One Ammavasai Goundar had two wifes namely (i) Machanayaki and (ii) Ayi Ammal, who is the second defendant in the suit(since deceased). He had a son by name Manickam through his first wife Machanayaki and he begotten another son by name Kannappan(D1), through his second wife Ayi Ammal(D2). Ammavasai Goundar had died in the year 1988. His son Manickam had died in the year 1969. His first wife Machanayaki had predeceased Ammavasai Goundar. The plaintiffs 1 & 2 are the son and wife of Manickam.

6. Ammavasai Goundar and his sons Manickam and Kannappan were living together in joint family. Ammavasai Goundar had ancestral properties at Kilarasampattu Village viz., the Housing property.

7. It is alleged that he had sold this ancestral property to one Appadurai Gounder in the year 1947 for the purpose of purchasing landed properties to the joint family. With the sale proceeds of the above said properties alongwith the joint family income, Ammavasai Goundar had purchased the suit properties in his name under a registered Sale Deed dated 22.05.1947 from one Mangai Ammal and others. Ammavasai Goundar was the Manager of the said joint family consisting of himself and his two sons.

8. Ammavasai Goundar had no exclusive right, title or interest over the suit properties either as a joint family member or as a co-parcener. He was entitled for 1/3rd share in the suit properties.

9. According to plaintiffs, after the death of Manickam in the year 1969, she (first plaintiff) and her son were residing alongwith Ammavasai Goundar and the defendants as joint family members. The suit property was treated as joint family properties.

10. Some time prior to 1983, Ammavasai Goundar had driven the plaintiffs out from the suit properties. Ever since then Ammavasai Goundar and the defendants were enjoying the profits derived from the suit properties without giving any share to the plaintiffs. During the year 1988, Ammavasai Goundar had passed away, leaving the plaintiffs and the defendants as his legal heirs and legal representatives. In view of the death of Manickam, his 1/3rd share devolved upon the plaintiffs. Subsequently, in view of the death of Ammavasai Goundar, his 1/3rd share was devolved upon the plaintiffs and the defendants.

11. Therefore, in view of the death of Manickam and Ammavasai Goundar, the plaintiffs have become entitled to $1/3+1/9=4/9^{\text{th}}$ share in the suit properties. When the plaintiffs had demanded the defendants to partition the suit properties, they had refused to effect partition.

12. The defendants have however claimed that the deceased Ammavasai Goundar had executed a Settlement Deed dated 27.06.1984 and thereby some portion of the suit properties was settled in favour of the first defendant. The plaintiffs have strongly refuted the genuineness and validity of the alleged Settlement Deed and contended that in fact, it should be a fabricated and concocted document created by the defendants only for the purpose of grabbing the properties. Hence, the plaintiffs were constrained to file the suit for partition claiming 4/9 share in the suit property.

13. The defendants have specifically denied the contention that the Ammavasai Goundar had a son by name Manickam through his alleged first wife Machanayaki. The defendants have contended that the suit properties are the separate and self acquired properties of Ammavasai Goundar and that there was no joint family property as alleged by the plaintiffs and therefore, the question of purchasing the suit properties with the joint family income did not arise. The suit property was never treated as joint family property. The defendants have also contended that the plaintiffs had never resided in the joint family. Ammavasai Goundar had died leaving the defendants alone as his legal heirs and since the plaintiffs are strangers they are not entitled to claim any share.

14. Since the suit properties are exclusive, separate and self acquired properties of Ammavasai Goundar, he had executed a registered Settlement Deed in favour of the first defendant conveying his right, title and interest in his favour and therefore, the plaintiffs have no manner of right to question the genuineness of the Settlement Deed dated 27.06.1984.

15. The Settlement Deed dated 27.06.1984 was accepted and acted upon and the possession of the property was also handed over to the first defendant. Since Ammavasai Goundar had every right to transfer his property to the first defendant, the plaintiffs could not question his act as they are absolute strangers to the suit properties.

