



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

S.A. (MD) Nos.304 and 305 of 2016
and
C.M.P. (MD) No.3752 of 2016

S.A. (MD) No.304 of 2016:

Maharaja @ V.Chinnakaruppan

... Appellant/2nd respondent/2nd defendant

Vs.

1.S.Muthukumar

... 1st respondent/appellant/Plaintiff

2.Karu Kanthasamy

... 2nd respondent/1st respondent/1st defendant

Prayer: The Second Appeal is filed under Section 100 C.P.C., against the decree and judgment dated 19.02.2010 in Appeal Suit No.20 of 2009 passed by the Fast Track Court (Addl.District Judge), Dindigul, reversing the decree and judgment dated 21.01.2008 in O.S.No.686 of 2003 passed by the learned Additional Sub Judge, Dindigul.

S.A. (MD) No.305 of 2016:

Maharaja @ V.Chinnakaruppan

... Appellant/2nd respondent/2nd defendant

Vs.

1.S.Muthukumar

... 1st respondent/appellant/Plaintiff

2.Karu Kanthasamy

... 2nd respondent/1st respondent/1st defendant

Prayer: The Second Appeal is filed under Section 100 C.P.C., against the decree and judgment dated 19.02.1010 in Cross Appeal No.20 of 2009 in A.S.No.20 of 2009 passed by the Fast Track Court (Addl.District Judge), Dindigul, confirming the decree and judgment dated 21.01.2008 in O.S.No.686 of 2003 passed by the learned Additional Sub Judge, Dindigul.

For Appellant

: Mr.N.Murugesan

For Respondents

: Mr.H.Lakshmi Shankar for R1

No appearance for R2

COMMON JUDGMENT

The 2nd appellant, who lost the Appeal before the First



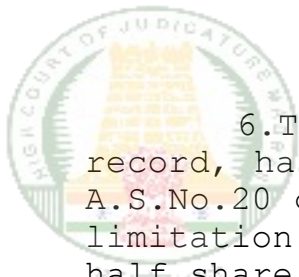
Appellate Court, has come forward with the present Second Appeal.

2.The 1st respondent namely, S.Muthukumar, has filed a suit in O.S.No.686 of 2003 before the Additional Sub Court, Dindigul, for partition and separate possession of half share in the suit property. He has stated that the suit property was originally belonging to his family and by way of a registered partition deed dated 23.08.1978, Schedule - J property was allotted to him and the 1st defendant was allotted Schedule - C property and the total extent has been mentioned commonly in both C and F schedule properties. At the time of partition, the plaintiff was 6 years old minor and hence, the cousin of the plaintiff namely, Shankar was maintaining the suit property. In the mean time, when the 1st defendant has attempted to sell the entire property, namely, Schedule - C and J, immediately the plaintiff issued a notice. However, without receiving the said notice, he sold the property to the 2nd defendant. Hence, the plaintiff has filed the suit for partition and separate possession of half share in the suit schedule property.

3.Before the Trial Court, the 1st defendant was set ex parte. The appellant / 2nd defendant has filed a detailed written statement. In the written statement the 2nd defendant has admitted the factum of partition and also admitted the fact that Schedule - C & J properties are one and the same. However, he has stated that from the date of purchase of the properties, he is in exclusive possession and enjoyment of the same and hence, he has prescribed title by adverse possession and therefore, he is the bona fide purchaser for value. Hence, he prayed for the dismissal of the suit.

4.The Trial Court, after considering the averments both in the plaint and written statement, has framed necessary issues. After considering the oral evidence of P.W.1, P.W.2 and D.W.1 and Exs.A1 to A5 and Exs.B1 to B12 the Trial Court dismissed the suit, holding that the 1st defendant has not prescribed title by adverse possession. But however, the Trial Court held that the 2nd defendant / appellant is the bona fide purchaser for value and dismissed the suit. Further, the Trial Court has held the suit is barred by limitation.

5.As against which, an appeal in A.S.No.20 of 2009 has been preferred by this plaintiff before the Fast Track Court (Additional District Judge), Dindigul, and the finding of the Trial Court in respect of adverse possession, the appellant herein has preferred a



6.The Appellate Court, after considering the materials on record, has dismissed the Cross Objection and allowed the appeal in A.S.No.20 of 2009 dated 19.02.2010 stating the suit is not barred by limitation and granted preliminary decree and separate possession on half share in the suit property.

