

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.24 of 2016 and
C.M.P.No.705 of 2016

S.Samiathal

.. Appellant/Plaintiff

vs.

1.Sulochana, rep by next friend/
guardin daughter parimala Devi

2.Parimala Devi

3.Muthusamy

4.Chinammal

.. Respondents/Defendants
3 & 4, 1 & 2

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 24.03.2015 made in A.S.No.16 of 2014 on the file of the learned Subordinate Judge, Perundurai, reversing the judgment and decree dated 25.08.2014 made in O.S.No.249 of 2008 on the file of the learned Principal District Munsif cum Judicial Magistrate, Perundurai.

For Appellant : Mr.M.V.Venkataseshan

JUDGMENT

The plaintiff in O.S.No.249 of 2008 on the file of the learned District Munsif, Perundurai is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for partition and for 1/3rd share and for other reliefs. The trial Court by decree and judgment dated 25.08.2014 decreed the suit in part thereby passing a preliminary decree for 1/12th share. As against the same, the defendants 3 and 4 have filed an appeal in A.S.No.16 of 2015 on the file of the learned Subordinate Judge, Perundurai. By decree and judgment dated 24.03.2015, the First Appellate Court allowed the appeal and set aside the decree and judgment of the trial Court. As against the same, the plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

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

The suit property was originally owned by one Mr.Ramasamygounder. Mr.Ramasamygounder had two sons by name Mr.Palanisamy and Mr.Muthusamy. Mr.Muthusamy is the first defendant in the suit. Mr.Palanisamy died leaving behind the defendants 2 to 4 as his legal representatives. The plaintiff is the daughter of Mr.Ramasamygounder. Mr.Ramasamygounder died intestate in the year 1972. Thereafter, there was no partition effected between his legal heirs. Though, the plaintiff demanded for partition of the suit property, the defendants did not come forward to partition the suit property. Therefore, the plaintiff filed the present suit for partition claiming 1/3rd share in the suit property.

4.The defendants disputed the said claim made by the plaintiff. According to the defendants 3 and 4, it is true that Mr.Ramasamygounder died intestate in the year 1972. But, after his demise, the plaintiff was never in possession of the property and she was virtually ousted from the possession of the suit property. The plaintiff's claim for partition is not sustainable as the same was time barred. It was further stated in the written statement that in the year 1978, the first defendant sold his undivided half share in favour of Mr.Palanisamy under Ex.B.1. Atleast from the year 1978 onwards, Mr.Palanisamy was in possession and enjoyment of the suit property and after his demise, his legal representatives namely, the defendants 2 to 4 have been in possession and enjoyment of the suit property. Thus, according to the defendants, the plaintiff has got no right to demand for partition of the suit property.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, she herself was examined as P.W.1 and as many as four documents were exhibited. On the side of the defendants, the first defendant was examined as D.W.1 and the second defendant was examined as D.W.2 and as many as nine documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit partly thereby passing a preliminary decree for partition allotting of 1/12th share to the plaintiff. However, the said judgment of the trial Court was reversed by the First Appellate Court. That is how the appellant/plaintiff is before this court with this second appeal.

7. In this second appeal, the learned counsel for the appellant would submit that though, it is true that the plaintiff was not in physical possession of the suit property all along after the demise of Mr. Ramasamygounder, there is enormous evidence to prove that she was in constructive possession with her brothers namely Mr. Palanisamy and Mr. Muthusamy. Thus, according to him, there is no evidence to succeed on the plea of ouster by the defendants. The learned counsel would further submit that the Courts below have erred in accepting the plea of ouster raised by the defendants.