16. In their additional written statement, the defendants have contended that during the pendency of the suit, the plaintiffs had deliberately and with an oblique motive got the Patta bearing No.136 transferred in their name on 28.05.1987,

despite strong objection was raised by them. Secondly, they have contended that the first defendant's son by name Velu was taken forcibly and illegally kept in the police station and during his confinement, his signature as well as the signature of the other defendant were obtained in a document and later they came to know that the said document was concocted as an 'Agreement of Partition' dated 15.03.1997 with the signatures of the defendants. The execution, validity and genuineness of the document dated 15.03.1997, is denied by the defendants. Thirdly, they have contended that there was no punchayat as alleged by the plaintiffs nor the defendants had agreed to execute the alleged document under the caption of 'Agreement for Partition' dated 15.03.1997. The defendants have specifically contended that the suit is squarely barred by limitation and since they are in exclusive and uninterrupted possession in their own rights for more than the statutory period they have perfected title by adverse possession also.

17. In their reply statement, the plaintiffs have contended that taking into consideration of their actual enjoyment of the suit property and after holding due enquiry, their names were included in the Patta alongwith the names of the defendants. Since, the defendant's son Velu had given unbearable troubles to the plaintiffs, the defendants and their son and other relatives had decided to put an end to the dispute and wanted to settle the matter amicably. Therefore, in the Village Punchayat, the defendants and their son wanted to effect a partition, dividing the properties between them and the defendants. Accordingly, they had agreed to execute and register the partition Deed. Accordingly an Agreement of Partition was executed on 15.03.1997 and the defendants were also the consenting parties to the Agreement of Partition.

18. Based on the pleadings of the parties to the suit, the trial Court, had formulated the following five issues:

(i) Whether the suit property purchased by Ammavasai Goundar, is his separate property or joint family property?

(ii) Whether it is true that Manickam was born to Ammavasai Goundar through his first wife in the year 1947?

(iii) Whether the Settlement Deed dated 27.06.1984 is true?

(vi) Whether the plaintiffs are entitled to partition as prayed for.?

(v) to what other reliefs, the plaintiffs are entitled?

Besides the above issues, the trial Court had formulated the following additional issue:

(i) Whether the signatures of the defendants and his son were obtained by coercion in the Police Station in a document dated 15.03.1997?

19. On evaluating the evidences both oral and documentary, the trial Court had proceeded to grant a preliminary decree directing the defendants to divide the suit properties into 9 equal shares by metes and bounds. Challenging the preliminary decree passed by the trial Court dated 18.12.2009, the defendants had preferred an appeal in A.S.No.30 of 2010 on the file of the learned Subordinate Judge, Vellore. After hearing both sides, the first Appellate Judge had dismissed the appeal confirming the judgment and decree of the trial Court.

20. Having lost their case before the Courts below, the first defendant stands before this Court with this second appeal, as his mother Ayi Ammal had passed away during the pendency of the suit.

21. It is obvious to note here that since the Courts below have given concurrent findings granting a preliminary decree for partition in respect of 4/9th share in favour of the plaintiffs/respondents, the appeal was not initially admitted, when it came up for admission before this Court. Subsequently, when the appeal came up for hearing, M/s.P.Veena, the learned counsel appearing for the appellant has identified the following two substantial questions of law.

(i) Are the Courts below right in decreeing the suit when the suit is barred by limitation?

(ii) When the plaintiffs have miserably failed to prove the ancestral character of the suit property, are the Courts below right in granting the decree for partition.

22. The learned counsel has also identified the following additional substantial question of law:

(i) In the absence of pleadings regarding the existence of the alleged Koorchit before the Village Panchayat, are the Courts below right in upholding the contentions of the plaintiffs especially when no evidence can be looked into?...

23. M/s. P.Veena, learned counsel appearing for the appellant/D1, has mainly focused her argument on the following two points:

(i) Limitation

(ii) The ancestral nature of the suit property

24. In so far as the ground No.11 of the memorandum of second appeal is concerned, it is stated that the learned trial Judge ought to have dismissed the suit as the suit is barred by limitation.

25. It is pertinent to note here that in paragraph No.10 of the written statement, the defendants have stated that there is no cause of action for the suit and the cause of

action in paragraph No.13 of the plaint are specifically denied. In their additional written statement, in paragraph No.3(last line), the defendants have stated that the suit is not in time and it is barred by limitation. In their reply statement, the respondents/plaintiffs, in paragraph No.12, have simply stated that the allegations that the suit is barred by limitation is not correct and that the suit is well within the time as per law.

