

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

SA.No.210/2017

Ammini @ Chinnammal .. Appellant / Plaintiff

Versus

1.Chenniappan
2.Chinnappan .. Respondents / Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree made in AS.No.3/2012 dated 25.06.2012 on the file of the learned Principal Subordinate Judge, Erode, confirming the judgment and decree as made in OS.No.169/2010 dated 10.08.2011 on the file of the learned Principal District Munsif, Erode.

For Appellant : Mr.V.Balamurugane

JUDGMENT

The plaintiff in OS.No.169/2010 filed for partition and for permanent injunction, lost before the Trial Court and in Appeal in AS.No.3/2012 filed before the Lower Appellate Court also, she had lost it and hence, this Second Appeal.

2 It is the case of the appellant / plaintiff that the suit properties admeasuring to an extent of 5.81 acres in Survey Nos.220/1 and 220/2, situate at Veppampalayam Village, Perundurai Taluk, Erode District, belong to the father of the plaintiff and the defendants, viz., one Kolandaiya Gounder and the appellant/plaintiff is the sister of the defendants. The said Kolandaiya Gounder died intestate and the plaintiff and the defendants as well as one more daughter, viz., Chellammal, had succeeded to the estate and the Chellammal died as a Spinster and as such, the plaintiff as well as the defendants are entitled to common 1/3rd share in the property and though the appellant/plaintiff has been repeatedly demanding the defendants

to partition the property and give her separate possession; but they failed to do so and taking advantage of the fact that the appellant/plaintiff as a Woman, had also tried to alienate the property and therefore, came forward to file the suit for partition and separate possession as well as for permanent injunction.

3 The defendants filed written statement refuting the allegations made in the plaint and they took a stand that the properties are not originally belong to their father, viz., Kolandaiya Gounder, but the properties are ancestral in nature and Kolandaiya Gounder died during the year 1952 and being coparcener, as they had become the absolute owners of the said properties, are in possession and enjoyment of the same for more than 50 years openly and uninterruptedly as their own properties. Subsequently, the defendants had also entered into a registered Partition Deed dated 16.09.2004 [Ex.B2] and they are also paying statutory levies and the plaintiff had waived her right to the suit properties for very many years and on that ground also, she is not entitled to any relief and prayed for dismissal of the suit.

4 The Trial Court, on a consideration of the pleadings, had framed the following issues:-

[a] Whether the plaintiff is entitled for 1/3rd share in the suit property? ;

[b] Whether the plaintiff is entitled for prayer for permanent injunction as prayed for? ; and

[c] To what other relief, the plaintiff is entitled to?

5 During the course of trial, the plaintiff examined herself as P.W.1 and marked Exs.A1 to A4. On the side of the defendants, the 1st defendant examined himself as DW1 and marked Exs.B1 to B8.

6 The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has dismissed the suit vide judgment and decree dated 10.08.2011 and aggrieved by the same, the plaintiff filed an Appeal in AS.No.3/2012 on the file of the Court of Principal Sub Judge, Erode.

7 The Lower Appellate Court, on a consideration of materials placed before it, had formulated the following point for consideration:-

Whether the Lower Court is right in dismissing the suit?

8 The Lower Appellate Court has found that the plaintiff who examined herself as P.W.1, had admitted that the properties were enjoyed by her father as a joint family property and are also ancestral in nature and the appellant/plaintiff had also claimed her right under the Hindu Succession Central Amendment Act, 2005 and taking into consideration of the fact that she got married after the demise of her father and in the light of the fact that the Hindu Succession Central Amendment Act, 2005 is prospective in nature, the plaintiff, as a co-sharer, cannot take shelter under the said Amendment, as her father died about 30 years prior to the Amendment.

9 The Lower Appellate Court also found that though the plaintiff claim that she is in joint possession and enjoyment of the properties along with the defendants, the same is not substantiated by any material in the form of evidence and taking into consideration of the fact that Exs.B7 and B8-Sale Deeds executed by the defendants with regard to a portion of the house said to have been belonging to joint family and the admission made by the plaintiff that the defendant made improvements in the said property by digging well and also levelled the land and cultivating the land by themselves and that the suit property is in possession for more than 28 years, had reached the conclusion that the plaintiff/appellant was quite aware of her exclusion/ouster in the joint family property. The Lower Appellate Court also found from Exs.B7 and B8, that the defendants had proved that the plaintiff has been excluded from the property to her knowledge right from the year 1982 and by applying the ratio laid down in the judgments reported in 2005 [2] MLJ 224 [A.Rajagopal [deceased] and others Vs. Muthulakshmi Ammal and another] and 2010 [6] MLLJ 359 [Venkataramana and others Vs. N.Munusamy Naidu and others], had reached the conclusion that the right of the plaintiff got extinguished as per Article 110 of the Limitation Act and dismissed the Appeal vide impugned Judgment and decree dated 25.06.2012. Aggrieved by the same, the appellant/plaintiff has filed the Second Appeal.

10 In the Memorandum Grounds of Second Appeal, the following Substantial Questions of law are raised:-

[a] Whether the finding of the Courts below that the plaintiff's right was extinguished due to delay in seeking partition is right? ;

[b] Whether the findings of the Courts that the right of the plaintiff is barred under the principle of "ouster" is right when the plaintiff had proved her joint possession in the suit property?