8. I have considered the above submissions.

9. At the outset, I should say that there is no question of law much less a substantial question of law at all involved in this second appeal warranting admission of the same. I also do not find any perversity in the finding of the First Appellate Court. Further, there is no dispute that the suit property was originally owned by Mr. Ramasamygounder and till his life time i.e., 1972, he was in possession and enjoyment of the suit property. After his demise, the plaintiff did not chose to demand for any partition in the suit property. In the year 1978, under Ex.B.1, the first defendant sold away his un-divided share to his brother Mr. Palanisamy, for a valuable consideration. The First Appellate Court has given a factual finding that it cannot be believed that the plaintiff did not know about the alleged sale made in the year 1978 under Ex.B.1. For about 30 years, she did not claim for partition. After the execution of Ex.B.1, i.e., from the year 1978 onwards, Mr. Palanisamy was in possession and enjoyment of the suit property and after his demise, his legal representatives namely defendants 2 to 4 in the suit have been in possession and enjoyment of the suit property. After the emergence of Ex.B.1, the plaintiff cannot succeed in her plea that she was in constructive possession jointly with Mr. Palanisamy after the year 1978. Absolutely, there is no explanation as to why the plaintiff did not file the suit for about 30 years. There is no evidence at all to prove that the plaintiff was in constructive possession along with her brothers in the suit property. Ex.B.1 is the sale deed executed by Mr. Muthusamy in favour of his brother Mr. Palanisamy which would go to show that atleast from the year 1978, the plaintiff was ousted from the possession of the suit property. Thus, she was lost her right to demand for partition. This factual aspect has been elaborately dealt with by the First Appellate Court in which, I do not find any perversity.

10. As I have already pointed out, there is no question of law at all involved much less a substantial question of law warranting admission of this second appeal. Further, I do not find any merit in the second appeal.

11.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSIII)

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Sub-Assistant Registrar

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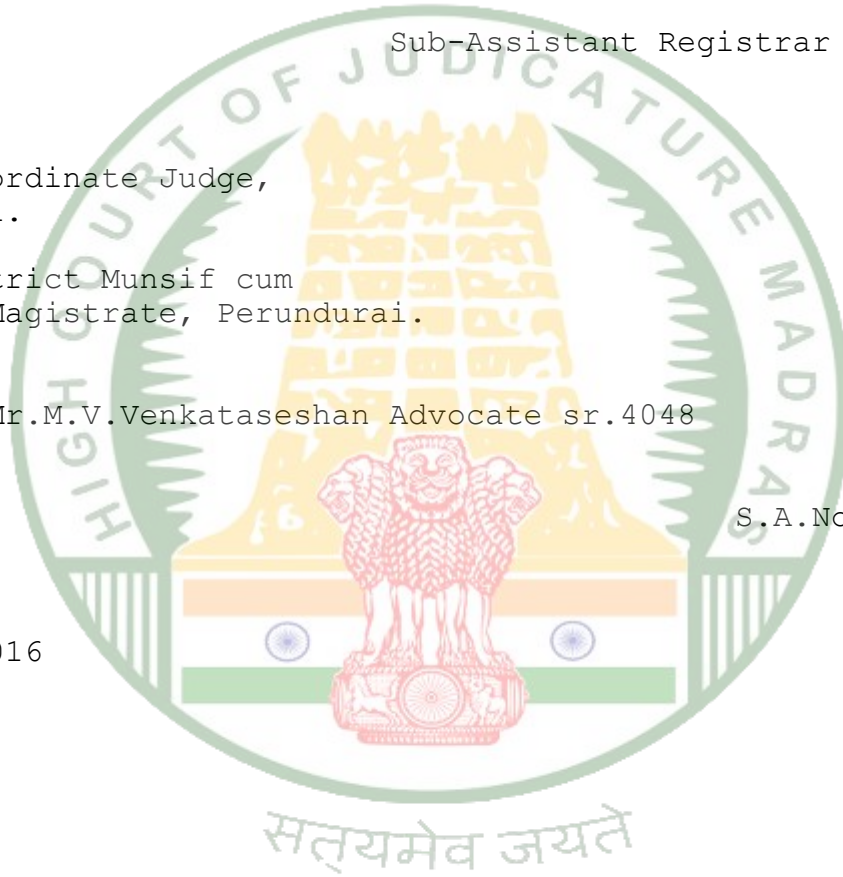
1.The Subordinate Judge,
Perundurai.

2.The District Munsif cum
Judicial Magistrate, Perundurai.

+1 cc to Mr.M.V.Venkateshan Advocate sr.4048

S.A.No.24 of 2016

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