26. On coming to the plaint, the plaintiffs/respondents, in paragraph No.13, have stated that in or about .06.1992, when they demanded for partition, the defendants had refused. In paragraph No.10, they have stated that subsequent to the death of Ammavasai Goundar, they demanded the defendants to partition the suit properties into 9 equal shares and allot them their legitimate 4/9th share. On perusing the averments of paragraph Nos.10 & 13 of the plaint, this Court is able to find that probably in the month of June 1992, the plaintiffs had demanded the defendants to partition the properties.

27. It is to be noted that the suit itself seems to have been filed in the year 1992. Thereafter, it appears that the suit was transferred to the file of the learned Principal District Munsiff, Vellore District and re-numbered as O.S.No.361 of 2004.

28. In so far as the suit for partition is concerned, the starting point on limitation is the date on which the denial of partition i.e., the cause of action arise from the date of denial of partition. With reference to the suit for partition, no period of limitation is prescribed in the Limitation Act 1963. However, Article 113 of the Limitation Act 1963 being a residuary provision envisages that any suit for which no period of limitation is provided, elsewhere, in this schedule, the prescribed period of limitation is 3 years, which begins to run when the right to sue accrues.

29. As afore stated, this is the residuary Article for suits not covered by any other article. In fact, this provision viz, Article 113 corresponds to Article 120 of the previous Act, only with the addition of the word 'any' at the beginning of the first column of the present Article, and the period of limitation having been reduced from six years to three years, so that no special advantage would be gained by any one seeking to prove that the residuary Article applies.

30. In so far as the scope and application of Article 113 is concerned, it is called as 'Omnibus Article of the Limitation Act'.

As observed in Mulidhar Vs. Ram Saran ILR (1946) All 638, AIR 1947 All 256., this Article is final and residuary, and the court ought not to regard a suit as coming under this

Article unless clearly satisfied that it does not come under any of other Articles dealing with specific cases.

31. Further, as observed by the Apex Court in *Moti Natwarilal Vs Raghavayya Nagindas* AIR 1977 SC 1778, the scope of this omnibus or residuary Article has been widened to some extent by the deletion of several Articles of the previous Act from the Statute book. Such of the deleted Articles as have not been amalgamated with others will be covered by Article 113 of the new Act. Article 113 applies to suits and cannot govern the special form of remedy available to the attorneys for recovering their fees. Proceedings in pursuance of that remedy are governed by Rule 573(ii) (a) of the Original Side Rules of the Bombay High Court.

32. In another decision *Union Bank of India Vs. K. Lal & Sons* (1987) 2 Bank LLR 327 (Bom), wherein, it has been held that the statute of limitation is intended to provide a time-limit for all suits conceivable. That is why an omnibus Article is provided for wherever any specific Article does not cover a case. The intention of the Legislature is to provide for time-limit for any suit and therefore even a claim against a wrongdoer can become time-barred if the suit is not brought within time. But the aid of this Article cannot be invoked if by a reasonable consideration any other Article would apply (See, *B. Das Vs. B. Das* AIR 1981 Pat 219).

33. Based on this proposition, the Hon'ble Supreme Court in *Krishna Pillai Rajasekharan Nair(Dead) by LRs Vs. Padmanabha Pillai (Dead) by LRs & Others* (2004) (12) SCC 754, at paragraph No.22, has observed that:

Para:22: In our opinion, the suit filed in the present case being a suit for partition primarily and predominantly and the relief of redemption having been sought for only pursuant to the direction made by the Hon'ble High Court in its order of remand, the limitation for the suit would be governed by Article 120 of the Limitation Act, 1908. For a suit for partition the starting point of limitation is - when the right to sue accrues, that is, when the plaintiff has notice of his entitlement to partition being denied.

34. On coming to the present case on hand, as observed in the foregoing paragraphs, the suit itself was filed originally on 22.07.1992. As per the cause of action paragraphs as well as the paragraph No.10 of the plaint, the plaintiffs have stated that the demand for partition was made in the month of June, 1992, but it was refused by the defendants. Since the

suit was filed on 22.07.1992, this court is of considered view that the suit is not barred by limitation.

35. Though the first substantial question of law has been formulated on the point of limitation, the learned counsel appearing for the appellant has not evinced any interest or has not taken much interest in advancing her argument explaining the circumstance as to how the suit is barred by limitation. Hence, in view of the above fact, this Court finds that the suit is not barred by limitation and hence the first substantial question of law is answered as against the defendants/appellants.

