

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2016

PRONOUNCED ON: 22.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.244 of 2011

&

M.P.No.1 of 2011

1.Devaki
2.Ranganathan
3.Kadirvel
4.Sankar
5.Vedagiri

... Appellants/ Defendants 1,3 to 6

Vs.

1.Saroja
2.Manoranjitham

...1st Respondent/ Plaintiff
...2nd Respondent/ 2nd Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 10.08.2010 passed in A.S.No.16 of 2010 on the file of the Subordinate Court, Madurantakam, confirming the judgment and decree dated 25.11.2009 passed in O.S.No.154 of 2006 on the file of the District Munsif Court, Madurantakam.

For Appellants : Mr.N.A.Nissar Ahamed

For R1 : Mr.R.Vijayaraghavan

J U D G M E N T

The defendants 1, 3 to 6 have preferred this Second Appeal impugned the judgment and decree dated 10.08.2010 made in A.S.No.16 of 2010 on the file of the Subordinate Court, Madurantakam, confirming the judgment and decree dated 25.11.2009 made in O.S.No.154 of 2006 on the file of the District Munsif Court, Madurantakam.

2.Suit for partition.

3.The case of the plaintiff in brief is as follows:

The plaintiff and the defendants 1 & 2 are the sisters and the daughters of Chengalvarayan. The third defendant is the husband of the first defendant and the defendants 4 to 6 are the sons of the defendants 1 and 3. The defendants 3 to 6 are residing in the suit village. The plaintiff and the

second defendant are not residing in the suit village. The suit property is left by Chengalvarayan and the patta stands in his name. The wife of Chengalvarayan died about 7 years ago. As such the suit property is under the management of the first defendant as she is living in the suit village and she has been looking after the suit property for herself and on behalf of the plaintiff and the second defendant. The plaintiff is entitled to obtain 1/3rd share in the suit property. Despite the request of the plaintiff to effect amicable partition and also after the issuance of the legal notice claiming partition in as much as the defendants have not come forward to give the share to which the plaintiff is entitled to, the suit has been laid. Further, according to the plaintiff, the third defendant has no manner of right or title over the suit property and the suit property was not given to the third defendant by Chengalvarayan and the third defendant has no right to create document in respect of the suit property in favour of his sons and hence the suit.

4.The case of the defendants in brief is as follows:

The plaintiff is not entitled to obtain 1/3rd share in the suit property. The suit property belongs to Chengalvarayan. Even before the third defendant's marriage, Chengalvarayan requested the third defendant to stay in his house and look after the land and as per the arrangement, the third defendant stayed in the matrimonial house and worked for the entire family and managed the suit property alongwith the other properties and during the life time of Chengalvarayan, he had orally bequeathed his right in the suit property to the third defendant and this is also known to Chengalvarayan's wife, the second defendant and the plaintiff and thereafter, the third defendant had settled the suit property in favour of his sons under the Settlement Deed dated 29.12.2005 and the patta also stood transferred in the name of the defendants 4 to 6. The third defendant has been in possession and enjoyment of the suit property continuously beyond the perspective period and the plaintiff is estopped from claiming the share in the suit property and the suit is barred by limitation and hence the suit is liable to be dismissed.

5.In support of the plaintiff's case, PW1 has been examined and Exs.A1 and 2 were marked. In support of the defendants' case, DW1 to 3 were examined and Exs.B1 to 4 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. The first Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the first Appeal preferred by the defendants 1, 3 to 6. Hence, the Second Appeal by the defendants 1, 3 to 6.

6.Admittedly, the suit property belonged to Chengalvarayan. The plaintiff and the defendants 1 and 2 are

the daughters of Chengalvarayan. It could therefore be seen that after the demise of Chengalvarayan, his legal heirs namely the plaintiff and the defendants 1 and 2 are entitled to succeed to his estate. Accordingly, inasmuch as the plaintiff is entitled to claim 1/3rd share in the suit property, as the requests of the plaintiff for effecting amicable partition failed, despite the issuance of legal notice demanding partition, according to the plaintiff she has laid the suit.

7. Per contra, it is the case of the contesting defendants that Chengalvarayan during his life time had orally bequeathed his right in the suit property to the third defendant, who according to the defendants stayed in Chengalvarayan's house and helped him to manage the suit property and the other properties and based upon the above said oral transfer, it is contended that the third defendant has been in possession and enjoyment of the suit property as the full owner thereof to the knowledge of every one including the plaintiff and the second defendant and others for more than the statutory period ousting the plaintiff and the second defendant and thus according to the third defendant he has prescribed his title to the suit property by way of adverse possession ousting the other co-sharers and further he has also settled the suit properties in favour of his sons and therefore, the suit for partition by the plaintiff is liable to be dismissed.

8. Inasmuch as the third defendant has set up the defence that Chengalvarayan had orally bequeathed his right in the suit property to him, it has to be seen whether the above defence would stand scrutiny in the eyes of law. It has not been explained as to how Chengalvarayan would be able to legally convey his right in the suit property orally in favour of the third defendant. Therefore, it could be seen that the Courts below have correctly found that the alleged oral relinquishment/gift of Chengalvarayan in respect of the suit property in favour of the third defendant cannot be upheld as per law. Therefore, the defence projected by the third defendant in particular that Chengalvarayan had bequeathed his right in the suit property to him orally cannot be accepted in any manner.

9. Further, according to the third defendant, pursuant to the oral bequeathment of the suit property to him, he had been in possession and enjoyment of the suit property as his own for more than the statutory period ousting the plaintiff and the second defendant and thus according to him, he has established his title to the suit property by adverse possession also, but the same has been stoutly denied by the plaintiff. To establish the above plea of ouster and claiming perspective title, no acceptable and reliable material is forthcoming on the side of the defendants other

than Ex.B3 and B4. There is no worthwhile material on the side of the defendants to uphold the case of the plea of ouster. Therefore, it could be seen that the Courts below have on an appreciation of the evidence placed by the parties in the right perspective held that the third defendant has failed to establish his perspective title of the suit property on the plea of ouster.

10.Resultantly, it could be seen that the third defendant has no valid title to the suit property and therefore, the case that he had settled the suit property in favour of his sons under Ex.B2, Settlement Deed also cannot be upheld in the eyes of law. Therefore, it could be seen that the alleged Settlement Deed dated 29.12.2005 is a invalid document and no right would flow to the defendants 4 to 6, pursuant to the same, in respect of the suit property.

11.In the light of the above discussions, it could be seen that the defendants have projected a false case to defeat the plaintiff's share in the suit property. Their case has been negatived by the Courts below correctly and when there is no warrant or material to interfere with the concurrent findings of the Courts below in any manner, I find that there is no merit in the Second Appeal.

12.In conclusion, sans any substantial question of law being involved in this Second Appeal, the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1.The Subordinate Court,
Madurantakam,

2.The District Munsif Court,
Madurantakam

1 cc to Mr.N.A. Nissar Ahmed, Advocate, Sr. 75963

S.A.No.244 of 2011

KGK (CO)
kk 25/1