



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.11.2016

C O R A M

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.446 of 2014 & M.P(MD)No.1 of 2014

1.Lakshmi
2.Raju
3.Muthukumar
4.Durai
5.Ravi
6

: Appellants/Appellants/Defendants 2 to

Vs.

1.Periya Guruvammal
2.Chinna Guruvammal
3.Kaliammal

: Respondents 1 to 3/ Respondents 1 to 3/
Plaintiffs

4.Guruvaiah

: 4th Respondent/4th Respondent/
1st Defendant

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 24.10.2013 passed in A.S.No.1 of 2013 on the file of the Sub-Court, Sankarankovil, confirming the judgment and decree dated 31.01.2008 passed in O.S.No.24 of 2007 on the file of the Principal District Munsif Court, Sankarankovil.

For Appellant

: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi.For Respondents
1 TO 3: Mr.V.S.Kishore Kumar
for Mr.V.B.Sundareshwar

J U D G M E N T

The defendants 2 to 6 in the suit in O.S.No.24 of 2007 on the file of the District Munsif Court, Sankarankovil, are the appellants before this Court.

2. The plaintiffs 1 to 3 are the respondents 1 to 3 in this appeal. The respondents 1 to 3 filed a suit in O.S.No.24 of 2007 on the file of the Principal District Munsif court, Sankarankovil, for partition and separate possession of the suit properties and for their 3/5 share in all the suit properties and



3. The case of the plaintiffs is that the suit properties are belonging to one Periyamadasamy Thevar, who died in the year 1981. The said Periyamadasamy Thevar admittedly had two wives. His first wife is Chinna Ganapathiammal and the second wife is Malayandi Achi Ammal. The plaintiffs 1 and 2 are the daughters and the first defendant is the son of first wife of Periyamadasamy Thevar. The third plaintiff is the daughter of Malayandi Achi Ammal. One Kaliyappan is the son of Malayandi Achi Ammal and his wife is the second defendant and the defendants 2 to 6 are the children of Kaliyappan. It is not in dispute that the son of Malayandi Achi Ammal namely Kaliappan died on 13.10.2001.

4. The suit was contested by the defendants 2 to 6 on the basis of an oral gift alleged to have been given by the Periyamadasamy Thevar in favour of the Malayandi Achi Ammal. The further case of the defendants 2 to 6 is that Malayandi Achi Ammal, namely, the second wife of Periyamadasamy Thevar has gifted the suit property in favour of Kaliyappan in the year 1982 under Ex.B1 dated 01.06.1982. The defendants 2 to 6 also set up title by ouster. According to them, they were in continuous possession and enjoyment of the suit properties by excluding the plaintiffs. The trial Court decreed the suit after holding that the oral gift pleaded by the defendants in favour of Malayandi Achi Ammal is not proved. Consequently, the trial Court found that the gift deed under Ex.B1 is not valid and not binding on the plaintiffs.

5. On the question of adverse possession, the trial Court found that the defendants are not entitled to claim title by adverse possession as they have not proved their possession as one ousting the plaintiffs. Since the plaintiffs and defendants are admittedly co-owners, the documents which are only the revenue records would not prove the exclusive possession of defendants 2 to 6.

6. Aggrieved by the findings of the trial Court, the defendants 2 to 6 filed an appeal before the Sub-Court, Sankarankovil, in A.S.No.1 of 2013. The appellate Court also fell in line with the trial Court and dismissed the appeal. The present Second Appeal is, therefore, filed by the defendants against the concurrent Judgment and Decree of the Courts below.

7. The learned Counsel for the appellants raised the following questions of law:

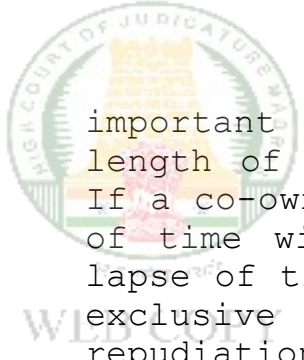
"1. When the original owner Periya Madasamy Thevar died in the year 1981 and admittedly the 1st respondent/1st plaintiff and 2nd Respondent/2nd plaintiff got married in the year 1958 and 1960 respectively, whether the Courts below are correct in granting a Preliminary decree for partition by allotting shares to the daughters by treating them as coparceners and admittedly the ~~services on~~ <https://hcserviceson.com> ~~in hcservices~~ <https://hcserviceson.com> died in the year 1981 and hence the judgment and decree of the Courts below warrants interference under Section 100 of Civil Procedure Code?

2) Whether the Courts below are correct in granting a preliminary decree of partition in favour of the Plaintiffs when the husband of the first appellant and father of the 2 to 5 appellants herein got registered settlement deed in his favour in respect of the suit schedule property and thus the judgments and decree of the Courts below is by misinterpreting the Registered Settlement Deed Ex.B1 hence the same warrants interference by this Honourable Court?

3) Whether the Courts below are correct in decreeing the suit for partition filed by the daughters more particularly the 1st and 2nd plaintiffs got married in the year 1958 and 1960 respectively and they were ousted from the possession of the properties in dispute and thus the Judgment and Decree of the Courts below granting decree for partition by overlooking the doctrine of ouster pleaded by these appellants and thus warrants interference?"