36. With regard to the substantial question of law No.2, Ms.Veena, the learned counsel appearing for the appellant has adverted to that the plaintiffs had not proved the ancestral character of the suit property. According to learned counsel, the suit properties are the separate and self acquired properties of late. Amavasai Goundar and therefore, the question of purchasing the suit properties with the joint family income did not arise.

37. Countering her argument, Mr.R.Margabandhu, learned counsel appearing for the plaintiffs/respondents, has made reference to Ex.A4, a Sale Deed dated 22.05.1947, under which Amavasai Goundar had purchased the suit property from one Mangai Ammal for valid consideration of Rs.300/-. He has also made reference to Ex.A17, a registered Sale Deed dated 19.11.1946, said to have been executed in favour one Appadurai Gounder by Amavasai Goundar. In this connection, Mr.R.Margabandhu, learned counsel has submitted that Amavasai Goundar was having his ancestral properties in Keelarasampattu Village viz., Housing property. He had sold the said ancestral property to one Appadurai Gounder for a sum of Rs.200/- in the year 1947 for the purpose of purchasing another landed property to the joint family. He has also submitted that with the sale proceeds of the above said property alongwith joint family income, Amavasai Goundar had purchased the suit properties in his name on behalf of joint family under a registered Sale Deed dated 22.05.1947 from one Mangai Ammal and others.

38. In order to substantiate his argument Mr.R.Margabandhu, learned counsel has made reference to Ex.A4 & A17. In Ex.A17, it is stated that for purchasing other landed properties. Therefore with regarded to the ancestral nature of the property Mr.R.Margabandhu, learned counsel has demonstrated with the assistance of Ex.A4 & A17, saying that Amavasai Goundar had sold his ancestral property under Ex.A17, only for the purpose of purchasing other landed properties for the joint family. Accordingly, he had purchased the suit properties under Ex.A4 from one Mangai

Ammal and others. Therefore, he has ascertained that the suit property is ancestral in nature.

38. The prime contention of the defendant/appellant is that Manickam, who is the husband of the first plaintiff and father of second plaintiff, Velu is not at all the son of Ammavasai Goundar born through Machanayaki. It is also their contention that Ammavasai Goundar had never married Machanayaki as his first wife as alleged by the plaintiffs. However, the defendants have failed to substantiate their contention. Ex.A1, Death Certificate of Ammavasai Gounder reveals that Ammavasai Gounder had passed away on 15.10.1988. This Certificate seems to have been issued by the Head Quarters, Deputy Tahsildar, Vellore. Exs.A2 & A3 are the Death certificates, which shows that Manickam had died on 06.11.1969 and he is the son of Ammavasai Goundar. Exs.A2 & A3, would go to prove that Manickam, who is the husband of the first plaintiff and father of the second plaintiff, is the son of Ammavasai Goundar and died on 06.11.1969. Therefore, it cannot be heard to say that Manickam is not the son of Ammavasai Goundar.

40. On perusal of the evidence of DW1(Kannappan, who is the appellant herein), it is revealed that he did not know as to whether the first plaintiff is the son of the second plaintiff. He has also stated that he did not know as to whether the name of the husband of the second plaintiff as well as the father of the first plaintiff is one Manickam. He has also stated that he did not know as to whether Machanayaki is the first wife of Ammavasai Goundar. In so far as the evidence of DW1(appellant herein is concerned), this Court is of view that the first defendant was not taking much interest in giving evidence before the trial Court for the purpose of substantiating his own case.

41. In view of the above fact and based on the evidence of PW1, which is supported by the testimonials of PW2 to 3, this Court is of considered view that the suit properties are attached with ancestral character and as such the Courts below have proceeded to give concurrent findings which resulted in granting a preliminary decree for partition in respect of the suit properties. Accordingly, the substantial question of law No.2 is answered against the appellants.