[c] Whether the Courts below are right in dismissing the claim of the plaintiff when as per the section 6[1] of the Hindu Succession [Amendment] Act, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same right in the coparcenary property as she would have had if she had been a son, be subject to the same liabilities in respect of the coparcenary property as that of a son, and any reference to a Hindu Mitakshara Coparcener shall be deemed to include a reference to a daughter of a coparcener. Further, the proviso to section says that nothing in the section 6[1] shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December 2004. Thus, as per this section, a daughter can claim partition in a joint Hindu Family governed by the Mitakshara Law so long as there is no partition or testamentary disposition of property before 20.12.2004. In this case, admittedly, no partition has taken place by a registered partition deed or through Court nor had any testamentary disposition had taken place?"

11 Mr.V.Balamurugane, learned counsel for the appellant/plaintiff would submit that admittedly, the appellant/plaintiff is the only sister to the respondents / defendants as one of the sisters had died and in the event of coparceners, possession of land can be treated as possession of the other coparceners and as such, the question of exclusion or extinguishment does not arise at all and both the Courts below has overlooked the said legal position and had erroneously reached the conclusion to reject the case of the plaintiff / appellant and prays for interference.

12 This Court has carefully considered the submission made by the learned counsel for the appellant/plaintiff and also perused the materials placed before this Court including the judgments rendered by the Courts below.

13 The plaintiff who was examined as P.W.1 has conceded that her father was enjoying the suit property as joint family property and reached the conclusion that the properties in question are also ancestral in nature and though the appellant/plaintiff has claimed partition under the Hindu

Succession Central Amendment Act, 2005, the fact remains that it is only prospective in nature and taking into consideration of the fact that the father of the appellant/plaintiff died after the marriage of the plaintiff / appellant, was of the view that the benevolent provisions of the said Amendment has no application to the case of the plaintiff / appellant. It is also admitted by P.W.1 - appellant/plaintiff that under Exs.B7 and B8, the 2nd defendant has converted a part of the property and though the appellant/plaintiff is very well aware of the facts, she did not chose to taek any action and therefore, the plea of "ouster" taken by the defendants is to be upheld and further reached the conclusion that the suit is also barred under Article 110 of the Limitation Act.

14 It is to be pointed out at this juncture that Exs.B7 and B8 came into being on 02.11.1987 and 15.12.1983 respectively and whereas, the suit was filed only on 18.03.2010 and the plaintiff has slept over for quite long time and came to initiate legal proceedings with much delay.

15 The plaintiff / appellant has miserably failed to establish her right over the suit property and taking into consideration of the fact that the ouster/adverse possession has also been established by taking into consideration Exs.B7 and B8 and coupled with her evidence as P.W.1 that the properties belong to her father ancestrally, this Court is of the view that the findings rendered by the Courts below do not warrant interference. The points urged by the learned counsel for the appellant/plaintiff on questions of law have been considered and answered by the Courts below and there are no substantial questions of law arise for consideration in the Second Appeal.

16 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree passed by the learned Principal Subordinate Judge, Erode, in AS.No.3/2012 dated 25.06.2012. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Principal Subordinate Judge,
Erode.

2.The Principal District Munsif,
Erode.

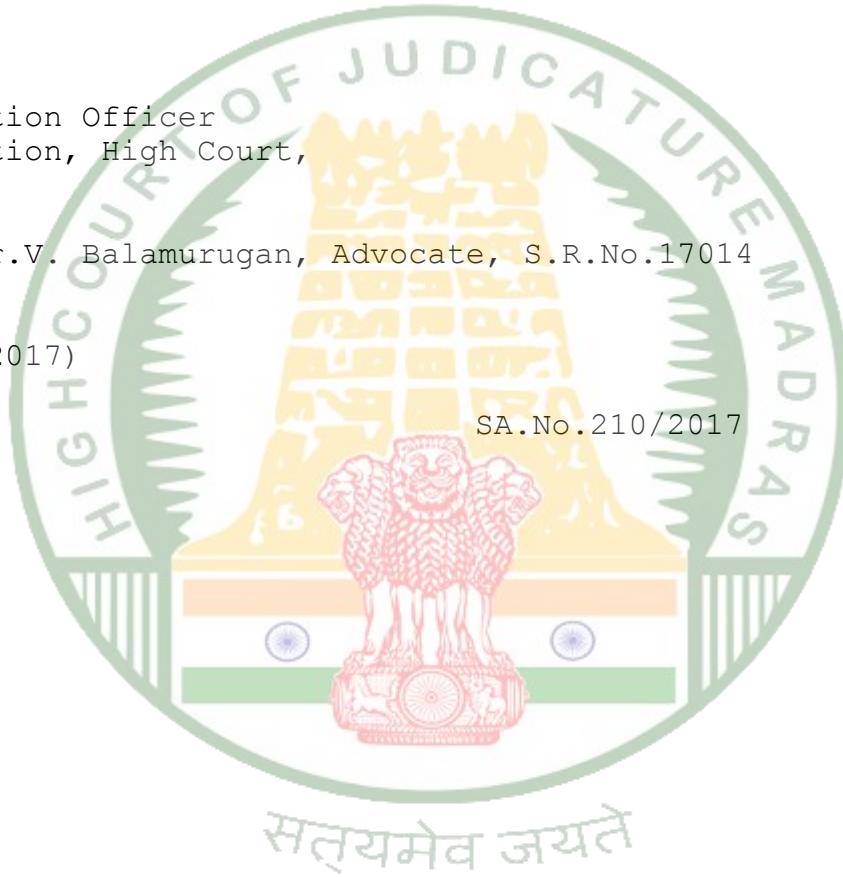
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1.The Section Officer
VR Section, High Court,
Madras.

+lcc to Mr.V. Balamurugan, Advocate, S.R.No.17014

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