7.The Appellate Court held that the suit in O.S.No.686 of 2003 was not filed for setting aside the partition deed, namely, Ex.A1 and further the Appellate Court held that the 2nd defendant / appellant is not a bona fide purchaser for value, even though notice has been issued much prior to the sale, without receiving the same, the sale has been effected. On that basis, the appeal in A.S.No.20 of 2009 has been allowed and Cross Objection was dismissed. Against the judgment and decree passed in A.S.No.20 of 2009, the present Second Appeal in S.A.(MD)No.304 of 2016 is filed and A.S.No.305 of 2016 has been filed for dismissing the Cross Objection.

8.At the time of admission, this Court has framed the following substantial questions of law:

"(i)Whether the First Appellate Court is right in granting preliminary decree even though in Ex.A1, partition deed, properties are divided between all the children of Chidambaram Pillai?

(ii)Whether the First Appellate Court is right in rejecting the plea of adverse possession raised by the appellant herein, who purchased the property only in the year 2003?"

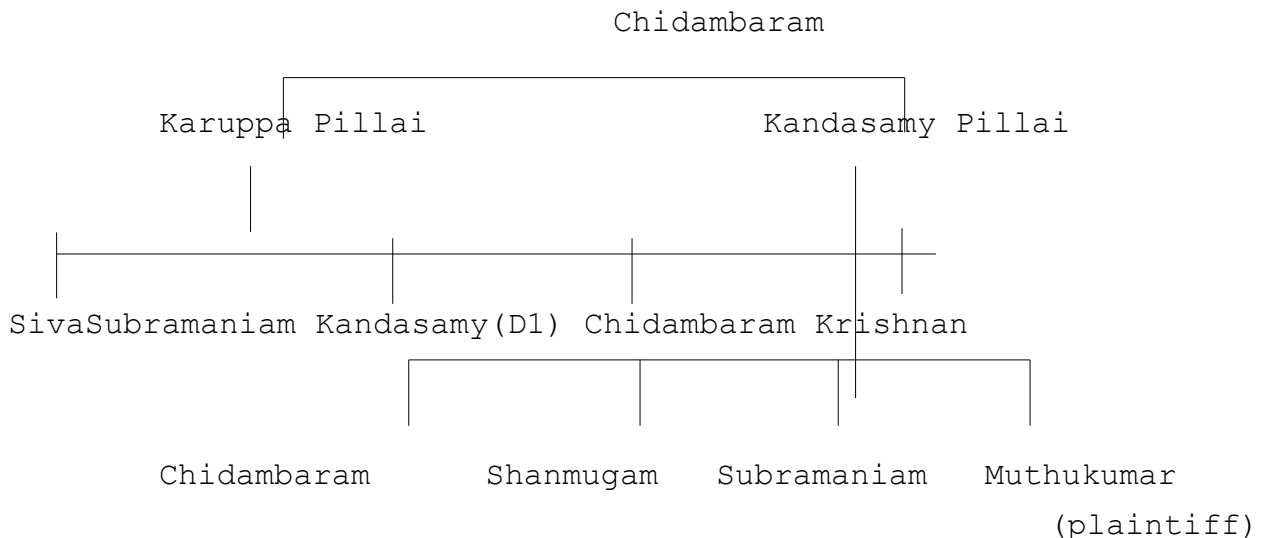
9.The learned counsel appearing for the appellant would submit that the suit is hopelessly barred by limitation and as per Article 60 of Limitation Act, the plaintiff ought to have filed a suit for setting aside the partition deed namely, Ex.A1, within 3 years from the date of attaining majority. The plaintiff attained majority in the year 1991, however, the suit was filed only in the year 2003, therefore, the suit is barred by limitation.

10.To substantiate his argument, the learned counsel appearing for the appellant relied upon a Judgment of this Court reported in **AIR 1978 Mad. 230 (Meenambal and others vs. Chockalinga Chettiar and others)**. He further submitted that after effecting the partition in the year 1978, the 1st defendant was enjoying the same till he sold the property to this appellant and after effecting the sale deed Ex.B.5 in favour of the 2nd defendant, he was enjoying the property and the said document was not considered by the courts below. Hence, he prayed for setting aside the same.

11.While considering the same, the learned counsel appearing for the 1st respondent would submit that the suit is not filed for setting aside the partition deed Ex.A1 dated 23.08.1978. The properties

allotted to the 1st defendant and plaintiff are one and the same. Hence, the plaintiff filed the suit for partition. Therefore, Article 60 of the Limitation Act, is not applicable to the facts of the present case. He would further submit that as the plaintiff was minor, there is no necessity for him to set aside the partition deed. To substantiate the said contention, the learned counsel appearing for the 1st respondent relied upon a judgment reported in **AIR 1977 Madras 67 (V.Nataraja Iyer and others Vs. Arunachalam and others)** and **2001 MLJ 601 (Mariasironmani and others Vs. Pappammal @ Savariammal and others)**. He further submitted that there is no necessity for setting aside the sale deed executed in favour of the 2nd defendant and he is not a party to the sale. He also submitted that the Appellate Court has rightly held that the plaintiff is entitled half share in the property. Hence, he prayed for dismissal of the present Second Appeal.