42. Insofar as the additional substantial question of law is concerned, it revolving around Ex.A7 i.e., the Partition Agreement dated 15.03.1997. In this connection, the respondents/plaintiffs, in their reply statement, in paragraph Nos.6, 7 & 15 have made reference to Ex.A7. The plaintiffs, in paragraph No.6, have stated that the defendants, their son and other relatives had decided to put an end to the dispute and wanted to settle the matter amicably. In paragraph No.7,

they have stated that the matter was not settled inside the police station but it was settled near the small/Vinayagar Temple situated some distance away from police station and on the side of Vellore, Arani Main Road. They have also stated that in fact the defendants and their son wanted to effect the partition in respect of the suit properties between them and the plaintiffs and they had also agreed to execute and register a partition Deed.

43. They have also stated that it is mentioned in the agreement as to what property should be taken by the plaintiffs and what property should be taken by the defendants. The Agreement of Partition(Ex.A7), which is relied upon by the plaintiffs is dated back to 15.03.1997.

44. It is significant to note here that the suit has been originally filed by the plaintiffs for partition before the Sub-Court, Vellore on 22.07.1992. It was numbered as O.S.No.299 of 1992. Subsequently, it appears that the said suit was transferred to the file of the learned Principal District Munsif, Vellore and renumbered as O.S.No.361 of 2004. Since the document under Ex.A7, which is captioned as 'Partition Agreement' is dated back to 15.03.1997, it seems to be the origin of subsequent to the suit. Therefore, it cannot be relied upon and hence this document is liable to be rejected on this sole ground. However, the right to claim partition for the suit property is not taken away from the hands of the plaintiffs and still they are entitled to claim partition as they have substantiated their case through the acceptable legal evidences. Under these circumstances, this Court does not see any reason to interfere with the concurrent findings of the Courts below.

45. In the result, the Second Appeal is dismissed confirming the judgments and decrees of the Courts below. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1.The learned Subordinate Judge,
Vellore.

2.The Principal District Munsif,
Vellore.

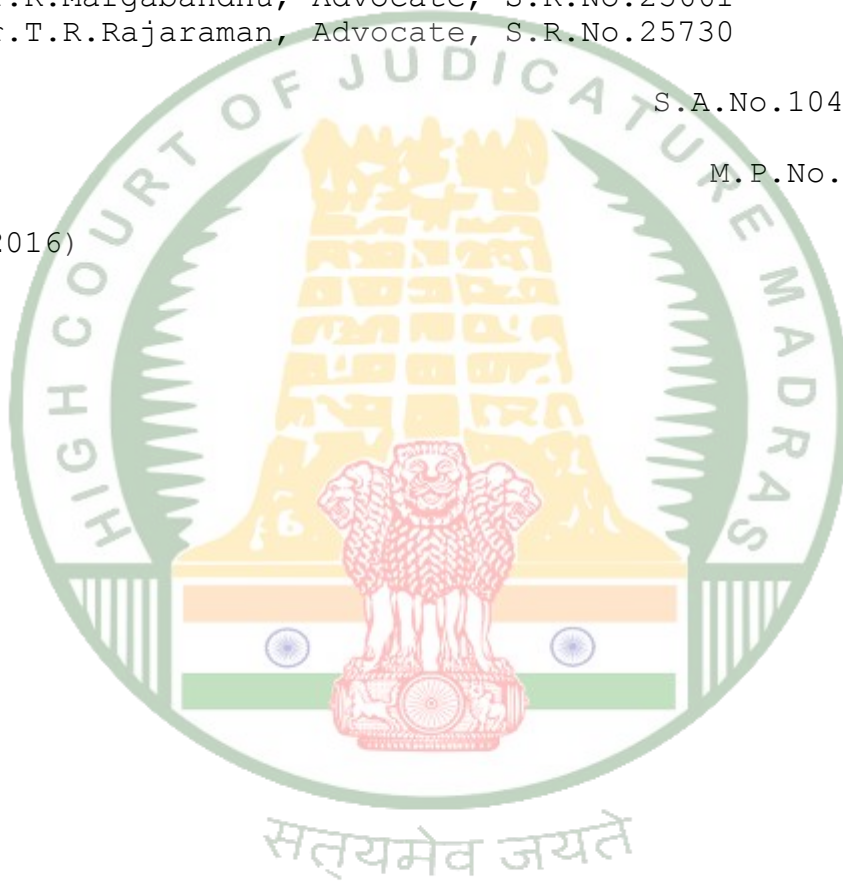
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S.A.No.1042 of 2013
and
M.P.No.1 of 2013

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