8. The main contention of the appellant is that the first defendant though admitted the case of appellants by filing an independent statement, joined hands with the plaintiffs later. The learned Counsel seriously contended that the Courts below have not appreciated the question of ouster in proper perspective with reference to the evidentiary value of the documents filed by the appellants. The learned Counsel for the appellants relied upon the judgment of this Court in Minor Ibramsa Rowther and others -Vs- Sheik Meerasa Rowther and others reported in 1972 (1) MLJ 466. He relied upon the paragraph 10 of the above judgment wherein , the Honourable Division Bench held as follows:-

"10. In a case of ouster of a co-owner, the position is entirely different. The possession of one co-owner is presumed to be on behalf of all the co-owners in view of the unity of title and possession. Because of this presumption of joint ownership in the case of co-owners the law requires to constitute ouster, proof of something more than mere exclusive possession and exclusive receipt of income. Along with exclusive possession there must be an ouster, a hostile, open denial and an open repudiation of the other co-owner's right to the latter's knowledge. The co-owner in exclusive possession cannot render his possession adverse to the other co-owner merely by any secret, hostile animus on his own part in derogation of other co-owner's title. Vide the observations in P. Lakshmi Reddy v. L. Lakshmi Reddy, ;Sinnaraj Pillai v. Ramayee Ammal, and Shambhu Prasad v. Phool Kumari,. But, this does not mean that the co-owner who has been ousted or excluded should be expressly informed as such by the other co-owner. If other circumstances concur the Courts, in proper cases, may legitimately infer, from exclusive possession for a considerable length of time, that the other co-owner has been excluded to his knowledge and that title has been denied and the hostile assertion of the co-owner in possession. The theory of lost grant is applicable to support long continued possession for a considerable length of time and the most



important element in presuming ouster is the time factor or the length of time of sole and exclusive possession by one co-owner. If a co-owner does not assert his rights for a considerable length of time with the result that the other side is handicapped, by lapse of time and disappearance of evidence, from proving that his exclusive possession was coupled with open denial and open repudiation of the title of the other co-owner either at the inception or subsequently, the co-owner who has been inactive must take the consequence for the long delay in bringing the suit which has prejudiced the other side and occasioned the loss of evidence by lapse of time.

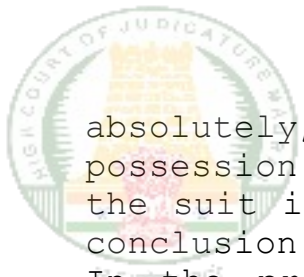
As observed in Broom's Legal Maxims (Tenth Edition) page 645, "No greater obligation lies upon a Court of justice than that of supporting long-continued enjoyment by every legal means, and by every reasonable presumption; this 'doctrine of presumption goes on the footing of validity, and upholds validity by supposing that everything was present which that validity required': omnia proesumuntur rite fuisse acta is the principle to be observed." Courts may presume ouster from exclusive possession for a considerable length of time."

9. In the present case, the learned Counsel for the respondents have filed the following documents to prove their title and plea of ouster:

- a) Ex.B1 is the certified copy of the Gift Deed executed by Malayandi Achi Ammal in favour of her son Kuruviah and Kaliappan.
- b) Ex.B2 is the sale deed dated 20.08.1983
- c) Ex.B4 is the joint patta in favour of defendants 1 and 2. This joint patta only obtained on 22.05.2003.
- d) Similarly, the document in Ex.B5 is only the original patta, that was given to the third plaintiff and the third defendant.

10. The case of the appellants that they were in possession and enjoyment of the suit properties for a long time to the exclusion of plaintiffs, cannot be believed. The document under Ex.B5 is also contrary to the appellants case. When it is admitted that Malayandi Achi Ammal did not have any right under the oral gift in her favour and it is neither valid nor proved, the subsequent gift deed alleged to have been executed by Malayandi Achi Ammal in favour of her sons, the first defendant and Kaliappan is not valid and binding on the plaintiffs. The plea of adverse possession or ouster cannot be accepted merely by producing some documents which would not prove the exclusive possession to sustain the plea of adverse possession or ouster.

11. In the present case, the documents are only the revenue records which are always considered as feeble. Further,



absolutely, there is no record to show that the appellants were in possession of the suit properties prior to 2003. Merely because the suit is filed after a long time, the Court cannot come to the conclusion that the plaintiffs have lost their title by ouster. In the present case, the facts are entirely different and the evidence on the side of the defendants to prove their exclusive possession are lacking. In such circumstances, the Judgment of this Court relied upon by the appellant will not lend any support to his case.

12. The fact that marriages of plaintiffs 1 and 2 took place in the year 1958 and 1960 respectively has no legal consequences as the properties are admittedly self-acquired properties of their father. Similarly, the documents Ex.B1 will not help the appellants to establish their title in the absence of prior title in Malayandi Achi Ammal. Since the oral gift is not proved, the subsequent gift deed executed by the Malayandi Achi Amal will not confer any right in favour the defendants.

13. Since the Courts below have considered the oral and documentary in a proper perspective and the judgments of the Courts below are supported by reasons, this Court do not find any reason to interfere with the concurrent findings.

14. For the aforesaid reasons, the substantial questions of law are also answered against the appellants.

15. In the result, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Sankarankovil

2.The Principal District Munsif ,
Sankarankovil.

+One cc to Mr.V.B.Sundareshwar, Advocate, SR.No.68698

+One cc to Mr.D.Nallathambi, Advocate, SR.No.68733

gsr

RL/5C/5P/CK/SAR2/2.1.2017

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