12.Considering the rival submissions and on perusal of typed set of papers, the admitted facts are, the properties are originally belonged to one Chidambaram. He had two sons namely, Karuppa Pillai and Kandasamy Pillai. The first son namely, Karuppa Pillai was having four sons, namely, Siva Subramaniam, Kandasamy (D1), Chidambaram and Krishnan. The second son namely, Kandasamy Pillai was having four sons namely, Chidambaram, Shanmugam, Subramaniam and Muthukumar (plaintiff). The genealogy of the Chidambaram is as follows:



It is also an admitted fact that as per partition deed dated 23.08.1978, Exs.A1 a partition was entered among the members of the family of the said Chidambaram. In the said partition, A-schedule property was allotted to Karuppa Pillai, B-Schedule property was allotted to Sivasubramaniam, C-schedule property was allotted to Kandasamy (D1 / 2nd respondent), D-schedule property was allotted to Chidambaram, E-schedule property was allotted to Kandasamy Pillai, the brother of Karuppa Pillai was allotted F-schedule property, his son Chidambaram was allotted to G-schedule, Shanmugam was allotted



to H-schedule, Subramaniam was allotted to I-schedule property and Muthukumar (plaintiff) was allotted to J-schedule property.

13. It is also an admitted fact that at the time of partition, the plaintiff was 6 years old and in the suit properties, namely, C & J schedule, the entire extent has been mentioned and hence, each entitled for half share. Now this Court has to decide as to whether the Article 60 of the Limitation Act is applicable to the facts of the present case. Therefore, it is appropriate to incorporate the prayer sought for in the plaint.

"a) Partition and separate possession of half share in the suit property.

b) Pass a final decree by appointing an Advocate Commissioner to divide the property in metes and bounds.

c) Direct the defendants to give the mesne profits for three years prior from the date of filing of the suit, under Order 20 Rule 12 of C.P.C.,

d) For costs and

e) For such other reliefs as the court may deem fit and proper and thus to render justice."

14. It is also appropriate to incorporate Article 60 of the Limitation Act as under -

"Section 60. Extension of period of limitation in certain cases. An appellate authority may admit any appeal under Section 55 after the period of limitation laid down in the said section, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period."

As per Article 60 for setting aside a transfer of property made by the guardian of a ward the same has to be set aside within a period of 3 years from the date the ward attaining majority. But here as already stated, the prayer is only for partition and not for setting aside the partition deed Ex.A1, which was entered by the mother of the plaintiff as guardian. Hence, the above argument advanced by the learned counsel appellant that the Article 60 of the Limitation Act is applicable to the facts of the present case, does not merit acceptance. So the decision relied upon by the learned counsel



reported in **AIR 1978 Mad. 230** is not applicable to the facts of the present case.

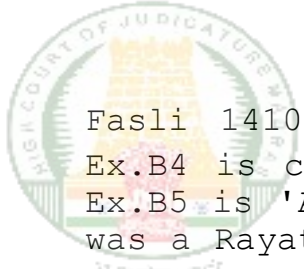
15. The submission of the learned counsel appearing for the appellant that without setting aside the same, the plaintiff is not entitled to sought for fresh partition, is not hold good. Because he has not questioned the validity of partition. In schedule - C & J as the entire extent has been commonly mentioned in both the schedules. In such circumstances, the aforesaid citation is not applicable. There is no need to setting aside Ex.A1 partition deed dated 24.08.1978.

16. The next question is as to whether the appellant predecessor in title has prescribed the title by adverse possession.

17. It is well settled dictum of the Hon'ble Apex Court that a person, who pleaded adverse possession, must plead specifically and prove the same. But before the Trial Court, the 1st defendant was set ex parte and he has not raised his little finger. Per contra, the appellant, who has stepped into the shoes of the 2nd defendant, who is the purchaser of the property, has raised the plea. Therefore, this Court has to decide whether he is an *animus possidendi* and whether the party has prescribed the title by adverse possession.

18. It is well settled the dictum of *nec vi nec clam nec precario*. Therefore, there must be animus on the part of a person, who possesses the property for openly, continuously, uninterruptedly adverse to the interest of the true owner for more than a statutory period, then only he has prescribed the title by adverse possession. But the appellant has purchased the property only on 04.03.2003 without the knowledge about the previous possession, who is not the competent person to speak the adverse possession the predecessor in title. But the 1st defendant has not get into the witness box. Now this Court has to decided as to whether the 2nd defendant has filed relevant document to show that he was in possession for more than statutory period.

19. The learned counsel appearing for the appellant would submit that the appellant has obtained Ex.B2 chitta for Fasli 1394 in his name and the same has not been considered by the Trial Court. In the patta No.187, issued in the name of Karuppa Pillai son of Kandasamy in the year 2007. Further, there was some transfer effected in the year 1973 and the same has also been mentioned. In ~~such circumstances~~, it is well settled dictum of the Hon'ble Apex Court that patta and chitta are not documents to prove the title. The possession is concerned, For the year 2001, Ex.B3, Adangal for



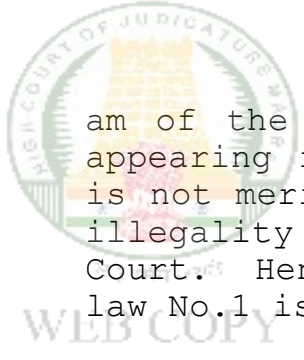
Fasli 1410, was issued stating that Mango trees were cultivated. Ex.B4 is computer patta mentioning the name of the 2nd defendant. Ex.B5 is 'A' register wherein it was stated that Survey No.60 / 3A2 was a Rayathwari Punja, which stands in the name of the said Chinna Karuppan / the 2nd defendant. A Register, Exs.B6 and B7 and B10 were obtained during the pendency of the suit. Ex.B8 is for Fasli 1495 wherein it was stated that ground-nut has been cultivated. In Ex.B9 it was stated as paddy. Exs.B11 and B12 are also obtained after filing of the suit. Therefore, there is no revenue records to show that from the year 1978 on wards, the 1st defendant was in continuous possession and enjoyment of the property with the knowledge of the true owner.

20.In such circumstances, both the Courts below have rightly held that the appellant has not proved that his predecessor title has prescribed title by adverse possession. Therefore, I do not find any reason to interfere with the findings of First Appellate Court. The substantial question of law No.2 is answered against the appellant. In view the answer given to substantial question of law No.2 the second appeal in S.A.(MD)No.305 of 2016 is liable to be dismissed.

21.In the result, the appeal in S.A.(MD)No.305 of 2016 is liable to be dismissed by confirming the decree and judgment dated 19.02.2010 in A.S.No.20 of 2009 passed by the Fast Track Court (Addl.District Judge), Dindigul.

22.In respect of the substantial question of law No.1 is concerned, the Trial Court has held that the appellant is the bona fide purchaser for value, therefore, the suit has been dismissed, whereas, the First Appellate Court has held after issuance of notice that the sale deed has been executed and hence, he is not a bona fide purchaser for value. But here admittedly, it is a suit for partition and the appellant herein has stepped into the shoes of his predecessor in title. But here in this case as soon as the plaintiff came to know about the sale transaction, immediately a notice has been issued and the same has been returned and thereafter, the sale deed has been executed. In such circumstances, I am of the view that the First Appellate Court has considered this aspect in proper perspective and came to the correct conclusion that the appellant has not a bona fide purchaser for value.

23.Further more, the learned counsel for the appellant would submit that the suit is barred by limitation. But, a suit for partition is concerned, the cause of action is a continuous one, till the property has been divided and possession has been taken. Moreover, the appellant purchased the property on 03.04.2003 and the suit was filed on 24.11.2003 with a year. In such circumstances, I



am of the view that the argument advanced by the learned counsel appearing for the appellant that the suit is barred by limitation, is not merit acceptance. Therefore, I do not find any infirmity or illegality in the decree and judgment passed by the First Appellate Court. Hence, it is hereby confirmed. The substantial question of law No.1 is answered accordingly.

24. In view of the answer given to the substantial questions of law Nos.1 and 2, the judgment and decree passed by the First Appellate Court is well reasoned. It is not suffered any illegality or irregularity and the same does not warrant any interference of this Court. Hence, the appeal in S.A.(MD)No.304 of 2016 is hereby dismissed.

25. Considering the facts and circumstances of the case both parties are directed to bare their own costs. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Fast Track Court (Addl. District Judge), Dindigul.
2. The Additional Sub Judge, Dindigul.

+ 2 CC TO Mr.H.LAKSHMI SHANKAR, ADVOCATE IN SR No. 45215, 45216
+ 4 CC TO Mr.N.MURUGESAN, ADVOCATE IN SR No. 45320, 45321

NBJ

TE/AAL-MPA/SAR-II : 29/09/2016 : 8P/9C

S.A. (MD) Nos. 304 and 305 of 2016
and
C.M.P. (MD) No. 3752 of 2016
17.08.2016